

**EAST MONTPELIER, VERMONT**  
**LAND USE & DEVELOPMENT**  
**REGULATIONS**

**ADOPTED**  
**JANUARY 6, 2009**

**AMENDED**  
**OCTOBER 18, 2010**  
**DECEMBER 19, 2011**  
**NOVEMBER 30, 2015**

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**TOWN OF EAST MONTPELIER LAND USE & DEVELOPMENT REGULATIONS  
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## ARTICLE 1: AUTHORITY & PURPOSE

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### Section 1.1 Enactment

In accordance with the Vermont Planning and Development Act [24 V.S.A. Chapter 117], hereinafter referred to as the “Act,” there are hereby established zoning and subdivision regulations for the Town of East Montpelier, Vermont. These regulations shall be known and cited as the “**East Montpelier Land Use & Development Regulations.**”

### Section 1.2 Purpose

The purposes of these regulations are to:

- (A) Encourage the appropriate and efficient use of all lands in the Town of East Montpelier in a manner which promotes and protects public health, safety and the general welfare of the community;
- (B) Facilitate the adequate and efficient provision of public facilities and services;
- (C) Implement the *East Montpelier Town Plan* as most recently amended, in accordance with the Act [§4410];
- (D) Integrate all administrative and regulatory provisions of zoning and subdivision regulations as authorized by the Act [§§4411, 4418, 4419] into a single set of regulations;
- (E) Further the goals and purposes established in the Act [§4302]; and
- (F) Balance the protection of individual property rights of East Montpelier landowners with the other purposes of these regulations as stated above.

### Section 1.3 Application & Interpretation

- (A) The application of these regulations is subject to all provisions of the Act, as most recently amended.
- (B) In accordance with the Act [§4446], no land development shall commence within the Town of East Montpelier except in conformance with the requirements of these regulations. Any land development not specifically recognized as permitted or conditional uses under these regulations, or otherwise exempted under Section 6.1 and/or Section 7.2, is prohibited.
- (C) All subdivisions of land, uses or structures lawfully in existence as of the effective date of these regulations are allowed to continue. Changes, alterations or expansions to pre-existing subdivisions, structures or uses shall be subject to all applicable requirements of these regulations, including provisions applying to pre-existing non-conforming lots under Section 3.9 and nonconforming uses and/or noncomplying structures under Section 3.10.
- (D) These regulations are not intended to repeal, annul or in any way to impair any permit previously adopted or issued.
- (E) Where these regulations impose a greater restriction upon the use of a structure or land than is required by another statute, ordinance, rule, regulation, permit, easement or agreement, the provisions of these regulations shall control.

**Land Development.** The division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, 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.

### Section 1.4 Adoption & Effective Date

- (A) In accordance with the Act [§4442(c)], these regulations shall take effect twenty-one (21) days from the date of adoption by a majority of the Selectboard, or immediately upon adoption by Australian ballot at a duly noticed town meeting. As of the effective date of these regulations, all zoning and subdivision regulations previously in effect for the Town of East Montpelier are deemed repealed.

(B) These regulations, including any zoning map(s) incorporated by reference, may be amended, or repealed in accordance with the requirements and procedures established in the Act [ §§4441, 4442].

**Section 1.5 Severability**

The provisions of these regulations are severable. In the event that any provision of these regulations, or their application, is judicially ruled invalid, such ruling shall not affect the validity of any other provision or application.

<b>TABLE 1.1 MUNICIPAL PERMITS &amp; APPROVALS</b>			
<b>Permit/Approval</b>	<b>Required for</b>	<b>Issued by</b>	<b>See</b>
<b>Zoning Regulations</b>			
Zoning Permit [§4449]	All development, including signs, conversions or changes of use, and boundary (lot line) adjustments, unless specifically exempted from these regulations.	Zoning Administrator	Section 7.1
Land-locked parcel access approval [§4412(3)]	Development without frontage on a maintained public road or public waters	Development Review Board & Selectboard	Section 3.3
Site Plan Approval [§4416]	All “permitted uses” except for forestry, agriculture, single and two family dwellings, and associated accessory structures or uses. Conditional uses require site plan review.	Development Review Board	Section 5.4
Conditional Use Approval [§4414(3)]	All uses classified as “conditional uses” by district, or as otherwise specified in these regulations	Development Review Board	Section 5.5
Variance Approval [§4469]	Requests on appeal for a variance from the provisions of these regulations	Development Review Board	Section 7.6
Planned Unit or Planned Residential Development (PUD, PRD) Approval [§4417]	Subdivisions of land which modify the provisions of these regulations as specified for PUDs and PRDs, to be approved simultaneously with approval of a subdivision plan	Development Review Board	Section 5.6
Certificate of Compliance [§4449]	Use of a dwelling or structure constructed after the effective date of these regulations for which a zoning permit has been issued	Zoning Administrator	Section 7.4
<b>Subdivision Regulations</b>			
Subdivision Approval [§4418]	All subdivisions of land, including amended subdivisions, and PRDs and PUDs	Development Review Board	Article 6
Sketch Plan Approval [§4418(2)]	Applications for subdivision approval, at the request of the applicant	Development Review Board	Section 6.3
Preliminary Plan Approval [§4418(2)]	All applications for subdivisions resulting in the creation of three or more lots	Development Review Board	Section 6.4
Final Plan Approval [Including plat approval] [§4418 & 4463]	All applications for the subdivision of land	Development Review Board	Section 6.5
Plat Recording [§4463(b)]	All approved subdivisions of land, including boundary or lot line adjustments	Development Review Board	Section 6.6
<b>Other</b>			
Potable Water Supply	Public or on-site potable water source	VT Agency of Natural Resources	Wastewater System and Potable Water Supply Rules
Wastewater System	On-site septic systems	VT Agency of Natural Resources	Wastewater System and Potable Water Supply Rules
Access (Curb Cut) Approval	Access onto town or state highways	Selectboard or VT Agency of Transportation	Access Policy
Road Upgrade/Acceptance	Road upgrades or acceptance of private roads	Selectboard	Road Policy

## ARTICLE 2: ZONING DISTRICTS

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### Section 2.1 Zoning Districts & Zoning Map

- (A) For the purposes of these regulations, the Town of East Montpelier is divided into the following zoning districts, in accordance with the Act [§4414(1)]:
- Zone A – Commercial District
  - Zone B – Industrial District
  - Zone C – Residential-Commercial District
  - Zone D – Rural Residential-Agricultural District
  - Zone E – Agricultural-Forest Conservation District
  - Conservation Area Overlay Districts
- (B) The location and boundaries of each zoning district are shown on the official “Town of East Montpelier Zoning Map,” which is incorporated as part of these regulations. Floodway and Special Flood Hazard Area boundaries are shown on National Flood Insurance Rate Maps for the Town of East Montpelier, which are adopted by reference to be part of these regulations. River Corridor boundaries are as mapped and published by the Vermont Agency of Natural Resources, beginning with the East Montpelier River Corridor, dated 2/27/15, which is hereby adopted by reference. The official zoning map and regulated flood hazard area maps, located in the East Montpelier Town Office, shall be the final authority as to the current zoning status of land and waters in the town.
- (C) The official zoning map shall be identified by the signatures of the Selectboard, as attested to by the East Montpelier Town Clerk. Changes may be made to the zoning map only in accordance with the bylaw amendment process specified in Section 1.4 of the Act. A reduced copy of the official zoning map is included in these regulations.
- (D) A development project that occupies more than one zoning district shall be reviewed by the Development Review Board. The Board shall ensure such a project complies with all district, overlay and general regulations.

### Section 2.2 Interpretation of Zoning District Boundaries

- (A) Where uncertainty exists as to the location of district boundaries shown on the zoning map, the following rules shall apply:
- (1) Boundaries indicated as following roads, transportation or utility rights-of-way shall be interpreted as following the centerlines of such features.
  - (2) Boundaries indicated as following lot lines shall be interpreted as following delineated property boundaries.
  - (3) Boundaries indicated as following rivers or streams shall be interpreted as following the centerlines of such features, and shall move with the river or stream channel.
  - (4) Boundaries indicated as following shorelines shall be interpreted as following the mean high water level, and shall move with the shoreline.
  - (5) Boundaries indicated as following contour lines shall be interpreted as following a constant, specified elevation as measured from mean sea level or other accepted reference datum.
  - (6) Boundaries indicated as following a compass heading shall be interpreted as following such headings.
  - (7) Boundaries indicated as parallel or perpendicular to, or extensions of, the above features shall be interpreted as such on the ground.
  - (8) Distances not specifically indicated on the map shall be determined from the scale on the zoning map.



- (B) The abandonment or relocation of a right-of-way, or the change in a line or feature that references a district boundary line, after the effective date of these regulations, shall not affect the location of the district boundary, except as specified for streams, rivers and shorelines.
- (C) Where available (i.e., in Zones A1-A30, AE and AH), base flood elevations and floodway limits provided by the National Flood Insurance Program (NFIP) in the Flood Insurance Study and accompanying maps shall be used to administer and enforce flood hazard area provisions of these regulations [see Article 9]. In areas where base flood elevations and floodway limits have not been provided by the NFIP (i.e., Zone A), base flood elevations and floodway information available from state or federal agencies or other accepted sources shall be obtained and reasonably used to administer and enforce flood hazard area provisions.
- (D) When the Zoning Administrator cannot definitely determine the location of a district boundary, the Development Review Board and/or appropriate state or federal official may be consulted prior to issuing a determination. A determination by the Zoning Administrator regarding the location of a district boundary may be appealed to the Development Review Board under Section 7.5.
- (E) Where there is a dispute as to where a district boundary lies, the Development Review Board may require that the property owner verify the location through a survey by a licensed surveyor.
- (F) Where a zoning district divides a lot in single ownership, the Development Review Board may allow, subject to conditional use review under Section 5.5, the extension of district standards up to a distance of 50 feet into either portion of the lot. Frontage requirements for the district in which the road frontage is located shall apply.
- (G) Where a lot is divided by a town boundary, the standards of these regulations shall be applied to that portion of the lot located in the Town of East Montpelier in the same manner as if the entire lot were located in the town.

### **Section 2.3 Application of District Standards**

- (A) The following Tables 2.1-2.6 set forth the stated purpose, allowed uses and specific standards for each zoning district noted in Section 2.1
- (B) All uses and structures, unless specifically exempted from these regulations under Section 7.2, must comply with applicable standards for the district(s) in which they are located (see Tables 2.1-2.6). The standards for each district shall apply uniformly to each class of use or structure, unless otherwise specified in these regulations. Non-conforming uses and non-conforming structures must meet the requirements of Section 3.10.
- (C) Overlay district standards shall be applied concurrently with the standards for the underlying zoning district(s). Where the overlay district imposes more restrictive standards on the use of land or structures, the standards of the overlay district shall apply.
- (D) Uses for each district are classified as “permitted uses” to be reviewed by the Zoning Administrator prior to the issuance of a zoning permit under Section 7.1; or “conditional uses” to be reviewed and approved by the Development Review Board in accordance with Section 5.5 prior to the issuance of a zoning permit. Both permitted and conditional uses must meet applicable zoning district requirements, and also general standards under Article 3. Site plan review under Section 5.4 also may be required for specified permitted uses.
- (E) In all districts, front setbacks will be measured starting from the road centerline. In development situations involving state highways, the front setback distance must meet the minimum setback for the specific district or be at least fifteen (15) feet from the edge of the state right-of-way, whichever is greater.

**TABLE 2.1  
COMMERCIAL DISTRICT [ZONE A]**

**(A) Purpose.** The purpose of the Commercial District is to encourage a mix of small-scale business uses at moderate densities in an area with convenient access to principal highway corridors, while avoiding strip development patterns and maintaining safe and efficient traffic flow.

**(B) Permitted Uses**

1. Accessory Dwelling [see Section 4.2]
  2. Accessory Structure/Use (to a permitted use)
  3. Agriculture
  4. Bank/Financial Institution
  5. Day Care Center
  6. Forestry
  7. Group Home
  8. Home Child Care [see Section 4.10]\*
  9. Home Occupation [see Section 4.10]\*
  10. Medical Clinic
  11. Motor Vehicles Sales & Service
  12. Personal Service
  13. Place of Worship
  14. Private Club
  15. Professional/Business Office
  16. Recreation Facility (Indoor)
  17. Recreation Facility (Outdoor)
  18. Restaurant (without drive-through)
  19. Retail Sales
  20. Self-storage Facility
  21. Transit Shelter
  22. Veterinary Clinic
- \* Within an existing single-family dwelling

**(C) Conditional Uses**

1. Accessory Structure/Use (to a conditional use)
2. Campground [see Section 4.5]
3. Cultural facility
4. Dwelling, Multi-family
5. Dwelling, Single-family
6. Dwelling, Two-family
7. Adaptive Re-use [see Section 4.3]
8. Extraction of Resources [see Sections 4.6 & 4.7]
9. Gas Station [see Section 4.8]
10. Home Industry [see Section 4.10]
11. Hotel/Motel
12. Kennel
13. Mixed Use [see Section 4.11]
14. Public Facility/Utility [see Section 4.13]
15. Residential Care Facility
16. Restaurant (with drive-through)
17. School
18. Telecommunications Facility [see Section 4.14]
19. Any other use the Development Review Board determines to be similar in scale, intensity and potential impact as other uses allowed as permitted or conditional uses in this district.

**(D) Dimensional Standards**

<i>Dimensional Standards (unless otherwise specified for a particular use)</i>	
Minimum Lot Size	1 acre
Minimum Frontage	150 feet
Minimum Setback/Front [see also Section 2.3 (E)]	75 feet
Minimum Setback/Side	25 feet
Minimum Setback/Rear	25 feet
Maximum Height	35 feet

**(E) Supplemental District Standards**

- (1) A single family dwelling in existence as of the effective date of these regulations may be altered or enlarged in accordance with the dimensional standards set forth in Subsection (D) with the approval of the Zoning Administrator under Section 7.1. Such alteration or enlargement shall not require conditional use approval under Section 5.5.
- (2) A single family dwelling in existence as of the effective date of these regulations may be converted to a two-family dwelling with the approval of the Zoning Administrator under Section 7.1, providing the conversion has received all applicable wastewater and water supply approvals from the Vermont Department of Environmental Conservation.
- (3) All permitted uses, excluding single-family and two-family dwellings, accessory uses/structures to single family dwellings (e.g., home occupations, accessory dwellings, home child care), forestry and agriculture, must receive site plan approval by the Development Review Board in accordance with Section 5.4.
- (4) All uses must comply with the requirements of Article 3: General Regulations and Article 4: Specific Use Standards, as applicable.
- (5) Planned Unit Developments are allowed in the Commercial District in accordance with Section 5.6.

**TABLE 2.2  
INDUSTRIAL DISTRICT [ZONE B]**

**(A) Purpose.** The purpose of the Industrial District is to encourage a variety of industrial, manufacturing and appropriate commercial uses at moderate densities and in a compact settlement pattern in locations that historically have been used as such, and which are served by good highway access.

**(B) Permitted Uses**

1. Accessory Dwelling [see Section 4.2]
  2. Accessory Structure/Use (to a permitted use)
  3. Agriculture
  4. Forestry
  5. Home Child Care [see Section 4.10]\*
  6. Home Occupation [see Section 4.10]\*
  7. Home Industry [see Section 4.10]
  8. Light Industry
  9. Manufacturing
  10. Professional/Business Office
  11. Retail Sales
  12. Self Storage Facility
  13. Warehouse Storage
  14. Wholesale Business
  15. Motor Vehicles Sales & Service
- \* Within an existing single-family dwelling

**(C) Conditional Uses**

1. Accessory Structure/Use (to a conditional use)
2. Contractor's Yard
3. Day Care Center
4. Dwelling, Single-Family
5. Adaptive Re-use [see Section 4.3]
6. Extraction of Resources [see Sections 4.6 and 4.7]
7. Group Home [see Section 4.9]
8. Mixed Use [see Section 4.11]
9. Public Facility [see Section 4.13]
10. Recreation Facility (Indoor)
11. Recreation Facility (Outdoor)
12. Sanitary Landfill
13. Transfer Station
14. Telecommunications Facility [see Section 4.14]
15. Transit Shelter
16. Any other use the Development Review Board determines to be similar in scale, intensity and potential impact as other uses allowed as permitted or conditional uses in this district.

**(D) Dimensional Standards**

<i>Dimensional Standards (unless otherwise specified for a particular use)</i>	
Minimum Lot Size	1 acre
Minimum Frontage	150 feet
Minimum Setback/Front [see also Section 2.3 (E)]	50 feet
Minimum Setback/Side	25 feet
Minimum Setback/Rear	25 feet
Maximum Height	35 feet

**(E) Supplemental District Standards**

- (1) A single family dwelling in existence as of the effective date of these regulations may be altered or enlarged in accordance with the dimensional standards set forth in Subsection (D) with the approval of the Zoning Administrator under Section 7.1. Such alteration or enlargement shall not require conditional use approval under Section 5.5.
- (2) All permitted uses, excluding single-family and two-family dwellings, accessory uses/structures to single family dwellings (e.g., home occupations, accessory dwellings, home child care), forestry, and agriculture, must receive site plan approval by the Development Review Board in accordance with Section 5.4.
- (3) All uses must comply with the requirements of Article 3: General Regulations and Article 4: Specific Use Standards, as applicable.
- (4) Planned Unit Developments are allowed in the Industrial District in accordance with Section 5.6.
- (5) No land or structure in any zoning district shall be used or occupied in any manner that creates dangerous, injurious, noxious or otherwise objectionable conditions which adversely affect the reasonable use of adjoining or nearby properties. In accordance with the Act [§§4414(5), 4413(d)], the following performance standards, as measured at the property line, must be met and maintained for uses in the Industrial District except for agriculture and forestry. In determining ongoing compliance, the burden of proof shall fall on the applicant, property owner, and/or all successors and assigns. No use, under normal conditions, shall cause, create or result in:

- (a) **Noise** in excess of eighty (80) decibels that is not the result of occasional, customary activities associated with an allowed use (e.g., lawn mowing); or noise that otherwise represents a significant increase in noise levels in the vicinity of the use so as to be incompatible with the surrounding area;
- (b) **Clearly apparent vibration** which, when transmitted through the ground, is discernable at property lines without the aid of instruments;
- (c) **Smoke, dust, noxious gases, or other forms of air pollution** which constitute a nuisance or threat to neighboring landowners, businesses or residents; which endanger or adversely affect public health, safety or welfare; which cause damage to property or vegetation; or which are offensive and uncharacteristic of the affected area;
- (d) **Releases of heat, cold, moisture, mist, fog or condensation** which are detrimental to neighboring properties and uses, or the public health, safety, and welfare;
- (e) **Electromagnetic disturbances or electronic transmissions or signals** which will repeatedly and substantially interfere with the reception of radio, television, or other electronic signals, or which are otherwise detrimental to public health, safety and welfare (except from facilities which are specifically licensed and regulated through the Federal Communications Commission);
- (f) **Glare, lumen, light or reflection** which constitutes a nuisance to other property owners or tenants, which impairs the vision of motor vehicle operators, or which is otherwise detrimental to public health safety and welfare;
- (g) **Liquid or solid waste or refuse** which cannot be disposed of by available methods without undue burden to municipal or public disposal facilities, which pollutes surface or groundwaters, or which is otherwise detrimental to public health, safety and welfare; or
- (h) **Undue fire, safety, explosive, radioactive emission or other hazard** which endangers the public, public facilities, or neighboring properties, or which results in a significantly increased burden on municipal facilities and services.

**TABLE 2.3  
RESIDENTIAL-COMMERCIAL DISTRICT [ZONE C]**

**(A) Purpose.** The purpose of the Residential-Commercial District is to promote compact residential development, and commercial uses compatible with the scale and character of residential neighborhoods, within and surrounding traditional village centers.

**(B) Permitted Uses**

1. Accessory Dwelling [see Section 4.2]
2. Accessory Structure/Use (to a permitted use)
3. Agriculture
4. Bank/Financial Institution
5. Bed & Breakfast
6. Boarding House
7. Community Center
8. Dwelling, Single-family
9. Dwelling, Two-family
10. Forestry
11. Funeral Home
12. Group Home [see Section 4.9]
13. Home Child Care [see Section 4.10]
14. Home Occupation [see Section 4.10]
15. Home Industry [see Section 4.10]
16. Medical Clinic
17. Motor Vehicles Sales & Service
18. Personal Service
19. Place of Worship
20. Professional/Business Office
21. Recreation Facility (Indoor)
22. Recreation Facility (Outdoor)
23. Restaurant (without drive-through)
24. Retail Sales
25. Veterinary Clinic

**(C) Conditional Uses**

1. Accessory Structure/Use (to a conditional use)
2. Cultural Facility
3. Day Care Center
4. Dwelling, Multi-family [see Subsection (E)]
5. Adaptive Re-use [see Section 4.3]
6. Extraction of Resources [see Sections 4.6 and 4.7]
7. Gas Station [see Section 4.8]
8. Home Industry [see Section 4.10]
9. Public Facility [see Section 4.13]
10. Mixed Use [see Section 4.11]
11. Residential Care Facility
12. Restaurant (with drive-through)
13. School
14. Telecommunications Facility [see Section 4.14]
15. Transit Shelter
16. Any other use the Development Review Board determines to be similar in scale, intensity and potential impact as other uses allowed as permitted or conditional uses in this district.

**(D) Dimensional Standards**

<i>Dimensional Standards (unless otherwise specified for a particular use)</i>	
Minimum Lot Size	1 acre
Minimum Frontage	150 feet
Minimum Setback/Front [see also Section 2.3 (E)]	50 feet
Minimum Setback/Side	25 feet
Minimum Setback/Rear	25 feet
Maximum Height	35 feet

**(E) Supplemental District Standards**

- (1) All permitted uses, excluding single-family and two-family dwellings, accessory uses/structures to single family dwellings (e.g., home occupations, accessory dwellings, home child care), forestry and agriculture, must receive site plan approval by the Development Review Board in accordance with Section 5.4.
- (2) All uses must comply with the requirements of Article 3: General Regulations and Article 4: Specific Use Standards, as applicable.
- (3) Planned Residential Developments (PRDs) and Planned Unit Developments (PUDs) are allowed in the Residential - Commercial District in accordance with Section 5.6.

**TABLE 2.4  
RURAL RESIDENTIAL-AGRICULTURAL DISTRICT [ZONE D]**

**(A) Purpose.** The purpose of the Rural Residential-Agricultural District is to promote agriculture and forestry while accommodating low-density residential development and other compatible non-residential uses.

**(B) Permitted Uses**

1. Accessory Dwelling [see Section 4.2]
2. Accessory Structure/Use (to a permitted use)
3. Agriculture
4. Bed & Breakfast
5. Cemetery
6. Community Center
7. Dwelling, Single-family
8. Dwelling, Two-family
9. Dwelling, Multi-family (maximum 6 dwelling units – with minimum area per dwelling unit of 3 acres)
10. Forestry
11. Group Home [see Section 4.9]
12. Home Child Care [see Section 4.10]
13. Home Occupation [see Section 4.10]
14. Recreation Facility (Outdoor)

**(C) Conditional Uses**

1. Accessory Structure/Use (to a conditional use)
2. Campground [see Section 4.5]
3. Dwelling, Multi-family
4. Adaptive Re-use [see Section 4.3]
5. Extraction of Resources [see Sections 4.6 and 4.7]
6. Home Industry [see Section 4.10]
7. Kennel
8. Light Industry
9. Mixed Uses [see Section 4.11]
10. Mobile Home Park [see Section 4.12]
11. Neighborhood Business [see Subsection (E)]
12. Public Facility/Utility [see Section 4.13]
13. Telecommunications Facility [see Section 4.14]
14. Veterinary Clinic
15. Any other use the Development Review Board determines to be similar in scale, intensity and potential impact as other uses allowed as permitted or conditional uses in this district.

**(D) Dimensional Standards**

<i>Dimensional Standards (unless otherwise specified for a particular use)</i>	
Minimum Lot Size	3 acres
Minimum Frontage	250 feet
Minimum Setback/Front [see Subsection (E)(2) below]	75 feet
Minimum Setback/Side [see Subsection (E)(2) below]	50 feet
Minimum Setback/Rear [see Subsection (E)(2) below]	50 feet
Maximum Height	35 feet

**(E) Supplemental District Standards**

- (1) A Neighborhood Business in the Rural Residential-Agricultural District shall be approved by the Development Review Board as a conditional use in accordance with Section 5.5 and the following requirements:
  - (a) Neighborhood Businesses (e.g., farm market, grocery stores, antique or craft shop, or other light commercial activity of similar nature) shall be housed in buildings designed to be consistent with the rural-agricultural character of the district.
  - (b) Retail floor area shall not exceed a maximum of 3,500 square feet.
  - (c) Hours of operation shall be compatible with the residential character of the district. The Board may limit evening or night hours to ensure such compatibility, or place other conditions on the design, layout and/or operation of the business to ensure that noise, lighting and traffic generated by the business does not exceed levels typical of residential uses or result in an adverse impact on neighboring properties.
- (2) Notwithstanding the side and rear setbacks set forth in Subsection (D), the side and rear setbacks for a lot of less than three acres shall be 25 feet, and the front setback for a lot of less than three acres shall be the existing distance from the point of the dwelling that is closest to the road right-of-way, or 25 feet, whichever is less, providing that:
  - (a) The lot was in existence prior to September 15, 1982; and
  - (b) The lot is occupied by a single-family dwelling that existed prior to September 15, 1982, and has occupied the lot continuously since September 15, 1982, in accordance with Section 3.10; and

- (c) A zoning permit is issued in accordance with Section 7.1 for the reconstruction, alteration, relocation, or enlargement of the existing dwelling, or the construction, reconstruction, alteration, relocation, or enlargement of an accessory structure to that dwelling.
- (3) All permitted uses, excluding single-family and two-family dwellings, accessory uses/structures to single family dwellings (e.g., home occupations, accessory dwellings, home child care), forestry and agriculture, must receive site plan approval by the Development Review Board in accordance with Section 5.4.
- (4) All uses must comply with the requirements of Article 3: General Regulations and Article 4: Specific Use Standards, as applicable.
- (5) Planned Residential Developments (PRDs) are allowed in the Rural Residential-Agricultural District in accordance with Section 5.6.

**TABLE 2.5  
AGRICULTURAL-FOREST CONSERVATION DISTRICT [ZONE E]**

**(A) Purpose.** The purpose of the Agricultural-Forest Conservation District is to promote agriculture, forestry and low density residential development in areas with limited access to public roads and community services, while protecting natural resources and the district's rural character.

**(B) Permitted Uses**

1. Accessory Dwelling [see Section 4.2]
2. Accessory Structure/Use (to a permitted use)
3. Agriculture
4. Bed & Breakfast
5. Dwelling, Single-family
6. Dwelling, Two-family
7. Forestry
8. Group Home [see Section 4.9]
9. Home Child Care [see Section 4.10]
10. Home Occupation [see Section 4.10]
11. Recreation Facility (Outdoor)

**(C) Conditional Uses**

1. Accessory Structure/Use (to a conditional use)
2. Dwelling, Multi-family
3. Adaptive Re-use [see Section 4.3]
4. Extraction of Resources [see Sections 4.6 and 4.7]
5. Public Facility/Utility [see Section 4.13]
6. Telecommunications Facility [see Section 4.14]
7. Mixed Uses [see Section 4.11]
8. Any other use the Development Review Board determines to be similar in scale, intensity and potential impact as other uses allowed as permitted or conditional uses in this district.

**(D) Dimensional Standards**

<i>Dimensional Standards (unless otherwise specified for a particular use)</i>	
Minimum Lot Size	7 acres
Minimum Area per Dwelling Unit	7 acres
Minimum Frontage	350 feet
Minimum Setback/Front [see Subsection (E)(1) below]	75 feet
Minimum Setback/Side [see Subsection (E)(1) below]	50 feet
Minimum Setback/Rear [see Subsection (E)(1) below]	50 feet
Maximum Height	35 feet

**(E) Supplemental District Standards**

- (1) Notwithstanding the side and rear setbacks set forth in Subsection (D), the side and rear setbacks for a lot of less than three acres shall be 25 feet, and the front setback for a lot of less than three acres shall be the existing distance from the point of the dwelling that is closest to the road right-of-way, or 25 feet, whichever is less, providing that:
  - (a) The lot was in existence prior to September 15, 1982; and
  - (b) The lot is occupied by a single-family dwelling that existed prior to September 15, 1982, and has occupied the lot continuously since September 15, 1982, in accordance with Section 3.10; and
  - (c) A zoning permit is issued in accordance with Section 7.1 for the reconstruction, alteration, relocation, or enlargement of the existing dwelling, or the construction, reconstruction, alteration, relocation, or enlargement of an accessory structure to that dwelling.
- (2) All permitted uses, excluding single-family and two-family dwellings, accessory uses/structures to single family dwellings (e.g., home occupations, accessory dwellings, home child care), forestry and agriculture, must receive site plan approval by the Development Review Board in accordance with Section 5.4.
- (3) All uses must comply with the requirements of Article 3: General Regulations and Article 4: Specific Use Standards, as applicable.
- (4) Planned Residential Developments (PRDs) are allowed in the Agricultural-Forest Conservation District in accordance with Section 5.6.



**TABLE 2.6  
CONSERVATION OVERLAY DISTRICTS**

**(A) Purpose.** The purpose of the Conservation Overlay Districts is to ensure the protection of critical natural resources by ensuring that development does not degrade or impair the ecological values and functions associated with the resources in the overlay district, regardless of the underlying zoning designation.

**1. Wetland Overlay District**

Wetlands provide a range of ecological functions, including habitat diversity, water purification, flood protection, shoreline stabilization, groundwater recharge, and streamflow maintenance. They contain a diverse array of plant and animal species, some of which are distinct to these habitats. Adjacent land uses should prevent potential pollutants from flowing into these areas and erosion caused by water runoff. Appropriate buffer areas need to surround wetland areas.

A minimum 50-foot buffer should surround all wetlands [see Section 3.12, Protection of Water Resources]. Wetlands identified on the Conservation Overlay Map are Class 2 Wetlands. Field inspection may be required to determine the exact extent of wetland areas. Wetlands also come under state regulatory authority and the specific rules can be found at: <http://www.nrb.state.vt.us>

**(a) Permitted Uses**

1. Agriculture
2. Forestry

**(b) Prohibited Uses**

1. All other uses not identified as permitted or conditional.

**(c) Conditional Uses**

1. Accessory Dwellings associated with a use currently in a wetland that cannot be accommodated outside the mapped wetland area.

**2. High Elevation Overlay District**

This district includes areas over 1,500 feet in elevation, and is for the protection of steep slopes, high elevation habitat, and for scenic enjoyment of East Montpelier's higher ridges and peaks. Development in these areas is prohibited. Agricultural and Forestry activities should have a minimal aesthetic impact, and retain the natural condition of the hilltop.

**(a) Permitted Uses**

1. Agriculture
2. Forestry

**(b) Prohibited Uses**

1. All other uses not identified as permitted or conditional.

**(c) Conditional Uses**

1. None

**(B) Dimensional Standards** (unless otherwise specified for a particular use)

As required for the underlying zoning district.

**(C) Supplemental District Standards**

All land development identified as a Conditional Use above must be approved by the Development Review Board in accordance with Section 5.5 and the following requirements:

- (1) All proposals shall demonstrate how the natural resources identified for the overlay district will be protected under the proposed development plan. The Development Review Board shall consider such factors as the capability of the land and water to sustain such use without degradation. In considering an application, the Board may consult with the Vermont Department of Environmental Conservation for assistance, or require certification by a registered professional engineer that the project will not result in degradation.
- (2) The Development Review Board may place conditions on the proposed use to ensure the above standards will be met. The conditions may include, but shall not be limited to, additional setbacks and/or buffer strips.
- (3) All proposed development will also be reviewed according to the standards of the underlying zone.

**Note: Rivers, Streams, Floodplains, and Flood Hazard Areas** are reviewed under Article 9: Flood Hazard Regulations.

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## ARTICLE 3: GENERAL REGULATIONS

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### Section 3.1 Applicability

The following general standards, including provisions required under the Act [ §§4412, 4413], apply to all uses and structures as specified within the Town of East Montpelier.

### Section 3.2 Abandonment of Structures

(A) **Abandoned Structures.** Unoccupied structures which remain substantially incomplete after one (1) year of the issuance of a zoning permit, or after one (1) year of being substantially damaged or destroyed, shall be considered abandoned for the purposes of these regulations. For such structures, the owner shall either:

- (1) Apply for a zoning permit under Section 7.1. To resume construction or repair, and thereby confirm the intent not to abandon the structure; or
- (2) Remove all materials from the site and then restore the site to a normal grade.

(B) **Damaged Structures.** No zoning permit shall be required for the stabilization of a damaged structure to prevent hazards to public health and safety, or to adjoining properties, structures or uses, or for the timely repair or reconstruction of a damaged structure to the extent of its prior condition and use. However:

- (1) Repair or reconstruction of a damaged structure must begin within one (1) year and be substantially completed within two (2) years of the date of the event resulting in its damage or destruction.
- (2) A zoning permit shall be required for any repair or reconstruction that results in changes in structural dimensions (e.g., height or footprint), density (e.g., number of units), or use.
- (3) Any repair or restoration of a nonconforming structure that increases the degree of non-compliance is subject to review by the Development Review Board under Section 3.10.

### Section 3.3 Access, Driveway & Frontage Requirement

(A) **Frontage.** No development, except for forestry and agriculture, may be permitted on lots which do not have (1) frontage on a maintained public road (state highway or Class I, II or III town highway) or public waters or (2) with the approval of the Development Review Board, access to a public road or water by means of a Class IV road, or (3) a permanent easement or right-of-way of at least 20 feet in width.

(B) **Non-frontage Lots.** The Development Review Board may grant approval for access to a lot which does not have the required minimum frontage in accordance with the following:

- (1) The Development Review Board may consider public safety in granting, conditioning or denying approval to access the non-frontage lot. These include, but may not be limited to the following:
  - (a) Right-of-way must be accessible for emergency vehicles year-round;
  - (b) Public right-of-way used for a private access shall remain open to the public.
- (2) The Development Review Board may consider local settlement patterns in granting, conditioning or denying approval to access the non-frontage lot. These may include, but may not be limited to the following:
  - (a) Intended use of the property;
  - (b) Traffic, road and site conditions.
- (3) If a Class IV road will be used for development that requires year-round access, the road shall be upgraded and maintained by the property owner in a manner agreed upon by the East Montpelier Selectboard.

- (4) If a new private road is established to serve three (3) or more lots, each of these lots must have the required frontage for the zone along this road, and front setbacks that are determined from the road. If a driveway accesses one (1) or two (2) non-frontage lots, each lot must meet the requirements as defined in Section 3.8(D).
- (5) The application for access approval shall be considered by the Development Review Board, at a regular or special meeting, within 45 days of the date of submission. The decision of the Board shall be issued in writing within 45 days of the meeting, to include findings of fact supporting the decision and a statement of the proposed time in which the decision may be appealed under Section 7.5, and shall be recorded in the land records of the town as required under Subsection 7.8(G). The decision shall be sent by certified mail to the applicant, and copies shall be filed with the Zoning Administrator and Town Clerk. No zoning permit for development of a non-frontage lot shall be issued until highway access (curb cut) approval has been granted by the East Montpelier Selectboard under Subsection 3.3(C), followed by access approval by the Development Review Board.

(C) **Highway Access (Curb Cut) Permit.** Access onto public highways is subject to the approval of the East Montpelier Selectboard, and for state highways, the Vermont Agency of Transportation. For projects in which new or altered access to a public highway is proposed, a copy of such approval (e.g., town access permit) must be submitted to the Zoning Administrator prior to the issuance of a zoning permit. In the event that subdivision or site plan approval and/or conditional use approval from the Development Review Board is required, highway access approval shall be obtained before the issuance of such approvals and prior to the issuance of a zoning permit.

(D) **Access (Curb Cut) Management Standards.** The following shall apply to all new and altered highway accesses in all districts:

- (1) No lot shall be served by more than one (1) access (curb cut) except for:
  - (a) A temporary or permanent access used only for farming or forestry purposes, as determined and approved by the East Montpelier Selectboard;
  - (b) A temporary access used for construction purposes or special events, as approved by the East Montpelier Selectboard;
  - (c) A lot for which it has been determined, subject to subdivision, site plan or conditional use review by the Development Review Board, that additional access is necessary to ensure vehicular and pedestrian safety; or that given physical site constraints (e.g., streams, wetlands or steep slopes) strict compliance with this requirement would result in a less desirable site layout;
  - (d) Unusual circumstances as determined and approved by the East Montpelier Selectboard.
- (2) For development subject to review by the Development Review Board, the Board may require, in consultation with the East Montpelier Selectboard, the elimination, consolidation and/or relocation of existing accesses to meet the requirements of these regulations.
- (3) The width of an access shall be limited to the width as approved, and shall not extend along the length of road frontage. The installation of curbing, landscaping, or other edge-defining features may be required for accesses subject to review by the Development Review Board.
- (4) Shared access is encouraged and may be required for development subject to review by the Development Review Board. For shared access, the interests of the owner of each lot shall be protected by an easement recorded in the deed of each lot.
- (5) No access shall be provided to serve a lot located in another zoning district which is to be used for a use that is prohibited within the district in which the access is located.
- (6) Where a lot has frontage on two roads (e.g., a corner or through lot), access to the lot shall be provided from the secondary (less traveled) road unless otherwise approved by the Development Review Board.

- (E) **Driveways.** All driveways shall meet town driveway standards (B-71) within the town road right-of-way for culverts, grading, ditching and design. In addition:
- (1) Driveways may be located within front, side and/or rear yard setback areas.
  - (2) Driveways 500 feet or more in length should include one pull-off area, at least 10 feet by 30 feet, and a turnaround (e.g., a “Y” or “T”) at the end.
- (F) **Class IV Roads.** The town, in accordance with state law and adopted town road policies, is not required to maintain Class IV roads for year-round use. Upgrade and maintenance of the road as required for development of adjoining parcels, and for emergency vehicle access, shall be the responsibility of the applicant and subsequent landowners under a maintenance agreement approved by the Selectboard. The reclassification of a Class IV road may be considered by the town only in accordance with state statutes and applicable town road policies currently in effect.
- (G) **Private Roads.** For the purposes of these regulations, any access serving three (3) or more lots shall be considered a private road which must meet the requirements of Section 6.8. Private roads may be taken over by the town only in accordance with town road policies and state requirements for the dedication and acceptance of such roads as public highways.

### **Section 3.4 Conversions & Changes of Use**

- (A) A conversion or change in the use of land, existing buildings and other structures is subject to the following requirements:
- (1) A conversion or change of use from one permitted use to another permitted use to another permitted use requires a zoning permit issued by the Zoning Administrator in accordance with Section 7.1. Site plan approval also may be required under Section 5.4 depending upon the type of permitted use.
  - (2) A conversion or change in use from a permitted use to a conditional use, or from one conditional use to another conditional use, requires conditional use approval under Section 5.5 prior to the issuance of a zoning permit. A change of a conditional use to another use shall constitute the discontinuance of the prior conditional use unless the Development Review Board specifically authorizes the continuation of that use as part of its approval. A landowner may not reconvene the discontinued use without Board approval.
- (B) Where a conversion or change of use results in increased wastewater generation, including but not limited to the conversion of a camp, seasonal or accessory dwelling to a single family dwelling; a single family dwelling to a two-family or multi-family dwelling; or a single principal use to a mixed use, a zoning permit shall not be issued by the Zoning Administrator until an approved wastewater system design has been submitted in accordance with Section 3.18.

### **Section 3.5 Equal Treatment of Housing**

In accordance with the Act [§4412(1)]:

- (A) No provision of these regulations shall have the effect of excluding mobile homes, modular housing or other forms of prefabricated housing from the Town of East Montpelier except under the same terms and conditions as conventional housing is excluded. A mobile home shall be considered a single family dwelling, and must meet the zoning requirements for such dwelling, except when located in an approved mobile home park [see Section 4.12] or allowed as a temporary structure [see Section 3.17].
- (B) No provision of these regulations shall be construed to prevent the establishment of a mobile home park pursuant to state statute [10 V.S.A. Chapter 153] and local standards within designated zoning districts [see Article 2].
- (C) No provision of these regulations shall be construed to prevent the establishment of multi-family dwellings pursuant to local standards within designated zoning districts [see Article 2].

- (D) No provision of these regulations shall have the effect of excluding for review, as a conditional use, one dwelling unit constructed within or attached to a primary single family residence located in a district in which single family residences are a permitted or conditional use, if the accessory unit meets statutory requirements [§4412(1)(E)]. Accessory dwellings are provided for under these regulations in accordance with the requirements of the Act [see Section 4.2].

### **Section 3.6 Height Requirements**

- (A) The maximum height of structures in all districts shall not exceed the district maximum, except as permitted under Subsection (B), or for the following, which are specifically exempted from the height requirements of these bylaws:
- (1) Agricultural structures in accordance with the Act [§4413(d)];
  - (2) Steeples, spires, belfries, bell and clock towers;
  - (3) Accessory structures associated with residential uses which are less than fifty (50) feet in height above the lowest grade at ground level at the base of the structure, including antennas, flag poles, ornamental cupolas, chimneys, wind generators with blades less than twenty (20) feet in diameter, and rooftop solar collectors.
- (B) The Development Review Board may permit structures in excess of the district standard subject to conditional use review under Section 5.4, upon finding that:
- (1) The structure does not constitute a hazard to public safety, or to adjoining properties;
  - (2) That portion of the structure above the district maximum height shall remain unoccupied except for normal maintenance;
  - (3) The structure is not to be used for advertising purposes;
  - (4) The portion of the structure above the maximum height for the district within which it is located shall not be lighted; and
  - (5) The proposed building height and scale are consistent with the character of the immediate surroundings.
- (C) Notwithstanding these requirements or the district maximum height standards, telecommunications facilities shall meet the standards set forth in Section 4.14, including those standards which relate to maximum height.

### **Section 3.7 Landfilling**

- (A) The dumping of refuse and waste materials for landfill is prohibited in all districts. Loam, soil, rock, stone, gravel, sand, cinders, and other inert material may be used for landfill associated with development projects approved as a conditional use under Section 5.5, or granted site plan approval under Section 5.4 or subdivision approval under Section 6.5 by the Development Review Board.
- (B) Landfilling not associated with development projects otherwise subject to site plan, subdivision, or conditional use review, and not exempted under Section 7.2, must be approved by the Development Review Board as a conditional use in accordance with Section 5.5 if it will affect a town road or neighboring property. In approving landfilling, the Board may require the preparation and implementation of an erosion control plan, prepared by an appropriate professional during all phases of the project.

### **Section 3.8 Lot & Yard Requirements**

- (A) Only a single principal use or structure may be located on a single lot, unless permitted within the specific district as:
- (1) A mixed use [see Section 4.11];

- (2) An adaptive reuse of a historic structure on a lot occupied by a principal dwelling, approved in accordance with Section 4.3;
  - (3) Agricultural and forestry uses on a lot occupied by another use;
  - (4) Otherwise approved by the Development Review Board as part of a Planned Residential Development (PRD) or Planned Unit Development (PUD) in accordance with Section 5.6; or
  - (5) Approved by the Development Review Board, two single family dwellings are permitted on a single lot if they are sited in such a way that they could be subdivided in the future with adequate acreage, lot frontage and setbacks for the district.
- (B) An accessory structure or use must be clearly subordinate in function to the principal structure and use, and conform to all lot, setback, coverage and other dimensional requirements for the district in which it is located, unless specifically exempted from such requirements under Section 7.2 or allowed as a variance under Section 7.6.
- (C) No lot shall be so reduced in area that it cannot conform to area, setback, frontage, coverage and other dimensional requirements as prescribed in these regulations, except as approved by the Development Review Board for PRDs or PUDs in accordance with Section 5.6.
- (D) Any interior lot that does not have frontage on a public or private road or public waters shall meet minimum setback requirements equivalent to the side and rear setback distances for the district in which it is located from all adjacent property boundaries.
- (E) Any yard adjoining a street shall be considered a front yard. A corner lot shall be considered to have only front and side yards.
- (F) Space required under these regulations to satisfy area, yard, or other open space requirements in relation to one structure, use or lot shall not be counted as part of a required open space for any other structure, use or lot.

### **Section 3.9 Nonconforming (Pre-existing) Small Lots**

- (A) In accordance with the Act [§4412(2)], any lot in individual and separate and non-affiliated ownership from surrounding properties, lawfully in existence on the effective date of these regulations, may be developed for the purposes permitted in the district in which it is located, if such lot is at least one-eighth of an acre in area with a minimum width or depth of 40 feet. Development of the existing lot shall be subject to all other applicable requirements.
- (B) Existing small lots in affiliated or common ownership, or such lots which subsequently come under common ownership with one or more contiguous lots, shall be deemed merged with the contiguous lots for the purpose of these regulations. However, such lots shall not be deemed merged, and may be separately conveyed if in accordance with the Act all of the following requirements are met:
- (1) The lots are conveyed in their pre-existing, nonconforming configuration; and
  - (2) Each lot had been developed with a water supply and wastewater disposal system; and
  - (3) At the time of transfer, each water supply and wastewater system is functioning in an acceptable manner; and
  - (4) The deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems, potable water systems, or both, in case there is a failed system or failed supply as defined by 10 V.S.A. Chapter 64ff.

### **Section 3.10 Nonconforming Uses & Nonconforming Structures**

All actions involving nonconforming uses and nonconforming structures located within the Regulated Flood Hazard Areas must meet the requirements of Article 9.

- (A) **Nonconforming Structures.** Any pre-existing structure or part thereof which is not in compliance with provisions of these regulations concerning density, setbacks, height, lot size or other dimensional

standard, or which does not meet other applicable requirements of these regulations, shall be deemed a nonconforming structure. Nonconforming structures legally in existence on the effective date of these regulations may be allowed to continue indefinitely, but shall be subject to the following provisions. A nonconforming structure:

- (1) May undergo normal repair and maintenance provided that such action does not increase the degree of non-conformance [see definition of degree of non-conformance in Article 8];
- (2) May be restored or reconstructed after damage from fire or other catastrophe, provided that the reconstruction does not increase the degree of non-conformance which existed prior to the damage and that the reconstruction occurs within two years of such damage;
- (3) May be structurally enlarged, expanded or moved, upon approval of the Zoning Administrator, provided the enlargement, expansion or relocation does not increase the degree of non-conformance; and/or
- (4) May, subject to conditional use review under Section 5.5, undergo alteration or expansion which would increase the degree of non-conformance solely for the purpose of meeting mandated state or federal environmental, safety, health or energy regulations (e.g., handicap access ramp in accordance with ADA standards).

(B) **Nonconforming Uses.** Any use of land or a structure that does not conform to the uses allowed for the zoning district in which it is located shall be deemed a nonconforming use. Nonconforming uses that legally exist on the effective date of these regulations may be continued indefinitely, but shall be subject to the following provisions. A nonconforming use:

- (1) Shall not be re-established or continued following abandonment or discontinuance resulting from structural damage from fire or other catastrophe, unless the nonconforming use is carried on uninterrupted in the undamaged part of the structure, or the use is reinstated within two years of such damage;
- (2) Shall not be re-established if such use has been changed to, or replaced by, a conforming use, or if such use has been discontinued for a period of one year, regardless of the intent to re-establish such prior use;
- (3) Shall not be changed to another nonconforming use without the approval of the Development Review Board in accordance with Section 5.5, and then only to a use which, in the opinion of the Board, is of the same or a more conforming nature; and/or
- (4) Shall not be moved, enlarged, or increased by any means, except with the approval of the Development Review Board subject to conditional use review under Section 5.5. In no case shall a Nonconforming use be moved to a different lot within the same district in which it is located.

### **Section 3.11 Parking and Loading Requirements**

(A) **Off-street parking spaces** shall be provided in accordance with this section when any use is established or enlarged, unless otherwise approved by the Development Review Board under Section 5.5 or under Section 5.4 or waived under Subsection (C).

- (1) Off-street parking shall be provided to accommodate business-owned vehicles and the vehicles of all owners, occupants, employees, customers or other persons expected to be on the premises in accordance with Table 3.1.
- (2) All required parking spaces shall have a minimum width of nine (9) feet, and a minimum length of eighteen (18) feet, excluding access and maneuvering room.
- (3) Non-residential parking areas shall be located to the side or rear of buildings unless otherwise approved under site plan review under Section 5.4 or conditional use review under Section 5.5. Non-residential parking area shall be screened from adjoining residential properties if required by the Development Review Board.



<b>Table 3.1 Minimum Off-Street Parking Requirements</b>	
<b>Use</b>	<b>Parking Spaces</b>
Dwelling Unit/ Single or Two-Family	2 per unit
Dwelling Unit/ Accessory	1 per unit
Dwelling Unit/ Multi-Family	4 per every 3 units
Home Occupation/Home-Based Business	2 per dwelling unit & 1 per additional employee
Bed & Breakfast	2 per dwelling unit & 1 per guest room
Lodging Facility (Inn, Motel, Hotel)	1 per lodging unit & 1 per 2 per employees
Office/Personal Service, Medical Clinic	1 per 200 square feet of gross floor area
Residential Care Facility	1 per every employee on the largest shift & 1 per every 2 beds
Restaurant/Bar	1 per every 150 square feet of gross floor area
Retail	1 per 200 square feet of gross floor area
Public Assembly (Church, Theater, etc.)	1 per 3 seats or 1 per every 100 square feet if no seats are provided
Warehouse/Manufacturing/Industry	1 per each employee on the largest shift
Other	As determined by the Development Review Board under site plan review

- (B) **Loading and Service Areas.** Off-street loading space shall be provided for commercial, industrial or institutional uses which will receive shipments in vehicles too large for a standard parking space. Space provided shall be specifically for off-street loading and shall be large enough to fully accommodate the maximum number of such vehicles expected to be on the premises at any one time. Service areas will be located without blocking or obstructing access or sight visibility at intersections.
- (C) **Waivers.** On-site parking, loading, and/or service area requirements may be reduced or waived by the Development Review Board under site plan review, when due to circumstances unique to the development, the strict application of these standards is unnecessary, based upon a determination under one or more of the following provisions:
- (1) Suitably landscaped vacant land is set aside and maintained as open space for future conversion to parking, loading or services areas in the event that the amount of space initially permitted is deemed inadequate to meet demonstrated need; or
  - (2) Shared use of parking, loading and/or service areas on the same or contiguous lots by two or more establishments is proposed; or
  - (3) Adequate off-site public parking exists within reasonable walking distance of the establishment; or
  - (4) Sufficient off-site parking has been procured (e.g., through lease agreements) in a private or municipal parking lot.

### **Section 3.12 Protection of Water Resources**

**Surface Waters and Wetlands.** To prevent soil erosion and sedimentation of surface waters, maintain water quality and protect wildlife habitat, the following standards shall apply to all mapped surface waters and wetlands:

- (A) All structures shall be setback a minimum of 50 feet from all surface waters designated on the Town's Water Resources map, as measured from the top of the bank. The Development Review Board may, in accordance with conditional use review under Section 5.4, approve the placement of a structure within the 50 foot setback providing it meets the following standards:
- (1) The building placement will better reflect the historic settlement pattern and character of the surrounding area; and

- (2) Reasonable provision is made for the protection of water quality such as, but not limited to, the planting of shade trees adjacent to streambanks, the establishment of vegetated buffer areas along streambanks, and/or stormwater management provisions to collect and disperse stormwater away from the mapped surface water.
- (B) An undisturbed, vegetated buffer strip shall be maintained for a minimum of 25 feet from all surface waters designated on the Town's Water Resources map. The 25 foot buffer strip shall be measured beginning from the top of the mapped streambank. No development, excavation, filling, clearing or grading shall occur within the buffer strip, with the exception of clearing or vegetation removal associated with site development necessary to accommodate the following:
- (1) Road, driveway, utility crossings and fire protection access;
  - (2) Streambank stabilization and restoration projects, in accordance with applicable state and federal regulations;
  - (3) Unpaved bicycle and pedestrian paths and trails and bridges associated with trails;
  - (4) Reasonable recreational uses, including structures, associated with surface water access;
  - (5) Agriculture in accordance with Acceptable Agricultural Practices (AAPs) as defined by the Commissioner of Agriculture, Food and Markets, and forestry in accordance with *Acceptable Management Practices (AMPs) for Maintaining Water Quality on Logging Jobs in Vermont*, published by the Vermont Department of Forests, Parks and Recreation;
  - (6) Removal of trees that are dead or hazardous to structures or property; or
  - (7) Any use allowed in Subsection (1) above.
- (C) The expansion or enlargement of the footprint of any structure in existence prior to the effective date of these bylaws, and not in compliance with this section, is permitted with approval of the Development Review Board pursuant to Section 3.10 regarding nonconforming structures.
- (D) No alteration of the natural course of any stream shall be allowed unless a stream alteration permit has been issued by the Vermont Department of Environmental Conservation in accordance with 10 V.S.A. Chapter 41. Such alterations within the Regulated Flood Hazard Areas are subject to requirements under Article 9.

### **Section 3.13 Outdoor Storage**

- (A) The dumping, burying, disposing, or burning of garbage, refuse, scrap metal, rubber, or similar materials is prohibited except in salvage, disposal or recycling facilities specifically permitted for such use under applicable municipal and state regulations.
- (B) In any district for the purposes of Article 5 review, the outdoor storage of trash or recyclable materials which is incidental to a principal or accessory use shall be screened or hidden from public view and the view of neighboring residential properties. For commercial or industrial uses, such storage shall be screened or located to the rear of buildings.
- (C) In any district, junk, salvage materials, and/or more than three (3) motor vehicles or portions thereof, which are non-operating and not registered with the state shall be stored in an enclosed area or in an area concealed from public roads and neighboring properties. Vehicles or materials used for farming or forestry operations are exempt.
- (D) The outdoor storage of materials and equipment associated with an allowed use may be approved by the Development Review Board under conditional use approval [see Section 5.5] or under site plan review [see Section 5.4], provided that such areas are clearly designated and are adequately screened from public view and neighboring properties. Designated storage areas shall meet the setbacks for the district in which the use is located, although the Board may require greater setbacks to avoid impacts on neighboring properties. The storage of unpermitted hazardous materials anywhere on the

premises is prohibited, with the exception of materials customary and characteristic of residential uses (e.g., heating oil).

### **Section 3.14 Setback Waivers**

- (A) Notwithstanding the minimum setback standards for front yards (setback from road centerline) and side and rear yards (setback from parcel boundaries) for various zoning districts as set forth in Article 2, the Development Review Board may allow the modification of building setbacks subject to the following provisions:
- (1) Fire safety, disability accessibility or other regulatory requirements cannot be reasonably satisfied without a waiver, or
  - (2) Energy conservation and renewable energy structures cannot be reasonably developed without a waiver, or
  - (3) The waiver is necessary to allow for reasonable expansion of existing structures and construction of new structures given existing configuration of development on the parcel, irregular lot configurations or restrictions of existing topography.
- (B) In all cases, the waiver:
- (1) Must be found to be in conformance with the municipal plan and the goals set forth in 24 V.S.A. Section 4302, and
  - (2) Shall not change the overall character of the surrounding area or neighborhood, and
  - (3) Shall not exceed one-third (33.3%) of any setback requirements.
- (C) The applicant may propose, or the Development Review Board may require, mitigation of any adverse effect through design, screening or other remedy as part of the waiver approved.

### **Section 3.15 Sign Regulations**

- (A) **Applicability.** A zoning permit shall be required prior to the erection, construction or replacement of any outdoor sign, except for signs, which are specifically exempted [Table 3.2], or specifically prohibited from these provisions [Table 3.3].
- (B) **General Standards.** All signs, other than those specified in Table 3.2, shall require a zoning permit issued by the Zoning Administrator in accordance with the following requirements pertaining to all signs:
- (1) No outdoor advertising signs shall be permitted in any district except for the purposes of identifying an existing, on-premise use in those districts where such uses are permitted.
  - (2) There shall be only one freestanding or hanging wall-mounted sign per principal business or service, except that a gasoline station may have one pricing sign which does not exceed 12 square feet in area and/or pump-top pricing signs, each not to exceed two square feet in area. Wall signs (lettering and/or graphics) shall meet the standards set forth in Subsection (5) below. In circumstances where there are multiple businesses on a single lot, each business may have a sign, not to exceed the size allowed in the district, on a common freestanding structure.
  - (3) No sign in the Rural Residential-Agricultural District (Zone D) or the Agricultural-Forest Conservation District (Zone E) shall exceed five (5) square feet per face, unless approved by the Development Review Board with considerations of safety, visibility, design, location, and traffic upon determination that the additional height is necessary to be visible from the nearest road.
  - (4) No freestanding or wall-mounted hanging sign located within the Commercial District (Zone A), Industrial District (Zone B) or the Residential-Commercial District (Zone C) shall exceed 16 square feet per face, excluding wall signs (lettering and/or graphics) allowed in accordance with Subsection (5) below.

- (5) In addition to freestanding and/or wall-mounted hanging signs allowed in the Commercial District (Zone A), Industrial District (Zone B) or the Residential-Commercial District (Zone C), wall signs (lettering and/or graphics) may be affixed or applied directly to the façade of a building, including its wall and windows, within the district specified above, provided the total area of the lettering and/or graphics meets the following:
    - (a) The total area of all wall signs (lettering and/or graphics) shall not exceed a maximum of 150 square feet;
    - (b) No single wall sign (lettering and/or graphics) may exceed 50 square feet. In computing the area of a wall sign (lettering and/or graphics), the area shall be the area of the smallest rectangle with a level base line that can contain a sign including the lettering, graphic, panel and frame, if any.
  - (6) No sign, including mounted or freestanding supporting structures, shall exceed 20 feet in height.
  - (7) No sign shall be placed on the roof of a building, and no sign attached to a building may extend above the eaves of that part and side of the building to which the sign is attached.
  - (8) All signs shall be located outside of the highway right-of-way. Signs shall be placed a minimum of 50 feet from the road centerline of the nearest intersection.
  - (9) Signs shall not be constructed to include blinking lights, moving parts, or any device capable of emitting noise.
  - (10) If illuminated, signs shall be constructed so as not to produce undue glare, hazards, or distractions. A constant, shielded light source may be used for indirect lighting, provided that the light fixture is mounted on the top or side of the sign, is directed onto the sign surface, and does not adversely affect neighboring properties, rights-of-way, or vehicular traffic. The light source shall not be visible from adjacent properties or roads.
  - (11) No sign shall be illuminated during hours when the premises are not occupied or open for business, or after 10:00 P.M., whichever is later. Bed & breakfasts, inns and hotels and other lodging accommodations may be considered open for business 24 hours a day.
  - (12) All signs shall be maintained in a secure and safe condition. Nothing in these regulations shall prevent normal sign maintenance and repair, including the replacement of broken parts. If the Zoning Administrator is of the opinion that a sign is not secure, safe, or in a good state of repair, a written warning and/or notice of violation under Section 7.7 may be issued with a request that any defect in the sign shall be corrected immediately.
  - (13) No nonconforming sign may be replaced, expanded, or the message altered to advertise a different owner, management or brand, unless such altered sign is brought into conformance with these standards.
- (C) **Measurement.** The area of measurement of any sign shall be the total area of the sign face to the outer edge, including any supporting frames or panels. Signs consisting of freestanding characters shall include any intervening spaces (the entire message area) in the calculation of total sign area. The height of the sign shall be measured to the highest point of the supporting structure.

**Table 3.2  
Exempt Signs**

The following signs are allowed in all zoning districts and shall not require a zoning permit, but shall be subject to all other requirements of this Section:

1. Signs erected by the town or state on public roads for directional, safety or public service purposes, including Official Business Directional Signs and sign plazas erected in accordance with 10 VSA Chapter 10.
2. One unlit sign advertising a home-based business (e.g., home child care, home occupation, home industry or bed & breakfast) or agricultural operation, which does not exceed five (5) square feet in area per face, and is set back at least 10 feet from the edge of the highway right-of-way.
3. One sign or bulletin board incidental to a school, church, library, public park or other government facility, which does not exceed 20 square feet in area per face.
4. One temporary real estate “for sale” or “for rent” sign per front yard that does not exceed six (6) square feet in area per side, and is removed immediately following property sale or rental. The sign may list the name of an agent.
5. One temporary sign, not exceeding 16 square feet in area per face, promoting the sale of agricultural products for a period not to exceed 120 days in any calendar year.
6. One portable sign displayed during business hours per business not to exceed 16 square feet.
7. Temporary signs providing safety or emergency information to the public.
8. Unlit, non-advertising informational signs which do not exceed four (4) square feet in area, for the direction, instruction, or convenience of the public (e.g., that identify restrooms, public telephones, freight entrances, vacancies, or are related to posted areas, trespassing or hunting).
9. An ornamental sign, flag or banner that is incidental to a residential use, and is not used for advertising purposes.
10. One temporary sign erected for a fair, exposition, or other municipal, philanthropic, or community sponsored special event that does not exceed 25 square feet in area per side, is installed on the premises no more than two weeks prior to the event, and is removed immediately following the event.
11. Temporary auction, lawn or garage or similar sale signs, not exceeding four (4) square feet in area per side, which shall be removed immediately following the sale.
12. One unlit temporary advertising sign, not exceeding 20 square feet per side, for an approved construction project or residential subdivision, which shall be removed when construction is completed or 75% of residential lots have been transferred into individual ownership.
13. Temporary election signs to be posted and removed in accordance with state law.
14. One unlit historic or landmark sign per historic property, not to exceed four square feet in area.
15. Wall murals intended solely for artistic, non-advertising purposes.

**Table 3.3  
Prohibited Signs**

Prohibited Signs. The following signs are specifically prohibited in the Town of East Montpelier:

1. Signs which impair highway safety or obstruct visibility of oncoming traffic or traffic safety signs.
2. Off-premise signs, except for those that conform to state laws.
3. Signs painted on or attached to rock outcrops, trees, or similar natural features, except for posting, trespassing or safety zone signs.
4. Permanent signs which project over public rights-of-way or property lines.
5. Signs identifying businesses that are no longer in existence.

### **Section 3.16 Swimming Pools**

In all zoning districts, swimming pools (above and in-ground) with a water surface in excess of fifty (50) square feet and any permanent structure associated with an above-ground pool, shall be considered an accessory structure and shall meet yard setback standards for the district in which it is located. Such

pools shall be surrounded by a child-proof fence a minimum of four (4) feet in height, with a locking gate. The Zoning Administrator may approve a pool protected by a safety mechanism other than a fence if determined that the structure will prevent open access to the pool.

### **Section 3.17 Temporary Uses & Structures**

- (A) Structures used for temporary office or storage space, including trailers and mobile homes, may be allowed as accessory to permitted construction activity. Such structures shall not be used for dwelling purposes. Temporary structures may be issued a zoning permit by the Zoning Administrator, for a specified period for time not to exceed one year from the date of issuance, with the provision that the structures will be removed upon expiration of the permit. The Zoning Administrator may renew a permit for a temporary structure for a period not to exceed one additional year.
- (B) The Zoning Administrator may issue a zoning permit to allow a temporary shelter, including a mobile home, to be occupied for dwelling purposes for not greater than one year to allow a property owner to reside on a parcel while constructing or rehabilitating a permanent dwelling. Such a temporary shelter shall be removed from the premises within one year of the issuance of the permit, unless the applicant obtains a one-year extension, with the approval of the Development Review Board as a conditional use in accordance with Section 5.5. No structure other than the permitted temporary shelter may be occupied as a dwelling on a single parcel for the period in which the temporary structure is occupied unless approved under Subsection 3.8(B).

### **Section 3.18 Water Supply & Wastewater Disposal**

No building or structure intended for human occupancy shall be erected, altered or converted to another use unless adequate water supply and wastewater disposal systems are provided in compliance with all applicable municipal and state regulations. No construction may be commenced under an East Montpelier Zoning Permit unless and until proof of issuance of any and all required state wastewater and potable water supply permits is submitted to the Zoning Administrator. In situations where a state wastewater permit is required, no Certificate of Compliance may be issued under Section 7.4 of these regulations until a copy of the pre-cover-up inspection report is submitted to the Zoning Administrator.

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## ARTICLE 4: SPECIFIC USE STANDARDS

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### Section 4.1 Applicability

The following standards apply to specified uses in all zoning districts in which such uses are allowed. Specified uses may be subject to conditional use under Section 5.5 or site plan review under Section 5.4. If there is a conflict between a standard in this article and a standard in another section of these bylaws, the more restrictive standard shall apply.

### Section 4.2 Accessory Dwellings

- (A) In accordance with the Act [§4412(1)], one attached or detached dwelling unit which is accessory to a single family dwelling may be allowed in any district subject to review by the Zoning Administrator under Section 7.1 and the following requirements:
- (1) Either the primary single-family dwelling or the accessory dwelling must be occupied by the owner;
  - (2) The floor area of the accessory dwelling shall not exceed 30% of the floor area of the total existing living area of the single family dwelling, or 600 square feet, whichever is greater;
  - (3) One on-site parking space shall be provided for the residents of the accessory dwelling, and
  - (4) The accessory dwelling shall be served by the same access and driveway as the single family dwelling unless access as per Section 3.3 D.1 (D) is determined and approved by the Selectboard due to unusual circumstances.
- (B) Any zoning permit issued for an accessory dwelling shall clearly state that the dwelling is permitted only as an accessory to the principal use of the property and shall be retained in common ownership. An accessory dwelling may be subdivided and/or converted for conveyance of use as a principal dwelling only if it is found to meet all current municipal regulations applying to a two-family dwelling, or to two single-family dwellings if detached, including all density and dimensional requirements for the district in which it is located. All applicable municipal permits and approvals shall be required prior to conversion to, or conveyance as, a principal dwelling.

### Section 4.3 Adaptive Reuse of Historic Barns

- (A) This provision is intended to enable the continued viability of historic barns that have outlived their original agricultural function, including non-conforming structures, by permitting additional uses within the current dimensions of such structures, subject to conditional use review under Section 5.5 and the provisions of this section.
- (B) Structures that shall be considered appropriate for adaptive reuse include historic barns, carriage houses and related buildings which:
- (1) Have historical or architectural significance to the town, as determined by the Development Review Board from application information, listing on federal or state historic site registers or surveys, and/or evidence provided in hearing;
  - (2) Are no less than 50 years old; and
  - (3) Have a minimum floor area of 600 square feet.
- (C) The following uses may be allowed, subject to conditional use review under Section 5.5:
- (1) Conditional uses allowed in the district in which the barn is located;
  - (2) The following additional uses:
    - (a) Agri-business (including sale of agricultural products)
    - (b) Art or craft shop, studio or gallery
    - (c) Antique shop

- (d) Cultural facility
  - (e) Day care facility
  - (f) Garden center
  - (g) Office
  - (h) Restaurant
  - (i) Private club
  - (j) Storage facility
- (3) Conversion to a single family or two-family dwelling, or a multi-family dwelling with no more than four (4) units, in districts in which residential uses are permitted;
  - (4) Special events, not to exceed four (4) consecutive weeks in duration, or 12 weeks within any 12 month period; and
  - (5) A combination of the above listed uses.
- (D) In addition to the standards set forth under Section 5.5, the Development Review Board shall also find that an adaptive reuse complies with the following:
- (1) Adequate water, septic and off-street peaking capacity exists to accommodate the proposed use; and
  - (2) The proposed use shall not significantly alter the footprint, historic façade, character or immediate context of the barn and shall be in keeping with the essential character of the neighborhood. In reviewing adaptive reuse proposals, the Development Review Board shall determine that the historic character of the barn will be retained to the extent practicable.
- (E) A zoning permit for the reuse of an historic barn shall clearly state that the use is allowed only within the existing structure and shall not be re-established if the structure is substantially modified, destroyed or demolished except in accordance with the requirements of these regulations for damaged structures [see Section 3.2]. Prior to the establishment of such use in a substantially modified or new structure, all applicable municipal permits and approvals shall be required.

#### **Section 4.4 Campers & Recreational Vehicles**

- (A) A camper (e.g., recreational vehicle, travel trailer) or other temporary shelter (e.g., tent, teepee, yurt) may be erected or parked on property in accordance with the following requirements:
- (1) Campers and other temporary shelters may be parked on approved campgrounds [see Section 4.5], sales establishments, and for a specified period, on construction sites for use as a temporary structure in accordance with Subsection (B) and/or Section 3.17.
  - (2) A camper or temporary shelter may be stored on the lot of a single or two-family dwelling and/or on an undeveloped parcel, provided that it is not occupied for dwelling purposes for more than 60 days within any one-year period and is not connected to the residential water or wastewater system. Any camper or temporary shelter that is used for dwelling purposes for more than 60 days within any one-year period, or is sited so as not to be readily moveable, shall be deemed a dwelling and be subject to all zoning regulations applicable to accessory or single family dwellings.
- (B) Any wastewater or sewage generated by a camper shall be disposed of off-site in accordance with all applicable state and federal regulations.

#### **Section 4.5 Campgrounds**

- (A) A new or expanded recreational vehicle campground, improved seasonal campground, or primitive campground may be allowed in designated zoning districts subject to conditional use review under Section 5.5 and the following provisions.
- (1) The parcel of land for a campground shall be no less than five acres in area or the minimum lot area for the district in which it is located, whichever is greater.



- (2) All campgrounds shall meet minimum setback requirements for the district in which they are located. A minimum 75-foot setback shall be required from any residential property. No building, camp site, parking or service area shall be located in setback areas.
  - (3) Campgrounds shall provide lavatory, shower, and toilet facilities sufficient to service all camp sites. Water and wastewater disposal systems must be designed and installed in accordance with applicable municipal and state regulations.
  - (4) A campground shall provide sufficient access and parking for each camp site. Each camp site shall be at least 2,000 square feet in area.
  - (5) The campground shall operate for a period not to exceed six months (180 days) during any calendar year, unless otherwise approved by the Development Review Board. Recreational vehicles may be stored on the property only if they are registered for highway use.
  - (6) Adequate provision for the safe, sanitary disposal of trash and recyclables shall be provided on site.
  - (7) Outdoor fires shall not result in a nuisance or threat to neighboring landowners, businesses or residents, nor endanger or adversely affect public health, safety or welfare.
- (B) For substantially undeveloped, primitive camping areas (e.g., tenting areas, backcountry shelters) located on public or private lands, the Development Review Board may waive any or all of the requirements under Subsection (A) if it is demonstrated to the Board's satisfaction that access, total lot area, camp site area, and setback distances are sufficient to:
- (1) Support the proposed level of use, and
  - (2) Avoid any adverse impacts to water quality, natural areas, and adjoining properties and uses.
- (C) This section shall not apply to backcountry camping on public or private land that does not involve designated camp-sites.

#### **Section 4.6 Extraction of Earth Resources**

- (A) The extraction or removal of topsoil, sand, gravel, rock, minerals or other similar earth resource may be allowed in designated districts subject to conditional use review under Section 5.5. In addition to the conditional use standards, the Development Review Board shall also require erosion control and site reclamation plans showing:
- (1) Existing grades, drainage patterns and depths to bedrock and the seasonal height water table;
  - (2) Extent and magnitude of the proposed operation, including proposed phasing;
  - (3) Finished grades at the conclusion of the operation; and
  - (4) A detailed plan for the restoration of the site, including final grading and re-vegetation.
- (B) In granting approval, the Development Review Board shall find that the proposed extraction will not cause a hazard to public health and safety, or adversely affect neighboring properties, property values or public facilities and services, surface water and groundwater supplies, critical wildlife habitat, or other natural, cultural, and historic features. To ensure compliance with this section, the Board may impose conditions or limits with regard to any of the following factors:
- (1) Depth of excavation or quarrying and/or slopes created by removal;
  - (2) Effects on surface drainage on and off-site;
  - (3) Storage of equipment and stockpiling of materials on-site;
  - (4) Hours of operation for blasting, trucking, and processing operations;
  - (5) Effects on adjacent properties due to noise, dust, or vibration;
  - (6) Effects on traffic and road conditions, including potential physical damage to public highways;

- (7) Creation of nuisances or safety hazards;
  - (8) Temporary and permanent erosion control, including project phasing to limit exposed area;
  - (9) Effect on ground and surface water quality, and drinking water supplies;
  - (10) Effect on natural, cultural, historic or scenic resources on-site or in the vicinity of the project.
- (C) A performance bond, escrow account, or other surety acceptable to the Selectboard may be required to ensure reclamation of the land upon completion of the excavation, to include any re-grading, reseeding, reforestation or other reclamation activities that may be required. Upon failure of the permit holder, or their successors or assigns, to complete site reclamation as required, the town may take legal action as appropriate to ensure site reclamation and cost recovery.
- (D) This section shall not apply to normal agricultural and/or forestry operations, public (municipal and state) road maintenance and construction, the operation of a cemetery, or the removal of earth resources for a use that is incidental to another duly permitted construction activity located on the same parcel from which the materials were extracted.

#### **Section 4.7 Withdrawal of Ground Water Resources**

- (A) The withdrawal of groundwater, including spring water, for non-domestic purposes, which exceeds 57,600 gallons on any given day or 20,000 gallons withdrawn per day averaged over a calendar month, may be allowed in designated zoning districts subject to conditional use review under Section 5.5. In addition to the conditional use standards, the Development Review Board shall also require the applicant to delineate the withdrawal's zone of influence by showing:
- (1) Depth and type of materials installed to enable the withdrawal;
  - (2) A map showing properties, structures, surface waters and wetlands, within the zone of influence or 0.50 mile radius from the point of withdrawal, whichever is greater;
  - (3) Estimates on the projected mean and peak daily, monthly and annual withdrawal volume; and
  - (4) A detailed plan for the restoration of the site, including final grading and re-vegetation.
- (B) In granting approval, the Development Review Board shall find that the proposed withdrawal will not cause a hazard to public health and safety, or adversely affect neighboring properties, property values or public facilities and services, surface water and groundwater supplies, critical wildlife habitat, or other conditions or limits with regard to any of the following factors:
- (1) Depth of withdrawal and type of materials, structures and equipment installed;
  - (2) Quantity, volume or rate of groundwater withdrawn;
  - (3) Storage of equipment and stockpiling of materials on-site;
  - (4) Hours of operation;
  - (5) Effect on adjacent properties due to noise or vibration;
  - (6) Effect on traffic and road conditions, including potential physical damage to public highways or road rights of way;
  - (7) Creation of nuisances or safety hazards;
  - (8) Effect on ground and surface water quality, and other groundwater supplies within the zone of influence;
  - (9) Effect on natural, cultural, historic, or scenic resources on-site or in the vicinity of the project;
  - (10) Impose fees in conjunction with independent review under Sections 7.8(C) and (D).
- (C) A performance bond, escrow, or other surety acceptable to the Selectboard may be required to ensure reclamation of the land upon completion of the groundwater withdrawal activity, to include any re-

grading, reseeding, reforestation or other reclamation activities that may be required. Upon failure of the permit holder, or their successors or assigns, to complete site reclamation as required, the town may take legal action as appropriate to ensure site reclamation and cost recovery.

- (D) This section shall not apply to groundwater withdrawal activities associated with agricultural and/or forestry operations or to the withdrawal of groundwater used for individual or domestic water supply purposes, or to the withdrawal of groundwater for emergency fire fighting purposes.

#### **Section 4.8 Gas Stations**

(A) A gasoline station may be allowed in designated zoning districts subject to site plan review under Section 5.4 or conditional use review under Section 5.5, in addition to the following requirements:

- (1) All pumps and other service equipment shall be located at least 30 feet from front, side and rear lot lines.
- (2) Notwithstanding the requirements of Section 3.3, there shall be no more than two (2) accesses (curb cuts) providing ingress and egress to adjoining roads. On corner lots, one or both accesses may be limited to the secondary road. The width of each curb cut shall not exceed 40 feet.
- (3) Curbing, landscaping and screening, and pedestrian walkways may be required by the Development Review Board as needed to safely manage vehicle and pedestrian circulation on- and off-site, and to minimize adverse impacts to adjoining properties.
- (4) In addition to signs allowed under Section 3.15, a gasoline station may have one (1) freestanding pricing sign that does not exceed 12 square feet in area, and/or pump-top pricing signs, each not to exceed two (2) square feet in area.
- (5) Station canopies shall be limited to the minimum area required for adequate pump and apron coverage, and the minimum ceiling height necessary to meet applicable state and federal safety requirements. Canopy scale and design shall be compatible with station design and with surrounding buildings. Corporate logos are specifically prohibited on station canopies. Canopy fascias shall not be illuminated or used for advertising.
- (6) The Development Review Board may require the submission of an outdoor lighting plan for review and approval in accordance with the following:
  - (a) Light fixtures mounted on station canopies shall either be recessed so that the lens cover is flush with the bottom surface (ceiling) of the canopy; or for indirect lighting, mounted and shielded or skirted so that direct illumination is focused exclusively on the underside of the canopy;
  - (b) Lights shall not be mounted on the top or sides (fascias) of canopies, nor shall canopies be internally illuminated; and
  - (c) Interior station sighting shall not be used to contribute or increase outdoor lighting levels, nor for advertising purposes.
- (7) All underground storage tanks shall meet applicable state requirements for design and installation.

(B) The use of a gasoline station is limited to the retail sale of gasoline, diesel fuel and other automotive fluids and products. The sale of other types of retail items (e.g., food or convenience items), or the provision of other services (e.g., motor vehicle repair, sales or rentals, car washes, towing services or restaurant seating) may be allowed only as a “Mixed Use” [see Section 4.10], and as such shall be required to meet applicable standards of these regulations pertaining to each use.

#### **Section 4.9 Group Homes**

(A) In accordance with the Act [§4412(1)(G)], a state licensed or registered residential care home or group home, serving not more than eight (8) persons who are developmentally disabled or physically handicapped, shall be considered by right to constitute a single family residential use of property, except that no home shall be so considered if it locates within 1,000 feet of another such home. A

zoning permit under Section 7.2 shall be required only for purposes of documenting and recording the use in the land records of the town.

- (B) Other types of residential care facilities may be allowed in designated zoning districts as conditional uses subject to conditional use review under Section 5.5.

#### **Section 4.10 Home Based Businesses**

- (A) **Home Child Care.** In accordance with the Act [§4412(5)], a state registered or licensed child care home serving six or fewer children on a full-time basis, and up to four additional children on a part-time basis, that is conducted within a single family dwelling by a resident of that dwelling shall be considered a permitted use of the single family residence. No zoning permit is required for home child care providing it meets the requirements of this section. The Zoning Administrator may issue a permit, if requested, after confirming that the home child care meets the provisions of this section. Non-residential day care facilities, and those facilities operated from a dwelling which serve greater than six children full-time may be allowed as Day Care Facilities in designated zoning districts.
- (B) **Home Occupations.** In accordance with the Act [§4412(5)], no provision of these regulations may infringe upon the right of any resident to use a minor portion of a dwelling for an occupation which is customary in residential areas and which does not change the character of the surrounding neighborhood or area. No zoning permit is required for a home occupation provided such home occupation complies with the standards below. The Zoning Administrator may issue a permit, if requested, after confirming the home occupation complies with the following standards:
- (1) The home occupation shall be carried on by residents of the dwelling and not more than two additional non-residential employees (or full-time equivalent part-time nonresident employees).
  - (2) The home occupation shall be carried on entirely within the principal dwelling or an accessory structure. Exterior storage or displays, other than that characteristic of a residential use, is prohibited.
  - (3) The home occupation shall not result in obnoxious or excessive noise, smoke, vibration, dust, glare, odors, electrical interference or heat that is not characteristic of a single-family dwelling and is detectable at the boundary of the property.
  - (4) No traffic shall be generated in substantially greater volumes than would normally be expected from a residential use.
  - (5) Off-street parking shall be provided for resident, employee, customer and delivery vehicles; no more than two vehicles may be parked within the front yard area.
  - (6) The home occupations shall meet all applicable sign standards [Section 3.15].
  - (7) On-site retail sales, and the service or repair of automobiles, require review under Home Industry under Subsection (C).
- (C) **Home Industry.** Home industry, as distinguished from “home occupation” under Subsection (B) may be allowed as an accessory to a single family dwelling in designated zoning districts subject to conditional use review under Section 5.5 (except in Zone B, where it is a permitted use), and the following provisions:
- (1) The home industry shall be conducted by residents of the dwelling, and up to four full-time nonresident employees (or full-time equivalent part-time nonresident employees).
  - (2) The home industry shall be carried out within the principal dwelling or an accessory structure.
  - (3) Exterior storage areas for materials and equipment associated with the home industry may be approved by the Development Review Board, provided that such areas are clearly designated and are adequately screened from public view and neighboring properties. Designated storage areas shall meet the setbacks for the district in which the use is located, although the Board may require greater setbacks to avoid impacts on neighboring properties. The storage of hazardous materials

anywhere on the premises is prohibited, with the exception of materials customary and characteristic of residential uses (e.g., heating oil).

- (4) The home industry shall not change the character of the neighborhood, or result in a change in the outward appearance of the dwelling or the accessory structure.
- (5) The home industry shall not generate traffic, including delivery traffic, in excess of volumes characteristic of other uses allowed in the district in which the home industry is located.
- (6) Off-street parking shall be provided for resident, employee, customer and delivery vehicles, as well as all commercial vehicles or equipment associated with the home industry.
- (7) The home industry shall not result in obnoxious or excessive noise, smoke, vibration, dust, glare, odors, electrical interference or heat that is not characteristic of a single-family dwelling, and is detectable at the boundary of the property.
- (8) The home industry shall meet all applicable sign standards [Section 3.15].

(D) **Permits and Approvals.** The zoning permit issued for a home industry shall clearly state that the business activity is permitted only as an accessory to the principal residential use of the property, and as such shall be retained in common ownership. A home occupation or home industry may be subdivided and/or converted for conveyance as a separate, principal use only if it complies with all municipal regulations applying to such use, including density and dimensional requirements for the district in which it is located. All applicable municipal permits and approvals shall be required prior to subdivision, conversion, or conveyance of a home-based business as a principal use.

#### **Section 4.11 Mixed Uses**

- (A) In designated zoning districts, more than one principal use may be allowed within a single building, or on a single lot, subject to the following provisions:
- (1) Each of the proposed uses is allowed as a permitted or conditional use within the zoning district in which the mixed use is located.
  - (2) The uses in combination meet all applicable standards for the district in which the mixed use is proposed, including minimum lot, frontage and setback requirements; or the mixed use is part of a Planned Unit Development (PUD) reviewed in accordance with Section 5.6.
  - (3) The mixed use shall meet all applicable general regulations under Article 3, including but not limited to signage and parking requirements.

#### **Section 4.12 Mobile Home Parks**

- (A) In accordance with the Act [§4412(1)(C)], no municipal zoning regulation shall have the effect of excluding mobile home parks from the town. New and expanded mobile home parks may be allowed in designated districts subject to conditional use review in accordance with Section 5.5 and the following provisions:
- (1) The parcel of land for a new mobile home park shall have a minimum area of no less than 20 acres unless approved otherwise by the Development Review Board.
  - (2) A minimum of 10% of the total land area in a new mobile home park shall be set aside for common recreational use.
  - (3) Each mobile home plot shall be at least 10,000 square feet in area, as depicted on the site development plan, of which 6,500 square feet shall be provided for each site and at least 3,500 square feet for each mobile home in common open space, exclusive of streets.
  - (4) A landscaped buffer, a minimum of 100 feet in depth, shall be located adjacent to all parcel boundaries. The 100 feet buffer shall not be included in the calculation of recreational land or open space required under Subsection (2),

- (5) All roads within a mobile home park shall comply with Section 6.9. Pedestrian paths connecting mobile home sites to common facilities and areas, or to public rights-of-way or pedestrian paths are recommended, and may also be required by the Board, as deemed necessary, to provide safe, interconnected pedestrian circulation.
  - (6) Each mobile home, and associated accessory structures, shall be setback a minimum of 20 feet from adjoining mobile home sites or 50 feet from any road.
  - (7) Parking shall be provided in accordance with Section 3.11 and may include a combination of individual and shared parking areas. At least two (2) parking spaces shall be available for each home site.
  - (8) All mobile homes shall be placed on a concrete pad or enclosed foundation.
  - (9) All utilities shall be buried underground, unless this requirement is specifically waived by the Development Review Board.
  - (10) Mobile home parks shall meet all applicable requirements of these regulations, including all applicable general requirements under Article 3.
  - (11) Mobile home parks shall comply with all state regulations including regulations pertaining to potable water supply and wastewater disposal systems.
  - (12) Mobile home parks may include as accessory to the park, subject to conditional use review, an office and common laundry, storage, parking and recreation facilities for use by park residents and their invited guests.
- (B) The mobile home park owner, or designated operator, as a condition of Board approval, shall:
- (1) Maintain all park buildings, roads, parking areas, paths, utilities, infrastructure, landscaping open space and common areas in good condition, and shall provide for the regular collection and removal of recyclables, waste and garbage; and
  - (2) Remove snow from all park roads, parking and service areas.
- Failure to meet these operation and maintenance requirements shall constitute a violation of permit conditions and these regulations, subject to enforcement action under Section 7.7.
- (C) Changes or alterations to park area, design, layout or common facilities are subject to conditional use review in accordance with the above provisions. The owner of a mobile home within an approved mobile home park, however, may apply for a zoning permit under Section 7.1 for a replacement home, deck, accessory structure or addition which meets site setback requirements under Subsection (A), without additional approval by the Development Review Board.
- (D) In accordance with the Act [§4412(7)(B)], if a mobile home park legally in existence as of the effective date of these regulations is determined to be nonconforming under these regulations, its nonconforming status shall apply only to the park as a whole, and not to individual mobile home sites within the park. Accordingly, the requirements of Section 3.10 shall not apply to an individual mobile home site for the purpose of replacing an existing mobile home on the site with a mobile home of the same or larger footprint, as long as a distance of at least 10 feet is maintained from adjoining mobile home sites. Sites within an existing park that are vacated shall not be considered discontinued or abandoned.
- (E) A mobile home park shall be considered the principal use of a parcel which shall be retained in common ownership and management. Individual mobile home sites may be subdivided from the rest of the park for sale only in accordance with all applicable requirements of these regulations pertaining to subdivisions and single family dwellings.
- (F) Mobile home park sales may be allowed in association with an established or proposed mobile home park only as a “mixed use” subject to conditional use review under Section 4.10.

### Section 4.13 Protected Public Uses

- (A) In accordance with the Act [§4413(a)], the following public facilities or uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping and screening requirements, and only to the extent that such regulations do not have the effect of excluding, or interfering with the intended use or function:
- (1) State or community owned and operated institutions and facilities;
  - (2) Public and private schools and other educational institutions certified by the Vermont Department of Education;
  - (3) Churches and other places of worship, convents, monasteries, and parish houses;
  - (4) Public and private hospitals;
  - (5) Regional solid waste management facilities certified by the state (under 10 V.S.A. Chapter 159);
  - (6) Hazardous waste management facilities for which a notice of intent to construct has been received by the state (under 10 V.S.A. §6606a).
- (B) Reasonable provision has been made for siting of the above public facilities and uses within specified zoning districts, as summarized in Table 4.1. Such facilities of uses must meet applicable district requirements, and may be subject to site plan review under Section 5.4 or conditional use review under Section 5.5; however, associated conditions of approval shall not exceed allowed regulation, as specified in the Act and Subsection (A).
- (C) In accordance with the Act [§4413(b)], public utility power generating plants and transmission facilities regulated by the Vermont Public Service Board (under 30 V.S.A. §248) are specifically exempted from municipal land use regulations.

TABLE 4.1 PROTECTED PUBLIC USES	
Facility	Specified District(s)
Public and private hospitals	All Districts
Regional solid waste management facilities certified by the State [10 V.S.A Chapter 159]	Zone B (see Sanitary Landfill)
Hazardous waste management facilities for which a notice of intent to construct has been received under state law [10 V.S.A. §6606(a)]	Zone B (see Transfer Station)
State or community owned and operated institutions and facilities	All Districts (see Public Facility/Utility)
Public and private schools and other educational institutions certified by the Vermont Department of Education	Zone A & Zone C (see School)
Churches and other places of worship, convents and parish houses	Zone A & Zone C (see Place of Worship)

### Section 4.14 Telecommunications Facilities

- (A) **Purposes.** The purpose of this section is to protect the public health, safety and general welfare of the Town of East Montpelier while accommodating the communication needs of residents and businesses in order to:
- (1) Preserve the character and appearance of the Town of East Montpelier while allowing adequate wireless telecommunications services to be developed.
  - (2) Protect the scenic, historic, environmental, and natural resources of the Town of East Montpelier.
  - (3) Provide standards and requirements for the operation, siting, design, appearance, construction, monitoring, modification, and removal of wireless telecommunications facilities and towers.

- (4) Minimize tower and antenna proliferation by requiring the sharing of existing communications facilities, towers and sites, where possible and appropriate.
- (5) Facilitate the provision of wireless telecommunications services to the residences and businesses of the Town of East Montpelier.
- (6) Minimize the adverse visual effects of towers and other facilities through careful design and siting standards.
- (7) Encourage, through performance standards and incentives, the location of towers and antennas in non-residential areas and away from other sensitive areas such as schools, hospitals and childcare facilities.

**(B) Consistency with Federal Law.** In accordance with federal law, particularly the Telecommunications Act of 1996, these regulations shall not be interpreted in a manner that would:

- (1) Prohibit or have the effect of prohibiting the provision of wireless telecommunications services;
- (2) Unreasonably discriminate among providers of functionally equivalent services; or
- (3) Regulate wireless telecommunications services on the basis of the environmental effects of radio frequency emissions to the extent that the regulated services and facilities comply with the Federal Communications Commission (FCC) regulations concerning such emissions.

**(C) Applicability.** Telecommunications facilities shall include all facilities subject to licensing or regulation by the FCC, including towers, associated accessory structures, buildings and/or equipment, except as specifically exempted under Subsection (D). New, modified or expanded telecommunication facilities, except as specified for small scale facilities under Subsection (E), may be allowed in designated zoning districts as conditional uses subject to review under Section 5.5 and the requirements of this section. However:

- (1) A new tower shall not be permitted unless it is found by the Development Review Board that the equipment planned for the proposed tower cannot be accommodated on an existing approved tower, building or structure;
- (2) No towers are allowed within the exclusion areas identified in Subsection I; and
- (3) The board can hire qualified person(s) to conduct an independent technical review of applications filed under this section and can require the applicant to pay for all reasonable costs thereof.

**(D) Exemption**

- (1) The following wireless telecommunications facilities are exempt from the requirements of this section: police, fire, ambulance, other emergency dispatch, and television antennas for home use. No FCC-licensed wireless telecommunications facility shall be considered exempt from these regulations for any reason, whether or not said facility is proposed to share a tower or other structure with such exempt uses.
- (2) The following freestanding structures: amateur (ham) radio, citizens-band radio, and residential-use radio dispatch antennas, are permitted uses, subject to district setback requirements and height requirements [Section 3.6]. The setback distance will be equal to the distance designated for the district, or the height of the tower, whichever is greater. A permit may be issued by the Zoning Administrator only after confirmation that the structure will meet setback and height requirements for the district in which it will be located. Antennas over 50 feet are subject to conditional use review under Section 3.6 (B).

**(E) Permitted & Prohibited Locations**

- (1) Wireless telecommunications towers or facilities may be permitted as conditional uses upon compliance with the provisions of this Bylaw in the following zoning districts:
  - (a) Zone A – Commercial District



- (b) Zone B – Industrial District
- (c) Zone C – Residential-Commercial District
- (d) Zone D – Rural Residential-Agricultural District
- (e) Zone E – Agricultural-Forest Conservation District

(2) Additionally, freestanding telecommunications towers or antennas over 20 feet in elevation may not be located in any of the following locations:

- (a) Closer than 75 feet or the height of the tower horizontally, including antennas and other vertical appurtenances (except in the case of a tower requiring guy wire anchors which must not be closer than 2 times the height of the tower horizontally), whichever is greater, to the boundary of the property on which the tower is located; to any structure existing at the time of the application which is used as either a primary or secondary residence, or to any other building except as provided in Subsection (F); to any existing road right-of-way; to any river or perennial stream; to a State or Federally designated wetland; or to any known archeological site.
- (b) The habitat of any rare or endangered species as listed by the State of Vermont.
- (c) Within 500 feet horizontally from any Historic district or property eligible to be listed on the National Register of Historic Places.
- (d) Closer than 1,000 feet horizontally to any structure existing at the time of the application which is the property of any school.
- (e) Within 2,000 feet horizontally of a designated scenic road or highway.

(F) **Small Scale Facilities.** The placement of wireless telecommunications antennas, repeaters or microcells on existing buildings, structures, roofs or walls, and not extending more than 10 feet from the same, or the installation of ground facilities less than 20 feet in height, may be approved by the Development Review Board as a conditional use under Section 5.5. In addition to the application materials required for conditional use approval, applicants for the placement of small scale facilities shall provide:

- (1) A final site and building plan.
- (2) A report prepared by a licensed mechanical or structural engineer indicating the structure's suitability for the wireless telecommunications facility, and that the proposed method of affixing the antenna or other device to the structure complies with standard engineering practices. Complete details of all fixtures and couplings and the exact point(s) of attachment shall be indicated.
- (3) For a facility to be installed on an existing structure, a copy of the applicant's executed contract with the owner of the existing structure.
- (4) A deposit in the amount of \$1,500.00 to be applied toward the costs of an independent technical assessment of the application, as provided for in Subsection 7.8 (C) of these regulations. The applicant shall pay any costs in excess of the deposit; any unused portion of the deposit will be returned to the applicant.
- (5) No such device, however, may be located closer than 50 feet to an existing residence.

(G) **Application Requirements for Telecommunications Facilities Not Covered Under Subsection F Above.** An applicant must be a wireless telecommunications service provider or FCC licensee, or must provide a copy of its executed contract to provide land or facilities to such an entity, to the Zoning Administrator at the time that an application is submitted. A permit shall not be granted for a tower or facility to be built on speculation. No construction, alteration, modification (including the installation of antennas for new uses) or installation of any wireless telecommunications tower or facility shall commence without a conditional use approval by the Development Review Board. In addition to information otherwise required in Section 5.3, applicants for wireless telecommunications towers or facilities shall include the following supplemental information:

- (1) The name and address of the applicant, the record landowners and any agents of the landowners or applicants as well as an applicant's registered agent and registered office. If the applicant is not a natural person, the name and address of the business and the state in which it is incorporated and has its principal office shall be provided.
- (2) The name, address and telephone number of the person to be contacted and who is authorized to act in the event of an emergency regarding the structure or safety of the facility.
- (3) The names and addresses of the record owners of all abutting property and the names and addresses of the landowner, facility operator, and the wireless service providers.
- (4) A report from the appropriate qualified engineers that:
  - (a) Describes the facility height, design and elevation (a licensed structural engineer for this section).
  - (b) Documents the height above grade for all proposed mounting positions for antennas to be collocated on a telecommunications tower or facility and the minimum separation distances between antennas (a radiofrequency engineer for this section).
  - (c) Describes the tower's proposed capacity, including the number, height and type(s) of antennas that the applicant expects the tower to accommodate (a licensed structural engineer for this section).
  - (d) Demonstrates that existing telecommunications sites and other existing structures, or other structures proposed by the applicant within 5 miles of the proposed site cannot reasonably provide adequate coverage and adequate capacity to the residents and businesses of the Town of East Montpelier. The documentation shall include, for each facility site of proposed site within such radius, the exact location, ground elevation, height of tower or structure, and sufficient additional data to allow the independent reviewer to verify that other locations will not be suitable.
  - (e) Demonstrates that the applicant has analyzed the feasibility of using "repeaters" or microcells in conjunction with all facility sites listed in compliance with Subsection (D) (above) to provide coverage to the Town of East Montpelier.
  - (f) Describes potential changes to those existing facilities of sites in their current state that would enable them to provide adequate coverage.
  - (g) Describes the output frequency, number of channels, sector orientation and power output per channel, as appropriate for each proposed antenna.
  - (h) Includes a written five-year plan for use of the proposed facility, including reasons for seeking capacity in excess of immediate needs, if applicable, as well as plans for additional development and coverage within the Town.
  - (i) Provides assurance that, at the proposed site, the applicant will establish and maintain compliance with all FCC rules and regulations, particularly with respect to radio frequency exposure. The Development Review Board may hire independent engineers to perform evaluations of compliance with the FCC regulations, standards and requirements on an annual basis at unannounced times.
  - (j) Includes other information required by the Development Review Board that is necessary to evaluate the request.
  - (k) Includes an engineer's stamp and registration, where appropriate.
- (5) A letter of intent committing the facility owner and his or her successors to permit shared use of the facility if the additional user agrees to meet reasonable terms and conditions for shared use.
- (6) For a facility to be installed on an existing structure, a copy of the applicant's executed contract with the owner of the existing structure (to be provided to the Zoning Administrator at the time an application is submitted).
- (7) To the extent required by the National Environmental Policy Act (NEPA) as administered by the FCC, a complete Environmental Assessment (EA) draft or final report describing the probable impacts of the proposed facility.

- (8) A copy of the application or draft application for an Act 250 permit, if applicable.
- (9) A deposit in the amount of \$1,500.00 to be applied toward the costs of an independent technical assessment of the application, as provided for in Subsection 7.8 (C).
- (10) The permit application shall be signed under the pains and penalties of perjury.

**(H) Site Development Plan Requirements for Wireless Telecommunications Facilities.**

Telecommunications facilities, excluding small facilities allowed under Subsection (F), are subject to conditional use approval under Section 5.5. In addition to the application requirements set forth in Section 5.2, site development plans for wireless telecommunications facilities shall include the following supplemental information:

- (1) Location map: a copy of a portion of the most recent USGS Quadrangle map showing the area within at least a two (2) mile radius of the proposed facility site.
  - (2) Vicinity map showing the entire vicinity within a 2,500 foot radius of the facility site, including the facility or tower, topography, public and private roads and driveways, buildings and structures, water bodies, wetlands, landscape features, historic sites and habitats for endangered species. It shall indicate the property lines of the proposed facility site parcel and all easements or rights-of-way needed for access from a public way to the facility.
  - (3) Propose site plans of the entire development, drawn at a minimum scale of one (1) inch equals fifty (50) feet, indicating all improvements including landscaping, utility lines, guy wires, screening and roads.
  - (4) Elevations showing all facades and indicating all exterior materials and color of towers, buildings and associated facilities.
  - (5) Computer generated photo simulations of the proposed facility showing the facility from all public rights-of-way and any adjacent property from which it may be visible. Each photo must be labeled with the line of sight, elevation and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.
  - (6) In the case of a proposed site that is forested, the approximate average height of the existing vegetation within 200 feet of the tower base.
  - (7) Construction sequence and time schedule for completion of each phase of the entire project.
- (I) Collocation Requirements.** An application for a new wireless telecommunications facility shall not be approved unless the Development Review Board finds that the facilities planned for the proposed structure cannot be accommodated on an existing or approved tower or structure due to one of the following reasons:
- (1) The proposed antennas and equipment would exceed the structural or spatial capacity of the existing or approved tower or facility, as documented by a qualified engineer licensed to practice in the State of Vermont. Additionally, the existing or approved tower cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment, at reasonable cost, to provide coverage and capacity comparable to that of the proposed facility.
  - (2) The proposed antennas and equipment would cause interference materially impacting the usefulness of other existing or permitted equipment at the existing or approved tower or facility as documented by a qualified engineer and such interference cannot be mitigated at a reasonable cost.
  - (3) The proposed antennas and equipment, either alone or together with existing facilities, equipment or antennas, would create excessive radiofrequency exposure.
  - (4) Existing or approved towers and structures cannot accommodate the planned equipment at a height necessary to function reasonably, or are too far from the area of needed coverage to function reasonably as documented by a qualified engineer.

- (5) Aesthetic reasons make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.
- (6) There is no existing or approved tower in the area in which coverage is sought.
- (7) Other unforeseen specific reasons make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.

Towers must be designed to allow for future placement of antennas upon the tower and to accept antennas mounted at carrying heights when overall permitted height allows. Towers shall be designed structurally and in all other respects to accommodate a minimum of four antennas when overall permitted height allows.

- (J) **Access Roads and Above Ground Facilities.** Where the construction of new wireless telecommunications towers and facilities requires construction of or improvement to access roads, to the extent practicable, roads shall follow the contour of the land, and be constructed or improved within forest or forest fringe areas, and not in open fields. Utility or service lines shall be designed and located so as to minimize or prevent disruption to the scenic character or beauty of the area. The Development Review Board may require closure of access roads to vehicles following facility construction where it is determined that site conditions warrant the same, and where maintenance personnel can reasonably access the facility site on foot.
- (K) **Tower and Antenna Design Requirements.** Proposed facilities shall not unreasonably interfere with the view from any public park, natural scenic vista, historic building or district, or major view corridor. Height and mass of facilities shall not exceed that which is essential for the intended use and public safety.
- (1) Towers, antennas and any necessary support structures shall be designed to blend into the surrounding environment through the use of color camouflaging and architectural treatment, except in cases in which the Federal Aviation Authority (FAA), state or federal authorities have dictated color. Use of stealth designs, including those which imitate natural features, may be required in visually sensitive locations.
  - (2) In order to protect public safety and to preserve the scenic character and appearance of the area, the height limit for towers, antennas and tower-related fixtures shall not be more than 20 feet above the average height of the tree line measured within 100 feet of the highest vertical element of the telecommunications facility. Notwithstanding the above, additional height may be approved upon a finding by the Development Review Board that the additional height is necessary to provide adequate coverage in the Town of East Montpelier or to accomplish collocation of facilities and that the additional height will not cause an undue visual impact on the scenic character or appearance of the area.
  - (3) Towers, antennas and any necessary support structures shall be designed to avoid having an undue adverse aesthetic impact on prominent ridgelines and hilltops. In determining whether a tower's aesthetic impact would be undue and adverse, the Board will consider:
    - (a) The period of time during which the proposed tower would be viewed by the traveling public on a public highway;
    - (b) The frequency of the view experienced by the traveling public;
    - (c) The degree to which the tower would be screened by existing vegetation, the topography of the land, and existing structures;
    - (d) Background features in the line of sight to the proposed tower that obscure the facility or make it more conspicuous;
    - (e) The distance of the proposed tower from the view point, and the proportion of the facility that is visible above the skyline;
    - (f) The sensitivity or unique value of a particular view affected by the proposed tower;
    - (g) Significant disruption of a viewshed that provides context to a historic or scenic resource.

The Board shall have the authority to impose conditions consistent with the purpose of this section in approving a proposed facility. Furthermore, the Board may designate an alternative location for the tower to be evaluated by the applicant if it is determined that the proposed location would result in undue adverse aesthetic impacts. In consideration of this, the applicant may revise its application to include such a site, assuming it is available to the applicant and reasonably technically feasible to meet the applicant's communication objectives.

- (4) All buildings and structures accessory to a tower (except for electric power poles where specifically exempted by the Board) shall meet the minimum setback requirements of the underlying zoning district or setback requirements specified in this bylaw. If the minimum setbacks of the underlying zoning district are less than the height of the tower, including antennas or other vertical appurtenances, the minimum distance from the tower to any property line shall be no less than specified in Subsection (E)(2).
- (5) The area around the tower and telecommunications facilities shelter(s) shall be completely fenced and gated for security to a height of eight feet. No permanently installed ladders shall reach below 12 feet above the ground.
- (6) Ground-mounted equipment or antennas, as well as buildings and structures accessory to a tower shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better complements the architectural character of the surrounding neighborhood. A planted or vegetative screen shall be a minimum of ten feet in depth with a minimum height of six feet and shall have the potential to grow to a height of at least 15 feet at maturity. Existing on-site vegetation outside the immediate site for the wireless facility shall be preserved or improved. Disturbance to existing topography shall be minimized unless the disturbance is demonstrated to result in less visual impact on the facility from surrounding properties and other vantage points.

**(L) Amendments to Existing Wireless Telecommunications Facility Permit.** An alteration or addition to any wireless telecommunications facility shall require a permit amendment when any of the following are proposed:

- (1) Change in the number of buildings or facilities permitted on the site;
- (2) Addition or change of any equipment resulting in greater visibility or structural windloading or weight load, or additional height of the tower, including profile of additional antennas, not specified in the original application.

**(M) Tower Lighting.** Unless required by the Federal Aviation Administration (FAA), no lighting of towers is permitted. In any case where a tower is determined to need obstruction marking or lighting, the applicant must demonstrate that it has or will request the least visually obtrusive marking and/or lighting scheme in FAA applications. Copies of required FAA applications shall be submitted by the applicant. Heights may be reduced to eliminate the need for lighting, or another location selected.

**(N) Signage.** A sign no greater than two (2) square feet indicating the name of the telecommunications facility owner(s) and a 24-hour emergency telephone number, either local or toll-free, shall be posted adjacent to the entry gate. In addition, radio frequency radiation (RFR) warning signs, and the federal tower registration plate, where applicable, shall be posted on the fence or as specified by federal or state requirements. No Trespassing signs may be posted at the discretion of the telecommunications facility owner(s). No commercial signs or lettering shall be placed on the facility.

**(O) Noise Generated by Facility.** The Development Review Board may impose conditions to minimize the effect of noise from the operation of machinery or equipment upon adjacent properties.

**(P) Temporary Wireless Telecommunication Facilities.** Any wireless telecommunications facility designed for temporary use is subject to the following:

- (1) Use of a temporary facility is permitted only if the owner has received a temporary use permit from the Development Review Board after site plan approval.
- (2) Temporary facilities are permitted for no longer than five days use during a special event.

- (3) The maximum height of a temporary facility is 50 feet from grade.
- (4) Temporary facilities must comply with all applicable portions of these regulations.
- (Q) **Continuing Obligations.** Upon receiving a permit, the permittee shall annually demonstrate that he or she is in compliance with all FCC standards and requirements regarding radiofrequency exposure, and provide the basis for his or her representations. In addition, the report shall include names and addresses of the landowner, facility operator, and wireless service providers.
- (R) **Facility Removal.** Abandoned, unused, obsolete, or noncompliant towers or facilities governed under this bylaw shall be removed as follows:
- (1) The owner of a facility/tower shall annually, on January 15, file a declaration with the Zoning Administrator certifying the continuing safe operation of every facility/tower installed subject to these regulations. Failure to file a declaration shall mean that the facility/tower is no longer in use and considered abandoned.
  - (2) Abandoned or unused towers or facilities shall be removed within 180 days of abandonment or of cessation of operations at the site unless a time extension is approved by the Development Review Board. In the event the tower or facility is not removed within 180 days of the abandonment or of cessation of operations at a site, the municipality shall notify the owner and may remove the tower or facilities. Costs of removal shall be assessed against the property or tower owner.
  - (3) Towers and facilities which are constructed in violation of permit conditions or application representations shall be removed within 180 days of a notice of violation at the site, unless a time extension or negotiated solution is approved by the Development Review Board. In the event the tower or facility is not removed within 180 days of notification of such a violation, the municipality may remove the tower or facilities. Costs of removal shall be assessed against the property or tower owner.
  - (4) An owner who has failed to file an annual declaration with the Zoning Administrator by January 15 may, by February 15, file a declaration of use or intended use and may request the ability to continue use of the facility/tower.
  - (5) The applicant shall, as a condition of the conditional use permit, provide a financial surety bond payable to the Town of East Montpelier and acceptable to the Board, to cover the cost of removal of the facility and remediation of the landscape, should the above clauses be invoked.
- (S) **Maintenance Requirements.** The applicant shall maintain all facilities. Such maintenance shall include, but not be limited to painting, structural integrity and landscaping. In the event the applicant fails to maintain the facility, the Town of East Montpelier may undertake such maintenance at the expense of the applicant or landowner.
- (T) **Insurance Requirements.** The facility owner shall maintain adequate insurance on all facilities and present a certificate of insurance annually on January 15.

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## ARTICLE 5: DEVELOPMENT REVIEW

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### Section 5.1 Applicability of Development Review Processes

Development review procedures and related standards under this article apply only to development that requires, prior to the issuance of a zoning permit under Section 7.1, the approval of the Development Review Board under one or more of the following review procedures.

- (A) **Site Plan Review.** Site plan review under Section 5.4 shall apply only to permitted uses as listed in Article 2, excluding single (one) and two family dwellings and associated accessory structures, home child care facilities and home occupations, signs, agriculture and forestry, and all other uses specifically exempted from these regulations under Section 7.2. Uses listed as a conditional use under Article 2 are not subject to site plan review *procedures*; however site plan review *standards* shall be applied through conditional use review under Section 5.5.
- (B) **Conditional Use Review.** Conditional use review by the Development Review Board under Section 5.5 shall apply only those uses designated as conditional uses in Article 2 or as otherwise specified in these regulations.
- (C) **Flood Hazard Area Review.** Conditional use approval by the Development Review Board, including the application of flood hazard area development standards, is required for all development identified in Section 9.5(D).
- (D) **Planned Residential Development (PRDs) and Planned Unit Developments (PUDs).** PRD and PUD standards and procedures may be applied, at the request of the applicant, to the subdivision of any size parcel within designated zoning districts in accordance with Section 5.6.

### Section 5.2 Administrative Amendment of Permits

- (A) **Administrative Amendment.** Amendments to final site plans or conditional use permits previously approved by the Development Review Board may be issued by the Zoning Administrator, with the concurrence of the Development Review Board Chair, or his or her designee, and without additional review by the Development Review Board, only in cases where applicants can demonstrate compliance with each of the following criteria:
  - (1) The amendment will not result in the project's noncompliance with any standards or requirements of the zoning regulations, or any permit conditions.
  - (2) The amendment will not result in changes to the previously approved parking or loading spaces;
  - (3) The amendment will not result in an increase of more than five percent (5%) to the previously approved building footprint or an additional 250 square feet, whichever is less;
  - (4) The amendment will not result in a change in location of any previously approved structure on the property which impacts the original setback distance to adjacent properties by more than ten percent (10%), or which impacts the original front setback by more than fifteen percent (15%);
  - (5) The amendment will not result in any changes to the previously approved project that would require a variance or waiver of the zoning regulations.
- (B) **Application Requirements.** Applications for administrative approval under this Section shall conform with the requirements of Section 7.3 and shall be accompanied by the Administrative Amendment fee. Applicants shall provide any previously approved site plan and/or conditional use decision with the application, and shall highlight all proposed changes in the site plan or conditional use decision for which administrative approval is sought. Applicants shall also forward copies of the application for amendment to all abutting property owners, by certified mail, return receipt requested, within three (3) days following submission of the application to the Zoning Administrator.

### **Section 5.3 Application Requirements (Site Plan & Conditional Use Review)**

(A) **Development Plan.** An applicant for site plan review or conditional use review by the Development Review Board shall submit, in addition to a zoning permit application under Section 7.1, one (1) original of a development plan and supporting information. The Board may request additional copies. Supporting information may include the following information, unless specifically waived by the Board under Subsection (B):

- (1) The names of the property owner(s) of record, the applicant if different from the property owners, and the person(s) or firm preparing the application and plan;
- (2) The names of all adjoining property owners, as determined from the current East Montpelier Grand List, and proof of written notification to all adjoining property owners notifying them of the application, in accordance with Subsection 7.8 (E).
- (3) A project location map showing the location of proposed development in relation to other properties and roads within the vicinity of the project; and
- (4) A site development plan, drawn to scale (or a survey) which shows the following, when applicable, unless specifically waived by the Development Review Board:
  - (a) Title block, north arrow, scale, and application date;
  - (b) Existing and proposed property boundaries, easements and rights-of-way;
  - (c) Site features, including contours, prominent topographic features and areas of steep slope (in excess of 25%); mapped surface waters, mapped wetlands and associated setback distances; designated floodplain areas; land cover, including tree lines and large specimen trees; and designated water supply source protection areas;
  - (d) The location of existing and proposed structures and facilities, including building footprints and elevations, utilities, roads, driveways, parking and loading areas and pedestrian paths;
  - (e) Proposed traffic and pedestrian circulation patterns, including access points to adjoining properties, public roads and public waters;
  - (f) The location of proposed water supply and wastewater disposal systems and design details; and
  - (g) Proposed grading, drainage, landscaping, screening, signs and lighting details.
- (5) If applicable, construction sequence and time schedule for completion of each phase for buildings, parking spaces and landscaped area of the entire development.

(B) The application shall not be considered complete until all information and associated fees have been submitted. The Development Review Board may waive one or more application requirements upon determination that the information is unnecessary for the comprehensive review of the application.

### **Section 5.4 Site Plan Review**

(A) **Applicability.** Any use or structure requiring site plan approval shall not be issued a zoning permit by the Zoning Administrator until the Development Review Board grants such approval in accordance with the Act [§4416], and the following standards and procedures.

#### **(B) Review Process**

- (1) **Conceptual Site Plan Review.** An applicant may request a conceptual site plan review by the Development Review Board prior to developing and submitting a formal application for site plan review under Section 5.4(B)(2). The purpose of a conceptual site plan review is to acquaint the DRB with the proposed site plan and explore possible concepts for developing a site at an early stage in the design process, prior to the applicant incurring significant expense. Conceptual site plan review is intended to allow for an informal exchange of ideas, in which the applicant explores with the Board site plan design options that best meet the needs of the applicant and the requirements of Section 5.4 (C).



- (a) **Conceptual site plan review application.** Prior to the scheduling of a conceptual site plan review, the applicant shall submit nine (9) copies of the conceptual site plan with major features (natural and man-made) clearly marked. The conceptual site plan shall also include a directional compass (showing north), adjacent streets and parcels (identified by name) and sketches and/or outlines of potential development approaches.
  - (b) **Effect.** The Development Review Board may offer comments and recommendations on the proposed conceptual site plan. Such comments and recommendations are advisory only and, as such, shall not constitute an appealable decision or action of the Board, and shall not be binding on subsequent site plan review. Materials accepted for conceptual review will not be carried forward for site plan review. To proceed, the applicant must submit an application based on the requirements in Section 5.3 above.
- (2) **Public Hearing.** When an application is complete, the Zoning Administrator shall schedule a public hearing, warned in accordance with Subsection 7.8(E). The Board shall act to approve, approve with conditions, or deny an application for site plan review within 45 days of adjournment of the final public hearing; and shall issue a written decision in accordance with Subsection 7.8(F). Failure to act within the 45-day period shall be deemed approval. Copies of the decision shall be mailed, via certified mail, to the applicant, and mailed to every person or body appearing and having been heard at the hearing, and a copy of the decision shall be recorded in accordance with Subsection 7.8(G).
- (C) **General Standards.** The Board shall consider and may impose conditions and safeguards with respect to the adequacy of traffic and pedestrian access, on-site circulation, parking, landscaping and screening, and other aspects of site development, in accordance with the following:
- (1) **Access.** Provision shall be made for adequate and safe access from the site to maintained public or private roads in accordance with the requirements of Section 3.4. The Board may require that access be shared between adjoining properties and/or uses, and may require the reduction, consolidation, or elimination of non-complying accesses or curb cuts. Requirements for shared access shall be made either at the time of site plan approval if similar provision has been made on contiguous parcels, or contingent upon future development of neighboring properties.
  - (2) **Circulation.** Provision shall be made for adequate and safe on-site vehicular and pedestrian circulation, in relation to the intended use and location of buildings and parking areas. Clearly marked travel lanes, pedestrian crossings, and pedestrian paths connecting buildings, parking areas, may be required to ensure vehicular and pedestrian safety and convenience.
  - (3) **Parking, Loading, Service & Outdoor Storage Areas.** On-site parking, loading and service areas shall be provided in accordance with the requirements of Section 3.11. Conditions may be imposed with regard to the extent, siting, landscaping, screening, paving, curbing and/or sharing of parking, loading and service areas as appropriate to ensure site safety, function and attractiveness, and to avoid or minimize adverse off-site impacts.
  - (4) **Landscaping & Screening.** Site plans may be required to incorporate landscaping and screening which preserves and incorporates existing vegetation, is suited to existing site conditions, enhances development and features unique to the site, integrates the development and site with surrounding properties, an/or services to buffer or screen incompatible development and/or outdoor storage or service areas from neighboring properties or public rights-of-way. Conditions may be imposed with regard to the amount, type, size, and location of landscaping and screening materials. The Board may also require a three year landscaping plan, and/or bond or other surety, to ensure installation and maintenance.
  - (5) **Layout & Site Design.** Conditions may be imposed as appropriate with regard to structure siting, orientation, and setbacks to ensure development is compatible with its setting and context.
  - (6) **Lighting.** Information regarding the location, type and level of illumination of all outdoor lighting shall be provided. Exterior lighting shall be kept to the minimum required for safety, security and intended use, consistent with the character of the neighborhood and/or zoning district

in which it is located. Permanent outdoor lighting fixtures shall not direct light onto adjacent properties, roads, or public waters, and shall minimize glare. The Board may restrict the height and/or location of fixtures and the maximum level of illumination on all or a portion of the property.

## **Section 5.5 Conditional Use Review**

(A) **Applicability.** For any use or structure requiring conditional use approval, a zoning permit shall not be issued by the Zoning Administrator until the Development Review Board has granted such approval in accordance with the Act [§4414(3)] and the following standards and procedures.

### **(B) Review Process**

(1) **Conceptual Conditional Use Review.** An applicant may request a conceptual conditional use review by the Development Review Board prior to developing and submitting a formal application for conditional use review under Section 5.5 (B)(2). The purpose of a conceptual conditional use review is to acquaint the DRB with the propose use and explore possible concepts for developing a site at an early stage in the design process, prior to the applicant incurring significant expense. Conceptual site plan review is intended to allow for an informal exchange of ideas, in which the applicant explores with the Board site plan design options that best meet the needs of the applicant and the requirements of Sections 5.5 (C) through (E).

(a) **Conceptual conditional use application.** Prior to the scheduling of a conceptual use review, the applicant shall submit nine (9) copies of the conceptual site plan with major features (natural and man-made) clearly marked. The conceptual plan shall also include a directional compass (showing north), adjacent streets and parcels (identified by name) and sketches and/or outlines of potential development approaches.

(b) **Effect.** The Development may offer comments and recommendations on the proposed conceptual conditional use. Such comments and recommendations are advisory only and, as such shall not constitute an appealable decision or action of the Board, and shall not be binding on subsequent conditional use review. Materials accepted for conceptual review will not be carried forward for conditional use review. To proceed, the applicant must submit an application based on the requirements in Section 5.3 above.

(2) **Public Hearing.** When an application is considered complete, the Zoning Administrator shall schedule a public hearing, warned in accordance with Subsection 7.8(E). The Board shall act to approve, approve with conditions, or deny an application for conditional use review within 45 days of adjournment of the final public hearing; and shall issue a written decision in accordance with Subsection 7.8(F). Failure to act within the 45 day period shall be deemed approval. Copies of the decision shall be mailed, via certified mail, to the applicant, and mailed to every person or body appearing and having been heard at the hearing, and a copy of the decision shall be recorded in accordance with Subsection 7.8(G).

(C) **General Standards.** Conditional use approval shall be granted by the Development Review Board upon finding that the proposed development will not result in an undue adverse effect on any of the following:

(1) **The capacity of existing or planned community facilities and services.** The Board shall consider the demand for community facilities and services that will result from the proposed development in relation to the existing and planned capacity of such services and facilities, the Town Plan, and any duly adopted capital budget and program currently in effect. The Board may request information or testimony from appropriate local officials to help evaluate potential project impacts on existing and proposed community facilities and services.

(2) **Character of the neighborhood or area affected.** The Board shall consider the design, location, scale, and intensity of the proposed development in relation to the character of the area or neighborhood, as determined from zoning district purpose statements, the Town Plan, and relevant testimony presented to the Board.

- (3) **Traffic on roads & highways in the vicinity.** The Board shall consider the potential impact of traffic generated by the proposed development on the capacity, safety, efficiency, and maintenance of roads, highways, intersections, bridges and culverts in the vicinity. A traffic impact assessment may be required.
  - (4) **Bylaws in effect.** The Board shall determine whether the proposed development conforms with other municipal bylaws and ordinances currently in effect, including but not limited to any road and on-site wastewater ordinances.
  - (5) **The utilization or renewable energy resources.** The Board will consider whether the proposed development will interfere with the utilization of renewable energy resources by either diminishing their current or future availability, or by interfering with neighboring property owners' access to such resources (e.g., for solar or wind power).
- (D) **Site Plan Review Standards.** In addition to the general standards set forth in Subsection (C) above, the Development Review Board shall also apply all applicable site plan review standards set forth in Section 5.3(C).
- (E) **Supplemental Standards.** In addition to the standards set forth in Subsection (C), the Development Review Board may also impose conditions in accordance with the following requirements:
- (1) The installation, operation, and maintenance of devices and/or methods of operation as necessary to prevent or reduce fumes, gas, dust, smoke, odor, noise, vibration, or similar nuisance. Performance standards shall be as specified by the appropriate State regulatory agencies.
  - (2) The extent of open spaces between the proposed use and surrounding properties.
  - (3) Up to triple minimum lot size, triple distance from adjacent or nearby uses and triple setback from adjacent roads if necessary to prevent a potential adverse impact on nearby properties.
  - (4) Landscaping and fencing if necessary to maintain the district character.
  - (5) Design and location of signs, structures, and service areas such that district character is maintained.
  - (6) Water supply and sewage disposal systems designed and installed in compliance with all applicable municipal and state requirements.
  - (7) Periodic review to ensure continued compliance.

## **Section 5.6 Planned Residential Developments & Planned Unit Developments**

- (A) **Purpose.** In accordance with the Act [§4417], the following two categories of Planned Developments are established under these regulations: Planned Residential Developments (PRD) and Planned Unit Developments (PUD). PRDs are allowed in all zoning districts excluding the Industrial District (Zone B). PUDs are permitted in the Commercial, Industrial, and Residential-Commercial Districts (Zones A, B and C, respectively). Both PRDs and PUDs are intended to encourage more efficient use of land, innovation in the design and layout of structures, to ensure adequate provision of streets and utilities, and to preserve the natural and scenic qualities of open land. In addition:
- (1) PRDs are intended to allow for the clustering of residential development to preserve and maintain open space, including but not limited to important resource or conservation lands, and to authorize the granting of a density bonus to facilitate the provision of affordable housing; and
  - (2) PUDs are intended to allow for the establishment of planned commercial and industrial parks and to encourage an integrated mix of uses within village centers.
- (B) **Review Procedure.** A PRD and PUD shall be reviewed concurrently with a subdivision review as set forth in Article 6 of these regulations. In addition to the application requirements of subdivisions set forth in Table 6.1, an application for PRD or PUD approval shall include a statement describing all proposed modifications, changes or supplements to existing requirements of these regulations. Modifications of one or more provisions of these regulations approved by the Development Review

Board shall be noted in writing and appended to a plat depicting the project to be filed in the East Montpelier Land Records. All other provisions of this bylaw not specifically modified shall remain in effect and be applicable to the project.

- (C) **Coordination with Conditional Use Review.** After receiving approval of site plan and subdivision from the Development Review Board, applications for PRD or PUD shall be subject to conditional use review by the Board. In conditional use review, the Board shall incorporate any applicable conditions during its approval process.
- (D) **General Standards.** The modification of zoning regulations by the Development Review Board may be permitted in accordance with the following standards:
- (1) The PRD or PUD shall meet all applicable standards set forth in Article 6 and shall be consistent with the East Montpelier Town Plan. The PRD shall also meet all local and state regulations for sewage disposal and the protection of water quality.
  - (2) The Board may allow for a greater concentration or intensity of development within some section(s) of the development than in others, on individual lots which are smaller than the minimum lot size for the district within which the PRD or PUD is located, provided that there is an offset by a lesser concentration in other sections.
  - (3) The PRD or PUD shall provide for the preservation of stream and streambanks, steep slopes, wetland, soils unsuitable for development, agricultural lands, unique natural and manmade features, watersheds, forest land, wildlife habitat, floodplains, and scenic features.
  - (4) The minimum front, side and rear yard setbacks at the periphery of the PRD or PUD shall be as dictated for the particular district unless otherwise specified by the Board. The Board may allow other setback standards within the PRD or PUD, such as a zero lot lines, a part of approval.
  - (5) Where a district boundary line divides a parcel, the Board may allow the development of a single PRD or PUD with a total density based on the combined allowable density of each district.
  - (6) Two or more contiguous parcels under the ownership or control of the applicant may be combined for review as a PRD or PUD. The permitted density on one parcel may be increased as long as the overall density for the combined parcels does not exceed that which could be permitted, in the Board's judgment, if the land were subdivided into lots in conformance with district regulations.
  - (7) The land area within the development not allocated to buildings and streets shall be reserved as common open space and shall be conveyed under one of the following options:
    - (a) To the municipality, if it agrees to accept and maintain it; or
    - (b) To an association of homeowners or tenants, to a community or comparable land trust or to a similar non-profit which adopts and imposes a set of covenants.
  - (8) The Development Review Board shall encourage energy efficient site planning and layout. For example, east-west orientation of roads to encourage southern exposure of structures, solar access protection and the use of land forms or vegetative wind breaks to the north.
- (E) **Standards Specific to Planned Residential Developments.** In addition to the general standards under Subsection (D), PRDs shall also meet the following specific standards:
- (1) The Development Review Board may authorize a density increase of as much as twenty five percent (25%) above the number of dwelling units otherwise permitted in the zoning district. The Board may, however, grant a density increase of up to fifty percent (50%) of the allowable number of units in any district in instances in which not less than twenty percent (20%) of the total number of dwelling units created are affordable housing units, as defined in Article 8.
  - (2) A PRD shall include only residential uses and associated accessory structures and uses allowed within the district in which the PRD is located. The dwelling units permitted may, at the

discretion of the Development Review Board, be of varied types, including single-family, tow-family, or multi-family construction, and may be attached or detached.

(F) **Standards Specific to Planned Unit Developments.** In addition to the general standards under Subsection (D), PUDs shall also meet the following specific standards:

- (1) The total number of allowable residential units and/or commercial or industrial space within the PUD shall not exceed the number which could be permitted in the Development Review Board's judgment, if the land were subdivided into lots in conformance with the zoning regulation for the district in which the project is located.
- (2) A PUD may include any permitted or conditional uses allowed in the district in which it is located. Multiple principal structures and/or uses on a lot, or multiple ownership of a single structure may be permitted.
- (3) Principal buildings and mixed uses shall be arranged to be compatible, and buffered as appropriate to ensure visual and acoustical privacy for the residents of the development and for adjacent properties.

## ARTICLE 6: SUBDIVISION REVIEW

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### Section 6.1 Applicability

- (A) Whenever any subdivision of land is proposed, the subdivider or authorized agent shall apply for and obtain Development Review Board approval of the proposed subdivision in accordance with the procedures set forth in these regulations. Subdivision approval must be obtained prior to:
- (1) The start of any construction, land development or land clearing (excluding forestry or agricultural activities) on land to be subdivided.
  - (2) The issuance of any permit for any land development involving land to be subdivided;
  - (3) The sale or lease of any subdivided portion of a property; and/or
  - (4) The filing of a subdivision plat in the land records of the town.
- (B) **Exemptions.** The following are specifically exempted from Development Review Board subdivision review under this article:
- (1) Parcels leased for agricultural or forestry purposes;
  - (2) Parcels leased for a legally allowed use that does not involve a subdivision as defined in Article 8;
  - (3) Granting of rights-of-way or easements which do not result in the subdivision of land;
  - (4) A boundary (lot line) adjustment between parcels, provided that the boundary adjustment does not result in the creation of new or nonconforming lots under these regulations and the adjustment is surveyed by a licensed surveyor and issued a zoning permit in accordance with Section 7.3. A boundary adjustment permitted by the Zoning Administrator shall also be subject to plat recording requirements under Section 6.6; and
  - (5) Two or more adjoining lots owned by the same entity can be merged through a boundary adjustment. All mergers must be issued a zoning permit in accordance with Section 7.3 and also be subject to plat recording requirements under Section 6.6.
- (C) **Minor & Major Subdivision.** For the purposes of these regulations, subdivisions of land are defined as “minor” or “major” subdivisions, as follows:
- (1) **Minor subdivisions**, to be reviewed by the Development Review Board under Sections 6.3 and 6.5, include:
    - (a) The subdivision of land which results in the creation of a total of three or fewer lots; or
    - (b) An amendment to an approved subdivision that does not substantially alter the subdivision, nor result in the creation of a major subdivision; or
    - (c) The adjustment of one or more boundary lines between adjacent parcels if not exempted under Section 6.1(B)(4) above.
  - (2) **Major subdivisions**, to be reviewed by the Development Review Board under Sections 6.3, 6.4 and 6.5, include:
    - (a) The subdivision of land which results in the creation of a total of four or more lots and/or involves the construction of a new road; or
    - (b) An amendment to an approved subdivision which substantially alters the subdivision or conditions of approval, or which results in the creation of a major subdivision or a new road.
- (D) **Coordination with Planned Residential and Planned Unit Development Review.** Applications for planned residential developments (PRDs) or planned unit developments (PUDs) shall be reviewed concurrently by the Development Review Board as subdivisions, in accordance with Section 5.6.

## Section 6.2 Waiver Authority

(A) **General Waiver Authority.** Pursuant to the Act [§4418], the Development Review Board may waive application requirements as specified in Table 6.1, or subdivision standards under Sections 6.8 through 6.11, when in the Board's judgment, the requirements:

- (1) Are not requisite in the interest of public health, safety, and general welfare; and
- (2) Are inappropriate due to the inadequacy or lack of connecting facilities adjacent to or in proximity to the subdivision.

The request for a waiver shall be submitted in writing by the applicant, along with the subdivision application. It shall be the responsibility of the applicant to provide sufficient information to justify the waiver and enable the Board to reach a decision. In granting waivers, the Board may require such conditions that will, in its judgment, substantially meet the objectives of the requirements waived. No such waiver may be granted if it would have the effect of nullifying the intent and purpose of these regulations or other municipal ordinances or regulations currently in effect.

(B) **Waiver for Large Parcels.** The Development Review Board may waive one or more application or review requirements (e.g., boundary survey requirements) for the retained portion of a parcel to be subdivided if the retained parcel is substantially larger in area than the lots to be created and is to remain unimproved and undeveloped. In granting such a waiver, the Board shall require that any portion of the subdivision to be separately conveyed and/or developed comply with all applicable requirements of these regulations.

## Section 6.3 Sketch Plan Review

(A) **Purpose.** The purpose of sketch plan review is to acquaint the Development Review Board with the proposed subdivision at an early stage in the design process, prior to the applicant incurring significant expense. Sketch plan review is intended to allow for an informal exchange of ideas, in which the applicant explores with the Board subdivision design options that best meet the needs of the applicant and the requirements of these regulations.

(B) **Sketch Plan Application.** Prior to the submission of a formal application for subdivision review, the applicant shall submit nine (9) copies of the sketch plan, to include information specified in Table 6.1, to the Zoning Administrator for distribution to the Development Review Board and subsequent consideration at a regularly scheduled meeting.

(C) **Effect.** The Development Review Board may offer comments and recommendations on the proposed sketch plan, including an indication of whether it will be reviewed as a minor or major subdivision, at the meeting. Such comments and recommendations are advisory only and, as such, shall not constitute an appealable decision or action of the Board, and shall not be binding on subsequent subdivision review.

**Table 6.1 Subdivision Application Requirements**

<b>(A) Application Information Requirements</b>	<b>Sketch Plan</b>	<b>Preliminary Plan*</b>	<b>Final Plan</b>
Application Form	1 original & 2 copies	1 original & 3 copies	1 original & 3 copies
Application Fee		Y	Y
Name, address of applicant [landowner and/or subdivider]	Y	Y	Y
General description of proposed development plans, including number and size of lots; general timing of development	Y	Y	Y
Waiver request, in writing (if applicable)		Y	Y
Names, addresses of all adjoining property owners		Y	Y
Evidence of written notification to adjoining landowners of intent to Subdivide		Y	Y
<b>(B) Plan/Plat Mapping Requirements</b>	<b>Sketch Plan</b>	<b>Preliminary Plan*</b>	<b>Final Plan</b>
Materials	Paper	Paper	Paper & Mylar**
Preparer Information, Certifications			Y
Scale		Y	Y
Date, North Arrow, Legend		Y	Y
Existing property lines and proposed lot lines, dimensions	Drawn (general location)	Drawn	Surveyed
The location of known natural and physical features located on the site, for example: buildings; watercourses; wetlands; flood hazard areas; areas of slope between 15 and 25% and in excess of 25%; critical habitat; historic or archaeological resources	Drawn (general location)	Y	Y
Existing and proposed roads, driveways, paths, parking areas, associated rights-of- way or easements	Drawn	Drawn	Surveyed
If applicable, proposed utilities, water and wastewater systems and associated rights-of-way or easements		Y	Y
Proposed building envelopes	Drawn (general location)	Y	Y
Monument (i.e., survey pin) locations			Y
Certification block (see Section 6.6(A))			Y
<b>(C) Other Plan/Plat Mapping Concerns (may be required by DRB)</b>	<b>Sketch Plan</b>	<b>Preliminary Plan*</b>	<b>Final Plan</b>
Proposed landscaping and screening		Y	Y
Existing & proposed elevations, contour lines		10' interval (maximum)	10' interval (maximum)



<b>(D) Supporting Information &amp; Documentation</b>	<b>Sketch Plan</b>	<b>Preliminary Plan*</b>	<b>Final Plan</b>
Site location map showing proposed subdivision in relation to major roads, major water courses, and adjoining properties	Y	Y	Y
Engineering reports (water and wastewater systems) (if applicable)		Y	Y
Off-site easements (e.g., for water, wastewater, access) (if applicable)	Description	Draft	Final
Proposed covenants and/or deed restrictions (if applicable)	Description	Draft	Final
Proposed homeowner or tenant association or agreements (if applicable)	Description	Draft	Final
<b>(E) As may be required by Development Review Board</b>	<b>Sketch Plan</b>	<b>Preliminary Plan*</b>	<b>Final Plan</b>
Existing & proposed traffic generation rates, volumes		Estimated	Documented
Proposed phasing schedule	Description	Draft	Final
Proposed performance bond or surety		Description	Final
Stormwater and erosion control plan			
Grading plan (showing proposed areas of cut and fill)			
Existing & proposed traffic generation rates, volumes			
Proposed conservation buffer and/or open space easement areas; open space management plan			
Temporary field markers, located on the site, to enable the PC to determine the proposed location of parcel boundaries, building envelopes and associated improvements			
Letters from municipal, state, and school district officials and emergency service providers regarding adequacy of existing facility capacity, and compliance of proposed improvements with applicable municipal and state policies and ordinances		As required under sketch plan approval	As required under sketch plan or preliminary approval
Site reclamation plan (for subdivisions involving extraction)			
Traffic impact analysis (current and proposed traffic volumes, capacities, levels of service, proposed improvements)			
Fiscal impact analysis (analysis of fiscal costs and benefits to the town)			
Historic or archeological assessment			
Environmental impact assessment (analysis of potential environmental impacts, proposed mitigation measures)			

Table 6.1 notes:

(\*) Column requirements are not necessary for minor subdivisions.

(\*\*) Refer to Section 6.6.

**Section 6.4 Preliminary Plan Review (Major Subdivisions)**

(A) **Purpose.** The purpose of preliminary subdivision plan review, which applies to all major subdivisions, is to identify significant issues or concerns associated with a proposed subdivision under the provisions of these regulations, and to provide the applicant with guidance to address identified issues and concerns prior to preparing final engineering plans for the subdivision and related site improvements.

(B) **Application Requirements.** Within six months of Development Review Board review of a sketch plan, the applicant shall submit an application and associated fees for preliminary plan and plat review. The application shall include an original and three (3) copies of the information specified for preliminary plans in Table 6.1.

- (C) **Public Hearing.** Upon receipt of the completed application, the Zoning Administrator will schedule a public hearing on the preliminary plan, warned and conducted in accordance with Subsection 7.8(E), in order to obtain public comment on the proposed subdivision prior to final plan preparation.
- (D) **Preliminary Plan Approval.** Within 45 days of the date of adjournment of the public hearing, the Development Review Board shall approve, approve with modifications, or disapprove the preliminary plan and associated plat based on a determination of whether or not the preliminary plan conforms to applicable subdivision review standards under Section 6.8 to 6.11 and other municipal regulations in effect. The Board may require, as a condition of approval, the submission of proposed changes or modifications to the subdivision plan. Approval, conditions of approval, or grounds for disapproval shall be set forth in accordance with Section 7.8 (F). The approval of a preliminary plan shall be effective for a period of six months from the date of written notice of approval, unless otherwise extended by the Board in its decision.
- (E) **Phasing.** At the time the Development Review Board grants preliminary plan approval, it may require the subdivision of 25 or more lots to be divided into two or more phases to ensure project conformity with the Town Plan and capital budget and program currently in effect. Conditions may be imposed upon the filing of an application for final plat approval for each phase, as the Board deems necessary to ensure the orderly development of the plat and/or to avoid overburdening municipal facilities and services.
- (F) **Effect of Preliminary Plan Approval.** Approval of the preliminary plan shall not constitute approval of the final subdivision plan and associated plat. As a condition of approval of the preliminary plan, the Development Review Board may require that the applicant obtain all applicable approvals from municipal officials having jurisdiction over the project (e.g., Selectboard), and state and federal agencies as may be required by law. Once applicable approvals have been obtained, and all relevant appeal periods have expired, the applicant may apply to the Development Review Board for final plan approval under Section 6.5.

### **Section 6.5 Final Plan & Plat Approval (All Subdivisions)**

- (A) **Application Requirements.** Unless otherwise waived or extended by the Development Review Board, the applicant shall submit, within six (6) months of the date of sketch plan approval (for minor subdivisions) or preliminary plan approval (for major subdivisions), an application for final subdivision plan and plat approval. If the subdivider fails to do so, s/he may be required to submit a new sketch plan or preliminary plan for Board review. The application for final subdivision plan approval shall include associated fees, one original and three (3) copies of the information specified for final plans and associated plats under Table 6.1.
- (B) **Public Hearing.** Upon receipt of a complete application, the Zoning Administrator will schedule a public hearing on the plan and associated plat, to be warned and conducted in accordance with Section 7.8(E). In the event that the plat is located within 500 feet of a municipal boundary, copies of the hearing notice shall also be sent to the clerk of the adjacent municipality at least 15 days prior to the hearing date.
- (C) **Final Plan Approval.** Within 45 days of the date of adjournment of the public hearing, the Development Review Board shall approve, approve with conditions, or disapprove the final subdivision review standards and other municipal regulation in effect. Approval, conditions of approval, or grounds for disapproval, and provisions for appeal, shall be set forth in a written decision in accordance with Subsection 7.8(F).
- (D) **Performance Bonding.** As a condition of approval of any subdivision that requires the construction of roads or other public improvements, the Development Review Board may require that the subdivider post a performance bond or comparable surety to ensure completion of improvements in accordance with approved specifications, and their maintenance for two years following completion, in accordance with Subsection 7.8(F)(2).

- (E) **Effect of the Final Plan Approval.** The approval by the Development Review Board of a final subdivision plan and associated plat shall not be construed to constitute acceptance by the municipality of any street, easement, utility, park, recreation area, or other open space shown on the final plat. Such acceptance may be accomplished only by a formal resolution of the Selectboard, as appropriate, in accordance with state law. Final plan approval may include a time limit within which all public improvements shall be completed. This time period shall not exceed three years unless, by mutual consent of the Board and applicant, the period is extended for not more than an additional three years.

### **Section 6.6 Plat Recording Requirements**

- (A) Within 180 days of the date of receipt of final subdivision approval under Section 6.5, the subdivider shall file a mylar plat in the East Montpelier land records in accordance with the requirements of 27 V.S.A. Chapter 17, and provide two paper copies or one digital copy of the recorded plat to the Zoning Administrator. The recorded mylar of the plat shall:

- (1) Be a minimum of 18" x 24", or a multiple thereof;
- (2) Have a margin of 1.5" outside of the border lines on the left side for binding and a margin of 0.5" outside the border lines along all other sides;
- (3) Be identical to the approved final plat; and
- (4) Carry the following endorsement on the copy to be filed with the Town Clerk:

*This mylar is identical to the final plat approved by resolution of the Development Review Board of the Town of East Montpelier, Vermont on the \_\_\_\_\_ day of <month>, <year>, subject to the requirements and conditions of said resolution.*

*Signed this \_\_\_\_\_ day of <month>, <year>, by \_\_\_\_\_, Zoning Administrator, East Montpelier.*

- (B) Approval of subdivision plats not filed within 180 days shall expire, unless the subdivider requests and receives a 90-day extension from the Zoning Administrator, based upon a determination by the Zoning Administrator that necessary final municipal, state or federal permits are pending but have not been issued.
- (C) The municipality shall meet all recording requirements for subdivision approvals as specified for municipal land use permits under Subsection 7.8(G).
- (D) No changes, modifications, or other revisions that alter the final plat or the conditions attached to the subdivision approval shall be made unless the proposed revisions are first submitted for review as either a boundary adjustment, a minor subdivision amendment, or a major subdivision amendment, in accordance with Section 6.1. In the event that revisions are recorded without complying with this requirement, the revisions shall constitute a violation of these regulations, and be considered null and void.

### **Section 6.7 General Standards**

- (A) **Development Suitability.** All land to be subdivided shall not result in undue adverse impacts to public health and safety, natural resources, or the character of the neighborhood, area or district in which it is located. Land that is subject to flooding or is characterized by flood hazard areas or other hazardous conditions shall not be platted for residential occupancy or for other uses that might cause danger to health, life or property.
- (B) **East Montpelier Regulations.** Subdivisions shall conform to all applicable provisions of these regulations, the capital budget and program, and all other municipal regulations, ordinances and regulations in effect at the time of application.
- (C) **Lot Layout.** Lot layouts shall:
- (1) Be consistent with the suitability of land for development as defined under Subsection (A);

- (2) Conform to desired district settlement patterns, as defined in Article 2;
- (3) Meet zoning district minimum lot size and density requirements under Article 2, except as modified for PRDs and PUDs under Section 5.6;
- (4) Conform to lot and yard requirements in Section 3.8; and
- (5) Avoid elongated “spaghetti lots” (for example the maximum length of a lot is not greater than five (5) times its width as measured at the lot’s narrowest point, or the minimum width of the lot is not less than six (6) times the side setback width).

(D) **Survey Monuments.** The locations of all proposed permanent surveying monuments and corner markers, as required under the Rules of the Board of Land Surveyors, shall be identified on the final subdivision plat.

(E) **Natural & Historic Resource Protection.** Subdivision boundaries, lot lines, and building envelopes should be located and configured to avoid adverse impacts to significant natural and historic features identified in the *East Montpelier Town Plan* or through site investigation. For purposes of these regulations, these shall include wetlands, surface waters, and associated buffer areas [Section 3.12]; flood hazard areas [Article 9]; areas within the Conservation Overlay Districts [Table 2.6]; slopes in excess of 25%; significant wildlife habitat areas; and historic sites and structures. Accordingly:

- (1) Lot lines and building envelopes should be configured to avoid development on, or the fragmentation of, significant natural or cultural features, including designated buffer areas;
- (2) Roads, driveways and utility corridors, to the extent feasible, should be shared, located to follow existing linear features (e.g., farm roads, stone walls, tree and fence lines), and to avoid significant natural and cultural features.
- (3) Lot lines and building envelopes shall be located to ensure that no buildings are placed on steep slopes (in excess of 25%), in wetlands or in flood hazard areas.
- (4) Historic sites and structures should be incorporated in subdivision design and layout;
- (5) Subdividers may be required to incorporate buffers, landscaping or screening in subdivision design, and/or submit management plans to protect significant natural, scenic and historic resources.

(F) **Stormwater Management & Erosion Control.** Subdivisions shall incorporate temporary and permanent stormwater management and erosion control practices appropriate for the type and density of proposed development. Accordingly:

- (1) All stormwater management systems shall be designed to:
  - (a) Use natural drainage systems to the extent feasible, and minimize the need for maintenance;
  - (b) Maximize on-site infiltration and treatment of stormwater, and minimize surface runoff;
  - (c) Accommodate anticipated storm events;
  - (d) Provide storage areas and treatment to manage flow and protect water quality; and
  - (e) Avoid damage to adjoining or downstream properties.
- (2) The Development Review Board may require the submission of stormwater management and erosion control plans, prepared by a licensed professional in instances involving a high risk of stormwater impacts on neighboring properties and public facilities (e.g., roads and culverts). Such plans shall incorporate acceptable stormwater treatment practices and sizing criteria set forth in the *Vermont Stormwater Management Manual* as most recently amended.
- (3) The Board may require the phasing of site development or construction to limit the extent of disturbed area during each phase of the subdivision.
- (4) The Board may also require an evaluation of the effect of the subdivision on existing downstream drainage capacity outside the area of subdivision. Where increased runoff from the subdivision may exceed the capacity of downstream storage, drainage or treatment systems, the Board may

require that the subdivider either delay construction until such capacity exists, or install necessary off-site improvements as needed to increase capacity.

(G) **Landscaping & Screening.** The Development Review Board may require the preservation, planting and maintenance of trees, ground cover, or other vegetation, of a size and type deemed appropriate by the Board in order to:

- (1) Preserve existing trees, tree lines, wooded areas of particular natural or aesthetic value to the site, or critical wildlife habitat areas;
- (2) Provide an undisturbed vegetated buffer between developed and undeveloped portions of the site to protect water quality, or other natural or scenic features;
- (3) Provide screening to increase privacy, reduce noise or glare, or establish a barrier between incompatible land uses; and/or to
- (4) Establish a tree canopy along roads or pedestrian walkways.

(H) **Energy Conservation.** Subdivision design and layout, to the extent feasible, will encourage energy efficiency through the siting and orientation of development (e.g., building envelopes) to take advantage of southern exposures and natural vegetative or topographic features.

### **Section 6.8 Roads & Access**

(A) **Access.** Access to the subdivision and to individual lots shall be provided in accordance with the requirements of Section 3.3. All access onto town roads shall be subject to the approval of the East Montpelier Selectboard, or for state routes, the Vermont Agency of Transportation. Access approval to the subdivision shall be required prior to final subdivision plan approval. To better manage traffic flow and safety, to avoid congestion, and to preserve the capacity of local roads, the Development Review Board may also:

- (1) Limit the number of access points onto public roads and highways;
- (2) Require shared access, driveways, and/or roads to serve multiple lots;
- (3) Require access from secondary roads, if a proposed subdivision has frontage on both primary and secondary roads; and/or
- (4) Require rights-of-way for future road extensions to connect to adjoining parcels.

(B) **Driveways.** Driveways serving one or two lots shall meet standards for driveways included in the *Town of East Montpelier Highway Ordinance*, as most recently amended, and the standards set forth in Section 3.3. For the purposes of these regulations, driveways servicing three or more lots shall be considered roads subject to the requirements of Subsection (C).

(C) **Roads.** The following road standards shall apply to all public roads and to private roads serving three (3) or more lots:

- (1) **Capacity.** Traffic to be generated by the proposed subdivision shall not result in unreasonable traffic congestion on public roads and highways, nor exceed the functional capacity of roads, intersections and related infrastructure in the vicinity of the subdivision. The Selectboard may require the submission of a traffic impact study to identify impacts and necessary mitigation measures to ensure road safety and efficiency, the cost of which shall be borne by the applicant. The subdivider, as a condition of approval, also may be required to install needed traffic control measures and road improvements, and/or reserve land to accommodate future improvements, as needed to serve the subdivision.
- (2) **Layout.** Roads shall be laid out to:
  - (a) Minimize the amount of cut and fill required;
  - (b) Maintain reasonable grades and safe intersections;
  - (c) Produce useable lots;
  - (d) Allow for access by emergency vehicles; and

- (e) Attempt to avoid adverse impacts to natural, scenic and historic features.
- (3) **Maintenance.** The maintenance of all private roads and all Class IV town roads shall be the responsibility of the subdivider and subsequent property owners. The subdivider shall provide evidence and assurance that such roads will be adequately maintained by the subdivider and/or an owners' association. In instances involving proposed lots requiring access onto Class IV town highways, a road maintenance agreement approved by the East Montpelier Selectboard shall be required prior to final subdivision approval.
- (4) **Names & Signs.** Road names shall be approved by the East Montpelier Selectboard, in accordance with road naming ordinances and policies currently in effect. Approved road names shall be identified on signs approved by the Selectboard.
- (D) **Pedestrian Access.** To facilitate pedestrian access from the subdivision to adjoining parcels and roads or to nearby public schools, playgrounds, or public lands, the Development Review Board may require the installation of sidewalks and/or pathways to connect to existing sidewalks on adjoining properties within the Commercial District (Zone A), Industrial District (Zone B) and/or the Residential-Commercial District (Zone C).

### **Section 6.9 Facilities & Utilities**

- (A) **Public Facilities.** The Development Review Board shall find that the proposed subdivision does not create an undue burden on existing and planned public facilities. The Board may consult with appropriate municipal and school officials to determine whether adequate capacity exists to serve the subdivision. The Board may also require a fiscal impact analysis, to be paid for by the subdivider, and/or the phasing of development in accordance with a duly adopted municipal or school capital budget and program.
- (B) **Fire Protection.** The Development Review Board, in consultation with the East Montpelier Fire Department, may require that the subdivider provide adequate water storage and distribution facilities for fire protection.
- (C) **Water Systems.** The subdivider shall demonstrate to the satisfaction of the Development Review Board that adequate potable water supplies exist on and/or off site to serve the subdivision. In addition:
  - (1) On-site systems, including individual or community water supply systems, shall be designed in accordance with all applicable state and municipal regulations. The Board may require that all water sources be identified on the final subdivision plat. The entire well-head protection area of an individual or community well shall be located on the same lot on which the well is located, unless the owner of record of an affected adjacent lot grants written permission allowing a well-head protection area to encompass a portion of their lot.
  - (2) Where applicable, designated source protection areas (SPAs) for municipal and community water supplies also shall be identified on the final subdivision plat, and shall be managed in accordance with a state-approved source protection plan.
  - (3) The location of structures and in-ground wastewater disposal systems will be reviewed to ensure such locations do not encroach upon existing water supply isolation distances, as defined by applicable state regulations.
- (D) **Wastewater Systems.** All individual and/or community wastewater systems shall be designed in accordance with applicable state and municipal regulations, and Section 3.18. The Development Review Board may require that sewage disposal areas be identified on the final plat.
- (E) **Utilities.** All utilities within the subdivision shall be located underground, unless the Development Review Board determines that burial is not necessary to preserve the scenic character of the area, or that it is prohibitively expensive. The Board may require the subdivider to show the location of all above ground utilities on the final plat. In addition:

- (1) The subdivider shall coordinate subdivision design with utility companies to ensure that suitable areas are available for above ground or underground installation, within and adjacent to the proposed subdivision.
- (2) Utility corridors shall be shared with other utility and/or transportation corridors where feasible, and be located to minimize site disturbance, adverse impacts to significant natural, cultural and scenic features, and to public health.

### **Section 6.10 Legal Requirements**

- (A) Land reserved for the protection of significant natural, cultural or scenic features, or other open space areas, may be held in common, or in separate ownership from contiguous parcels. Such land may be dedicated, whether in fee or through a conservation easement approved by the Development Review Board, to the municipality, an owners' association comprised of all present or future owners of subdivided lots, and/or a nonprofit conservation organization. At a minimum, land designated for protection shall be indicated with appropriate notation on the final subdivision plat.
- (B) The subdivider shall provide documentation and assurances that all required improvements, associated rights-of-way and easements, and other common lands or facilities will be adequately maintained either by the subdivider, an owners' association, or through other legal means acceptable to the Development Review Board. Such documentation, as approved by the Board, shall be filed in the East Montpelier land records.

## ARTICLE 7: ADMINISTRATION & ENFORCEMENT

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### Section 7.1 Permits & Approvals

(A) **Permit Requirements.** In accordance with the Act [§4446], no development or subdivision of land may begin in the Town of East Montpelier until all applicable municipal land use permits and approvals have been issued, unless the development is specifically exempted from these regulations under Section 7.2. Such permits and approvals are summarized in Table 1.1.

(B) The Zoning Administrator will coordinate the development review process on behalf of the Town of East Montpelier, refer applications to the appropriate board or municipal officer, and provide information and assistance to applicants for municipal land use permits as appropriate [§4448(c)].

**Municipal Land Use Permit:** a zoning, subdivision, site plan or building permit or approval, any of which related to land development as defined in these regulations, which has received final approval from the applicable board, commission or officer of the municipality; and a Certificate of Compliance issued by the Zoning Administrator. [24 V.S.A 4303(1)]

### Section 7.2 Exemptions

(A) In accordance with the Act [§4446], the following uses and structures have been determined to impose little or no impact on the surrounding area and the overall pattern of land development within the town. Therefore, under most circumstances, no zoning permit shall be required for the uses and structures listed below. However, the exemptions listed below do not apply in the Regulated Flood Hazard Areas [see Article 9]. Outside of the Regulated Flood Hazard Areas, no zoning permit shall be required for:

- (1) Normal maintenance, repair, remodeling or interior alteration of an existing structure that does not result in a change in use or any change to the footprint, height dimensions or expansion in the total area of the structure, unless such structure is subject to the terms and conditions of prior approval (e.g., conditional use, site plan), and such remodeling or interior alteration would not be compliant with said approval.
- (2) Residential entry stairs (excluding deck or porch areas), handicap ramps, walkways, and fences or walls six feet or less in height, which do not extend into or obstruct public rights-of-way, or interfere with corner visibility or sight distances for vehicular traffic.
- (3) Up to two (2) accessory structures, such as a shed, tree house, doghouse, child's play house, or similar structure with a floor area of not more than 80 square feet (each) and a height of not more than 10 feet which complies with all applicable setbacks for the district in which it is located. A zoning permit is required for all other accessory structures.
- (4) Up to two (2) prefabricated, temporary carports and storage covers, assembled out of metal structural supports and fabric, provided such covers are not affixed to a permanent foundation, do not exceed 400 square feet of covered area, and meet all setback standards for the district in which they are located.
- (5) Home occupations, including home childcare facilities that meet the criteria set forth in Section 4.9.
- (6) Outdoor recreation, including walking, hiking, cross-country skiing and snow mobile trails, that does not involve the development or use of structures or substantial site improvements (e.g., construction of parking area at a trail head).
- (7) Grading and excavation outside of a public right-of-way associated with road and driveway maintenance (including culvert replacement and re-surfacing) and yard improvements associated



with accessory uses to existing principle uses (contouring yards, establishing garden and landscape areas).

- (8) Activities within a public right-of-way associated with road and highway maintenance and improvements, provided such activities are undertaken by the Vermont Agency of Transportation or East Montpelier Selectboard.
- (9) Signs specifically exempted from these regulations under Section 3.15.
- (10) Transit or bus stop shelters which do not exceed 80 square feet in floor area and 10 feet in height, and are set back a minimum of 15 feet from edge of the travel lane, and do not otherwise interfere with visibility or sight distances for vehicular traffic. Any transit or bus shelter located within a public right-of-way shall be approved by the Selectboard in the case of town roads, and Vermont Agency of Transportation in the case of state highways.
- (11) Garage sales, yard sales and auctions not exceeding three (3) consecutive days, nor more than 12 per calendar year, which do not cause unsafe traffic conditions or parking problems.
- (12) Fuel storage as an accessory structure to an allowed use.
- (13) Accepted management practices (AMPs) for silviculture (forestry), as defined by the Commissioner of Forests, Parks and Recreation, in accordance with the Act [§4413(d)].
- (14) Agriculture (Accepted Agricultural Practices – AAPs), including the construction or expansion of farm structures, as defined by the Secretary of the Agency of Agriculture, Food and Markets. In accordance with the Act [§4413(d)], written notification to the Zoning Administrator is required prior to any construction of a farm structure, and such structures shall meet all setback requirements under these regulations unless waived by the Secretary. Notification shall include a sketch plan of the structure showing setback distances from road rights-of-way, property lines and surface waters.
- (15) Public utility power generating plants and transmission facilities regulated by the Vermont Public Service Board (under 30 V.S.A. §248) are specifically exempted from these regulations in accordance with the Act [§4413(b)].
- (16) The maintenance or installation of telecommunications lines within a public right-of-way.

### **Section 7.3 Zoning Permit Requirements**

- (A) **Application Requirements.** The application for a zoning permit must be submitted to the Zoning Administrator on forms provided by the town, along with any application fees as established by the Selectboard. In addition, the following will be required as applicable:
- (1) Applications for permitted uses shall include a statement describing the existing and intended use of the land and structures and/or any proposed structural changes, and be accompanied by two copies of a sketch plan, no smaller than 8 ½” x 11”, that accurately depicts the following:
    - (a) The dimensions of the lot, including existing and proposed property boundaries;
    - (b) The location, footprint, and height of existing and proposed structures and additions;
    - (c) The location, and dimensions of existing and proposed accesses (curb cuts), driveways and parking areas;
    - (d) The location of existing and proposed easements, rights-of-way and utilities;
    - (e) Setbacks from property boundaries, road rights-of-way, surface waters, and wetlands;
    - (f) The location of existing and proposed water and wastewater systems, as well as all required isolation distances from such systems;
    - (g) The location of all features delineated as falling within the Conservation Overlay Districts [see Table 2.6]; and
    - (h) Such other information as may be needed to determine compliance with these regulations.

- (2) For development requiring one or more approvals from the Development Review Board and/or Selectboard prior to the issuance of a zoning permit, applicable application materials and fees shall be submitted concurrently with the application for a zoning permit.
- (3) An additional copy of any application within the Regulated Flood Hazard Areas [see Article 9] shall be provided by the applicant. The Zoning Administrator shall forward the copy of the application to the appropriate agency within 10 business days of receipt of the application.
- (4) The Zoning Administrator will be responsible for deeming an application as complete. The application shall not be considered complete until all information and associated fees have been submitted. The Zoning Administrator shall sign and date the complete application.

(B) **Issuance of Zoning Permits.** A zoning permit shall be issued by the Zoning Administrator only in accordance with the Act [§§4448, 4449], and the following provisions:

- (1) No zoning permit shall be issued by the Zoning Administrator for any use or structure that requires approval of the Development Review Board and/or Selectboard, until such approval has been obtained. In addition, no zoning permit shall be issued by the Zoning Administrator for the development of a lot for which subdivision approval is required, until subdivision approval has been obtained.
- (2) For uses requiring state agency referral and compliance with Regulated Flood Hazard Areas requirements [see Article 9], no zoning permit shall be issued until a response has been received, or the expiration of 30 days following the submission of the application to the agency, whichever is sooner.
- (3) If public notice has been issued for the first public hearing of the Selectboard to consider a proposed amendment to these regulations, the Zoning Administrator shall, for a period of 150 days following that notice, review any new application for compliance with the proposed amendment and applicable existing bylaws. If the new bylaw or amendment has not been adopted by the conclusion of the 150-day period, or if the proposed bylaw or amendment is rejected, the permit shall be reviewed under all applicable provisions of this bylaw [§4449(d)].
- (4) Within 30 days of receipt of a complete application, including all application materials, fees, and required approvals, the Zoning Administrator shall act to either issue or deny a zoning permit in writing, or to refer the application to the Development Review Board for consideration. In accordance with the Act [§4448], if the Zoning Administrator fails to act within the 30-day period, a permit shall be deemed issued on the 31<sup>st</sup> day.
- (5) Each zoning permit issued shall include a statement of the time within which appeals may be taken under Section 7.5, and shall require posting of a notice of permit, on a form prescribed by the municipality, within view of the nearest public right-of-way until the time for appeal has expired.
- (6) Within three (3) days of issuance, the Zoning Administrator shall deliver a copy of the permit to the Listers, and post a copy at the Town Office for a period of 15 days from the date of issuance.

(C) **Effective Dates**

- (1) **Zoning Permits.** No zoning permit shall take effect until the time for appeal under Section 7.5 has passed, or in the event that a notice of appeal is properly filed, until final adjudication of the appeal. Permits and associated conditions will run with the land and be binding upon the landowner's future heirs and assigns. A permit will, however, expire and become null and void within one (1) year from the date of issuance if the permitted development has not been substantially commenced. Prior to the expiration of the permit, the Zoning Administrator may issue an extension for one (1) additional year in the event the permittee can document an unavoidable delay in the substantial commencement of the project.
- (2) **Board Approvals.** Approvals of the Development Review Board shall expire upon the expiration of the zoning permit issued subsequent to Board approval. The Board may grant a

longer period of approval to accommodate phased development or other projects that reasonably require a long period of time for project completion.

- (D) **Display of Zoning Permit.** In accordance with the Act [§4449], the notice of a zoning permit must be displayed within view from the public right-of-way nearest to the property until the time for appeal under Section 7.5 has passed.

#### Section 7.4 Certificates of Compliance

- (A) No structure, other than accessory structures to single family dwellings, for which a zoning permit has been issued shall be occupied or used, in whole or in part, until the Zoning Administrator has issued a certificate of compliance.
- (1) An application for a certificate of compliance shall be provided with the zoning permit issued by the Zoning Administrator. The applicant shall submit a completed application for a certificate of compliance to the Zoning Administrator prior to the expiration of the permit, as per Section 7.3(C) above.
  - (2) The applicant shall certify and affirm, in the presence of a notary public and to the satisfaction of the Zoning Administrator, that the constructed building or addition is in conformance with the zoning permit and any associated approvals, including all applicable permit conditions.
  - (3) The Zoning Administrator may, but is not required to, inspect the site layout before acting on the certificate of compliance. In all cases, the Zoning Administrator's decision to approve or deny an application for a certificate of compliance shall be based on the applicant's certifications and representations, and the issuance of a certificate of compliance shall not preclude a subsequent zoning enforcement action for any violations of the zoning permit or zoning regulations that may have existed prior to the issuance of the certificate of compliance.
  - (4) An application for a certificate of compliance shall be approved or denied by the Zoning Administrator within 30 days of receipt. If the Zoning Administrator fails to either grant or deny the certificate of compliance within 30 days of the submission, the certificate shall be deemed approved on the 31<sup>st</sup> day. The decision of the Zoning Administrator may be appealed to the Development Review Board under Section 7.5(A).

#### Section 7.5 Appeals

- (A) Decisions of the Zoning Administrator. In accordance with the Act [§4465], the applicant or any other **interested person** may appeal a decision or act of the Zoning Administrator by filing a notice of appeal with the Development Review Board or the Town Clerk within 15 days of the date of such decision or act. A copy of the notice of appeal also shall be filed with the Zoning Administrator.
- (1) In accordance with the Act [§§4464, 4466], the notice of appeal shall be in writing and include:
    - (a) The name and address of the appellant;
    - (b) A brief description of the property with respect to which the appeal is taken;

**Interested Person.** In accordance with the Act [§4465(a)], in addition to the applicant the definition of an "interested person" includes the following:

- The Town of East Montpelier or an adjoining municipality;
- A person owning or occupying property in the immediate neighborhood of the property that is the subject of a decision or act taken under these regulations, who can demonstrate a physical or environmental impact on the person's interests 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 the town;
- Any 10 voters or property owners within the town who, by signed petition to the Board, allege that any relief requested by a person under these regulations, if granted, will not be in compliance with the plan or bylaw of the town; and
- Any department or administrative subdivision of the State owning property or any interest therein within the Town or adjoining municipality, and the Vermont Agency of Commerce and Community Development.

- (c) A reference to applicable bylaw provisions;
  - (d) The relief requested by the appellant, including any request for a variance from one or more provisions of these regulations;
  - (e) The alleged grounds why such relief is believed proper under the circumstances; and
  - (f) Proof of notification to adjoining and facing landowners in accordance with Subsection 7.8(E)(3).
- (2) The Development Review Board shall hold a public hearing on a notice of appeal within 60 days of the filing of the appeal. The Board shall give public notice of the hearing as required under Subsection 7.8(E)(1), and shall mail a copy of the hearing notice to the appellant at least 15 days prior to the hearing date.
  - (3) The Board may reject an appeal or request for reconsideration without hearing and render a decision, which shall include findings of fact, within 10 days of the filing of a notice of appeal, if the Board determines that the issues raised by the appellant have been decided in an earlier appeal or are based on substantially or materially the same facts by or on behalf of the appellant [§4470].
  - (4) All appeal hearings shall be open to the public in accordance with the Act [§4468]. Any interested person or body may appear and be heard in person or be represented by an agent or attorney at the hearing. The rules of evidence applicable at these hearings shall be the same as the rules of evidence applicable in contested cases in hearings before administrative agencies as set forth in state statutes [3 V.S.A. §810]. The hearing may be adjourned by the Board from time to time, provided that the date and place that the hearing will be reconvened is announced at the time of adjournment.
  - (5) A decision on appeal shall be rendered within 45 days after the adjournment of the hearing, as required under Section 7.8(F)(1). Failure to issue a decision within this period shall be deemed approval and shall be effective on the 46<sup>th</sup> day. Decisions shall be issued in writing and shall include a statement of the factual bases on which the Board has made its conclusions, and a statement of conclusions. The decision shall also include a statement of the time within which appeals may be taken under Subsection (B). The decision shall be sent by certified mail to the appellant within the 45-day period. Copies of the decision shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Zoning Administrator and the Town Clerk as part of the public records of the municipality [§4464(b)(3)].
- (B) Development Review Board Decisions.** The applicant, appellant or other interested person who has participated in a regulatory proceeding of the Development Review Board may appeal the decision rendered by the Board within 30 days of such decision, to the Vermont Environmental Court, in accordance with the Act [§4471].
- (1) “Participation” in a board or commission proceeding shall consist of offering, through oral or written testimony, evidence of a statement of concern related to the subject of the proceeding.
  - (2) The notice of appeal shall be filed by certified mailing, with fees, to the Environmental Court and by mailing a copy to the East Montpelier Town Clerk, or the Zoning Administrator if so designated, who shall supply a list of interested persons (including the applicant if not the appellant), to the appellant within five (5) working days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person. If any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.

## **Section 7.6 Variances**

- (A) Landowners seeking variances from one or more setback standards should refer to Section 3.14 regarding setback waivers before submitting an application for a variance under this section
- (B) The Development Review Board shall hear and decide upon requests for variances pursuant to the Act [§4469(a)], and appeal procedures under Section 7.5. The Board may grant a variance, and

render a decision in favor of the appellant, only if **all** of the following facts are found and the findings are specified in its written decision:

- (1) There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographic or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not the circumstances of conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located;
- (2) Because of such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
- (3) The unnecessary hardship has not been created by the appellant;
- (4) 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 of development of adjacent property, reduce access to renewable energy resources, or be detrimental to public welfare.
- (5) The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.

(C) **Renewable Energy Structures.** On an appeal for a variance from the provisions of these regulations that is requested for a structure that is primarily a renewable energy resource structure, the Development Review Board may grant that variance and render a decision in favor of the appellant only if **all** the following facts, as listed in the Act [§4469(b)], are found, and the findings are 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 these regulations;
- (2) The hardship was not created by the appellant;
- (3) 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 of development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare;
- (4) The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and the plan.

(D) **Flood Hazard Area.** Variances within Regulated Flood Hazard Areas [see Article 9] shall be granted by the Development Review Board only:

- (1) In granting a variance under this section, the Development Review Board may attach conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect;
- (2) Upon a determination that during the base flood discharge the variance will not result in increased flood levels; and
- (3) Upon a determination that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(E) In granting a variance under this section, the Development Review Board may attach conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect.

## **Section 7.7 Violations & Enforcement**

(A) **Violations.** The commencement or continuation of any land development or use that does not meet the requirements of these regulations shall constitute a violation. All violations shall be pursued in

accordance with the Act [ §§4451, 4452]; each day that a violation continues shall constitute a separate offense. The Zoning Administrator shall institute, in the name of the Town of East Montpelier, any appropriate action, injunction or other proceeding to enforce the provisions of these regulations. All fines imposed and collected shall be paid over to the town.

- (B) **Notice of Violation.** No action may be brought under this section unless the alleged offender has had at least seven (7) days notice by certified mail that a violation exists, as required under the Act [§4451]. The notice of violation also shall be recorded in the land records of the town under Section 7.8(G). The warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days. Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of the regulations after the seven-day notice period and within the next succeeding 12 months.
- (C) **Limitations of Enforcement.** An action, injunction or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required or duly recorded municipal land use permit may be instituted against the alleged offender if the action, injunction or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred, and not thereafter, in accordance with the Act [§4454]. The burden of proving the date the alleged violation first occurred, shall be on the person against whom the enforcement action is instituted. No enforcement proceeding may be instituted to enforce an alleged violation of a municipal land use permit unless the permit or a notice of the permit has been recorded in the land records of the municipality under Section 7.8(G).

## **Section 7.8 Municipal Administrative Requirements**

- (A) **Appointments.** The following appointments or elections shall be made in association with the administration and enforcement of these regulations as provided for in the Act:
- (1) **Zoning Administrator.** The Selectboard shall appoint a Zoning Administrator, from nominations submitted by the Planning Commission, for a term or one (1) year in accordance with the Act [§4448] and the East Montpelier Charter [24 V.S.A Chapter 114E, Section 4]. In the absence of the Zoning Administrator, an acting Zoning Administrator may be appointed by the Selectboard, from nominations submitted by the Planning Commission, who shall have the same duties and responsibilities of the Zoning Administrator in the Zoning Administrator's absence. The Zoning Administrator shall literally administer and strictly enforce the provisions of these regulations, and in doing so shall inspect development, maintain records, and perform other related tasks as is necessary and appropriate.
  - (2) **Development Review Board.** Development Review Board members and alternates shall be appointed by the Selectboard for specified terms in accordance with the Act [§4460]. The Board shall adopt rules of procedure to guide its official conduct as required under the Act and Vermont's Open Meeting Law. The Board shall have all powers and duties as set forth in the Act to administer the provisions of these regulations, including but not limited to the power to hear and act upon:
    - Requests for land-locked parcel access approval [Section 3.3];
    - Requests for site plan approval [Section 5.4];
    - Requests for conditional use approval [Section 5.5];
    - Applications for planned residential and planned unit developments [Section 5.6];
    - Requests for subdivision approval [Section 6.1];
    - Appeals of any decision, act or failure to act by the Zoning Administrator [Section 7.5(A)]; and
    - Variance requests [Section 7.6].
  - (3) **Planning Commission.** The Planning Commission shall be elected to specified terms by the voters of the Town in accordance with the Act [ §§4321, 4323]. The Commission shall adopt

rules of procedure to guide its official conduct in accordance with the requirements of the Act [§4323] and Vermont's Open Meeting Law [1 V.S.A. §310-314]; and shall have powers and duties as set forth in the Act [§4325], including but not limited to the power to hear and decide requests and petitions for bylaw amendments.

- (B) **Fee Schedule.** The Selectboard shall establish a schedule of fees to be charged in administering these regulations, with the intent of covering the town's administrative costs. Such fees may be revised from time to time as deemed necessary by the Selectboard. In accordance with the Act [§4440(d)], the fee schedule may authorize the Development Review Board to charge the applicant for the reasonable costs of an independent technical assessment of an application that may be incurred during the review process under these regulations.
- (C) **Independent Technical Review.** In accordance with the Act [§4440(d)], the Development Review Board may require an applicant for one or more approvals under these regulations to pay the reasonable costs of an independent technical review of the application. In exercising this requirement, the Board shall:
- (1) Prepare a scope of work for the technical review that shall be limited and relevant to specific review criteria upon which the Board must base its decision on the application.
  - (2) Require that the review be completed within a timely manner.
  - (3) Retain a competent and, where applicable, licensed individual or firm qualified in the pertinent field(s) to conduct the review.
- (D) **Independent Compliance Review.** In some cases and following the issuance of a permit, the Development Review Board may require an applicant to pay the reasonable costs of an independent technical review to periodically monitor compliance with conditions of an approved permit. In exercising this requirement, the Board shall adhere to actions noted in Section 7.8(C) above.
- (E) **Public Hearing Notice Requirements**
- (1) In accordance with the Act [§4464(a)], a warned public hearing shall be required for conditional use review [Section 5.5], appeals and variances [Sections 7.5, 7.6], and final subdivision review [Section 6.5]. Any public notice for a warned public hearing shall be given not less than 15 days prior to the date of the public hearing by all the following:
    - (a) Publication of the date, place and purpose of the hearing in a newspaper of general circulation in the town;
    - (b) Posting of the same information in three (3) or more public places within the municipality, including posting of a notice within view from the public right-of-way nearest to the property for which the application is being made;
    - (c) Written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way, which includes a description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal; and
    - (d) For hearings on subdivision plats located within 500 feet of a municipal boundary, written notification to the clerk of the adjoining municipality.
  - (2) Public notice of all other types of development review hearings, including site plan review [Section 5.4], shall be given not less than seven (7) days prior to the date of the public hearing, and shall at a minimum include the following:
    - (a) Posting of the date, place and purpose of the hearing in three (3) or more public places within the municipality;
    - (b) Written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way, which includes a description of the proposed project, information that clearly informs the recipient where additional

- information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal; and
- (c) Publication of the date, place and purpose of the hearing in a newspaper of general circulation in the town.
- (3) The applicant or appellant shall be required to bear the cost of the public warning, and the cost and responsibility of notifying adjoining landowners, as required under Subsection (E)(1) and (E)(2). The applicant shall be required to demonstrate proof of delivery to adjoining landowners, as determined from the most recent municipal grand list, by certified mail.
- (4) No defect in the form or substance of any required public notice under this section shall invalidate the action of the Development Review Board where reasonable efforts have been made to provide adequate posting and notice. However, the action shall be invalid when the defective posting or notice was materially misleading in content. If the Environmental Court rules an action to be invalid, the action shall be remanded to the Board to provide new posting and notice, hold a new hearing, and take a new action.
- (5) Public hearings concerning proposed amendments to these regulations shall be noticed and warned in accordance with the Act [§§4441, 4444].
- (F) **Decisions.** In accordance with the Act [§4464(b)], the Development Review Board may recess proceedings on any application pending the submission of additional information. The Board will close evidence promptly after all parties have submitted requested information, and shall issue a decision within 45 days after the adjournment of the hearing. Failure to issue a decision within the 45-day period shall be deemed approval and shall be effective the 46<sup>th</sup> day.
- (1) All decisions shall be issued in writing and shall separately state findings of fact and conclusions of law. Findings of fact shall explicitly and concisely restate the underlying facts that support the decision, based exclusively on evidence of the record. Conclusions shall be based on the findings of fact. The decision shall also include a statement of the time within which appeals may be taken under Section 7.5. At the discretion of the Board, minutes of the hearing at which a decision was made may serve as a written decision provided such minutes satisfy the requirements of this section.
- (2) In rendering a decision in favor of the applicant, the Board may attach additional reasonable conditions and safeguards as it deems necessary to implement the purposes of the Act, these regulations, and the municipal plan currently in effect. This may include, as a condition of approval:
- (a) The submission of a three-year performance bond, escrow account, or other form or surety acceptable to the East Montpelier Selectboard, which may be extended for an additional three-year period with the consent of the owner, to assure the completion of a project, adequate stabilization, or protection of public facilities that may be affected by a project; and/or
- (b) A requirement that no zoning permit be issued for an approved development until required improvements have been satisfactorily installed in accordance with the conditions of approval.
- (3) All decisions shall be sent by certified mail, within the required 45-day period, to the applicant or to the appellant on matters of appeal. Copies of the decision shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Zoning Administrator and Town Clerk as part of the public record of the municipality, in accordance with Subsection (G).

**(G) Permit & Violation Recording Requirements**

- (1) Within 30 days of the issuance of a municipal land use permit or a notice of violation, the Zoning Administrator shall deliver either the original, a legible copy, or a notice of the municipal land use permit or notice of violation to the Town Clerk for recording in the land records of the town



generally as provided for in 24 V.S.A. §1154(a) and (c), and file a copy in the Town Office in a location where all municipal land use permits shall be kept, as required under the Act [§4449(c)]. The applicant may be charged for the cost of the recording fees.

- (2) For development within the Regulated Flood Hazard Areas [Article 9], the Zoning Administrator shall also maintain a record of:
  - (a) Permits issued for development in Regulated Flood Hazard Areas;
  - (b) Elevation certificates that show the elevation, in relation to mean sea level, of the lowest floor, including basement, of all new or substantially improved buildings;
  - (c) The elevation, in relation to mean sea level, to which buildings have been floodproofed;
  - (d) All floodproofing certifications required under the regulation; and
  - (e) All variance actions, including the justification for their issuance.

## ARTICLE 8: DEFINITIONS

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### Section 8.1 Terms & Usage

- (A) Except where specifically defined in these regulations or in the Act, or unless otherwise clearly required by the context, all words, phrases and terms in these regulations shall have their usual, customary meanings.
- (B) In the interpretation of words and terms used, defined, or further described in these regulations, the following shall apply:
- (1) The particular controls the general;
  - (2) The present tense includes the future tense;
  - (3) The word “shall” is mandatory; the words “may” and “should” are permissive; the term “generally shall” indicates that it is mandatory unless the Development Review Board or other applicable body deems otherwise in accordance with these regulations;
  - (4) The word “structure” includes “building;”
  - (5) The word “road” includes “street;” and
  - (6) The word “lot” includes “parcel.”
- (C) For the purposes of flood hazard area regulation under Article 9, National Flood Insurance Program definitions contained in 44 CFR 59.1 are hereby adopted by reference and shall be used to interpret and enforce these regulations. Definitions of some commonly used terms are provided in Article 9, Section 14.
- (D) Any interpretation of words, phrases or terms by the Zoning Administrator may be appealed to the Development Review Board under Section 7.5. In such cases, the Board shall base its decision upon the following definitions, state statute, and the need for reasonable and effective implementation of these regulations. The Board shall publish and update from time to time such written interpretations, to ensure consistent and uniform application of the provisions of these regulations.

### Section 8.2 Definitions

**Accepted Agricultural Practices (AAPs):** Accepted practices for agriculture, including farm structures other than dwellings, as currently defined by the Secretary of the Vermont Agriculture, Food and Markets (see exemptions under Section 7.2). See also Agriculture, Farm Structure.

**Accepted Management Practices (AMPs):** Accepted practices for silviculture (forestry) as currently defined by the Commissioner of the Vermont Department of Forests, Parks and Recreation (see exemptions under Section 7.2). See also Forestry.

**Access:** A defined area of ingress and/or egress between a property and an abutting road right-of-way (e.g., a curb cut) or surface water. See also Driveway, Road.

**Accessory Dwelling:** See Dwelling/Accessory.

**Accessory Structure:** A structure that is customarily incidental and subordinate to the primary use or structure of a lot or parcel of land, is located on the same lot as the primary structure or use, and is clearly related to the primary use. See also Accessory Use.

**Accessory Use:** A use that is customarily incidental and subordinate to the principal use of a lot, is located on the same lot as the principal use, and is clearly and customarily related to the principal use. See also Accessory Structure.

**Act:** 24 V.S.A, Chapter 117, the Vermont Municipal and Regional Planning and Development Act as most recently amended.

**Adaptive Re-Use:** The use of a historic building or structure for other than its originally intended use or purpose, in a manner that maintains its historic features and character, in accordance with the requirements of these regulations [see Section 4.3].

**Adequate Capacity:** Capacity for wireless telephony is considered to be “adequate” if the grade of service (“GOS”) is p.05 or better for median teletraffic levels offered during the typical busy hour, as assessed by direct measurement of the facility in question. The GOS shall be determined by the use of standard Erland B calculations. As call blocking may occur in either the land line or radio portions of a wireless network, Adequate Capacity for this regulation shall apply only to the capacity of the radio components. Where capacity must be determined prior to the installation of the wireless telecommunications services facility in question, Adequate Capacity shall be determined on the basis of a 20% busy hour (20% of all offered traffic occurring within the busiest hour of the day), with total daily traffic based on aggregate estimates of the expected traffic in the coverage area.

**Adequate Coverage:** Coverage is adequate within that area surrounding a base station where the predicted or measured median field strength of the transmitted signal is such that the majority of the time, transceivers properly installed and operated will be able to communicate with the base station without objectionable noise (or excessive bit-error rate for digital) and without calls being dropped. In the case of cellular communications in a rural environment like East Montpelier, this would be signal strength of at least -90dBm. It is acceptable for there to be holes within the area of adequate coverage, as long as the signal regains its strength farther away from the base station. The outer boundary of the area of adequate coverage, however, is that location past which the signal does not regain.

**Adjoining Landowner:** A landowner(s) that may adjoin or that may abut a parcel or property that is subject to review under these regulations. For the purposes of these regulations, adjoining or abutters can be those immediately next to or those separated by a right-of-way, road or driveway.

**Administrative Officer:** The East Montpelier Zoning Administrator.

**Affiliate:** For the purposes of regulating telecommunications facilities, (1) when used in relation to an operator, an affiliate is another person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or common control with the operator, or an operator’s principal partners, shareholders, or owners of some other ownership interest; or (2) when used in relation to the municipality, an affiliate is any agency, board, authority or political subdivision associated with the municipality or other person in which the municipality has legal or financial interest.

**Affordable Housing:** Housing that is either: (1) owned by its inhabitants, whose gross annual household income does not exceed 80 percent of the median income for Washington County, 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 (2) rented by its inhabitants whose gross annual household income does not exceed 80 percent of the median income for Washington County, 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. “Perpetually affordable” shall mean housing that meets the affordability requirements of these regulations for a minimum period of 99 years from the date of first sale or lease.

**Affordable Housing Development:** A housing development in which at least 20% of the units, or a minimum of five (5) units, whichever is greater, are affordable housing units.

**Agriculture:** As defined by the Vermont Secretary of Agriculture, to include the cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; the raising, feeding or management of livestock, poultry, equines, fish or bees; the operation of greenhouses; the production of maple sap; the on-site storage, preparation and sale of agricultural products principally produced on the farm; and the on-site production of fuel or power from agricultural products or wastes produced on the farm. The term shall include commercial riding stables, but specifically excludes the slaughtering of animals of poultry for commercial purposes. See also Accepted Agricultural Practices.

**Agricultural Products:** Products produced, prepared and/or processed from an agricultural operation including, but not limited to milk, vegetables, fruits, flowers, potting or bedding plants, soil or compost, trees, shrubs, greens, maple syrup or other sap products, meat, poultry, eggs, fish, honey, and other bee products. This also includes products manufactured from these products, including cheese and other dairy products. See also Agriculture.

**Agricultural Structure:** See Farm Structure

**Alteration:** Any relocation, structural change, rearrangement, or addition to a building or structure, excluding normal maintenance and repair activities. Alterations shall include any construction that changes the number of dwelling units, or increases the size of a building or structure, including its height, length, width, footprint, or gross floor area. It shall also include any increase in the number of bedrooms or bathrooms. See also Conversion; Improvement; Substantial Improvement.

**Antenna:** A device for transmitting and/or receiving electromagnetic signals that is attached to a tower or other structure.

**Antenna Height:** The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure. If the support structure is on a sloped grade, then the average between the highest and lowest grades at the base of the structure shall be used in calculating the antenna height.

**Antenna Support Structure:** Any pole, telescoping mast, tower tripod, or any other structure that supports a device used in the transmitting and/or receiving of electromagnetic signals.

**Applicant:** The owner of land or property proposed to be subdivided and/or developed in accordance with these regulations and/or his or her duly authorized representative. Any party with a legal interest in land subdivision and/or development may apply for a permit in cooperation with the owner of the property. See also Interested Party.

**Authorized Agent:** A person or group of persons who have been duly authorized in writing by an applicant or subdivider to act on his/her behalf.

**Available Space:** For purposes of regulating telecommunications facilities, the space on a telecommunications tower or structure to which the antennas of a telecommunications provider are both structurally able and electromagnetically able to be attached.

**Bar:** See Restaurant.

**Base Station:** The primary sending and receiving site in a telecommunications facility network. More than one base station and/or more than one variety of telecommunications provider can be located on a single tower or structure.

**Basement:** Any area of a building having its floor at subgrade (below ground level) on all sides.

**Bed & Breakfast:** A single family dwelling occupied by the owner or operator, in which not more than six double-occupancy rooms within the dwelling and/or in an accessory structure located on the same lot, are rented out to provide overnight accommodations to transient travelers. Individual cooking and eating facilities shall not be provided; breakfasts shall be the only meals served and shall be limited to overnight guests. The bed and breakfast shall function as a private home with house guests.

**Boundary (Lot Line) Adjustment:** A division of land for the purpose of adjusting boundaries between adjacent lots or parcels where no new lot is created. A boundary adjustment shall not create a nonconforming lot or use [see Section 3.10]. See also Subdivision.

**Buffer:** Any space between adjoining land uses or between a land use and a natural feature, that is intended and designed to reduce the impact of one use on another use or feature. Buffers may include open space, woodland, landscaped areas, undisturbed vegetated areas, or other types of physical, visual or sound barriers.

**Building:** A structure having a roof supported by columns or walls and intended for the shelter or accommodation of persons, animals, goods, chattel or equipment.

**Building Envelope:** A specific area of a lot, delineated on a subdivision plat, within which structures, parking, and loading areas shall be located, and outside of which no structures, parking or loading areas shall be located. A building envelope shall be defined by required minimum setback and height distances, unless otherwise specified in these regulations. This also may be referred to as the “buildable area” of a lot.

**Building Height:** See Height.

**Camper:** Any vehicle used as temporary sleeping, camping or living quarters, that is mounted on wheels, a truck or camper body, or towed by a motor vehicle, and includes a holding tank for the storage of sewage if bathroom facilities are present. This definition includes recreation vehicles such as motor homes and travel trailers, but specifically excludes mobile homes [see Section 4.4]. See also Mobile Home.

**Campground:** A parcel of land upon which three (3) or more campsites are located for occupancy by a camper, tent, yurt or lean-to as temporary living quarters for recreation, education, or vacation purposes [see Section 4.5]. See also Camper.

**Cellular Telecommunications:** A commercial Low Power Mobile Radio Service bandwidth licensed by the FCC to providers in a specific geographical area in which the radio frequency spectrum is divided into discrete channels that are assigned in groups to geographic cells within a service area and that are capable of being reused in different cells within the service area.

**Cemetery:** Land used or dedicated to the burial of the dead, including cremains. A cemetery may include as accessory structures: mausoleums, columbaria, or maintenance facilities: crematoriums are specifically prohibited. An individual burial site on private land, registered with the East Montpelier Town Clerk in accordance with state law is exempted from this definition. See also Funeral Home.

**Change of Use:** See Conversion.

**Clearing:** The removal of existing vegetation, e.g., as part of site preparation for the installation of driveways, septic systems, building sites and construction or yard areas.

**Co-location:** Locating wireless telecommunications equipment from more than one provider at a single site or structure.

**Commercial Use:** An occupation, employment or enterprise that is carried on for profit by the owner, lessee or licensee.

**Commission:** The East Montpelier Planning Commission, as created under the Act.

**Common Land:** Land within a development or subdivision that is not individually owned, but is designed to be held in common for the use, enjoyment, management and maintenance by the residents of a development or subdivision. Such land may include but not be limited to open space areas, parking lots, community water and wastewater systems, pedestrian walkways, utility and road rights-of-way.

**Community Center:** A building owned by a public or nonprofit entity, or a homeowners or similar community association, that is used for recreational and social activities and is intended primarily to serve the population of the community in which it is located.

**Community System (Water, Wastewater):** Any water or wastewater disposal system other than a municipally-owned system that provides potable water to, or disposes of wastewater from, two or more domestic, commercial, industrial, or institutional uses. Such systems shall include associated collection, distribution and treatment facilities.

**Compact Settlement/Residential Pattern:** Settlement patterns are the manner in which building and other structures are organized on the ground and may include building sizes and orientation and the relationships of parking and open space. Sometimes referred to as “historic settlement patterns,” examples of compact settlement/residential pattern include many if not most Vermont towns, villages and

hamlets such as East Montpelier Village, East Montpelier Center and North Montpelier. Compact settlement patterns efficiently use the available open space and provide connections with neighboring properties that reduce curb cuts and enhance pedestrian connections. The use of multiple stories, common open space, clustering and a close relationship to the street are characteristics that can distinguish compact settlements from sprawl or strip development.

**Contiguous Land:** (1) A parcel of land contained within a single, unbroken parcel boundary; or (2) two or more parcels that share a common parcel boundary or point. Where one or more existing road rights-of-way bisect an existing parcel, the right(s)-of-way may be considered a boundary dividing the parcel into two or more lots only if all portions of the parcel divided by the right(s)-of-way meet the minimum lot size requirement for the district within which they are located.

**Contractor's Yard:** A parcel of land with or without buildings thereon to be used for the storage of equipment, materials, and/or vehicles used in the operation of construction and related trades. See also Home Industry.

**Conversion:** Changing the original purpose of a building to a different use, with or without structural alteration. This includes, but may not be limited to, the conversion of camps or accessory dwellings to single family dwellings, or the conversion of a single family dwelling to a two-family or multi-family dwelling [see Section 3.]. See also Adaptive Reuse.

**Cul-de-sac:** A road intersecting another road at one end and terminated at the other end by a vehicular turnaround.

**Cultural Facility:** A museum, theater, concert hall, or other establishment that offers programs, performances or exhibits of cultural, educational, historical or scientific interest, and is not operated as a commercial use. See also Recreation, Indoor.

**Curb Cut:** See Access.

**Day Care Center:** All state registered or licensed day care facilities that do not meet the definition of "home child care," including nonresidential child and adult day care facilities, and home-based childcare facilities that serve more than six children on a full-time basis. See also Home Child Care; Residential Care Facility.

**dBm:** Unit of measure of the power level of an electromagnetic signal at the input of a receiver, given its antenna system gain at a particular frequency, expressed as decibels (dB) above one milliwatt. Signal predictions with this measure are applicable at a particular frequency, and may be ambiguous unless all receivers and antenna combinations utilize an identical frequency.

**dBu:** Unit of measure of the field intensity of an electromagnetic signal, expressed as decibels (dB) above one microvolt per meter, an absolute measure for describing and comparing service areas, independent of the many variables (see dBm) introduced by different receiver configurations. This unit shall be used for coverage prediction plots.

**Degree of Non-Compliance:** The degree to which a structure, or portion thereof, does not meet required dimensional standards, including setback distances, as specified in these regulations. For purposes of these regulations, any enlargement or other structural alteration that extends the footprint, height or volume of a structure within a required setback distance, or above the maximum allowed height (i.e., the amount of encroachment), shall be considered to increase the degree of non-compliance. See also Non-Conforming Structure.

**Demolition:** The razing of more than fifty percent (50%) of a structure.

**Density:** The maximum number of dwelling units per acre of lot area, excluding the land area within existing and proposed road rights-of-way, unless otherwise specified in these regulations.

**Development:** See Land Development.

**Drive-through:** An establishment that by design, physical facilities, and/or service, encourages or permits customers to receive services, obtain goods, or be entertained while remaining in their motor vehicles.

**Driveway:** A private travel way, easement, or right-of-way serving one or two parcels, that provides vehicular access to a parking area(s) associated with the principal structure or use. See also Road.

**Dwelling/Accessory:** A secondary dwelling unit established in conjunction with, and clearly subordinate to, a single family dwelling that is retained in common ownership, is located within, attached to or on the same lot as the primary dwelling, and that otherwise meets applicable requirements of these regulation [see Section 4.2]. See also Dwelling/Two-Family.

**Dwelling/Multi-Family:** A building, or portion thereof, containing three (3) or more dwelling units. See also Dwelling Unit; Dwelling/Two Family.

**Dwelling/Single Family:** A building containing one (1) principal dwelling unit and up to one (1) accessory dwelling as allowed under Section 4.2. See also Dwelling/Accessory; Group Home.

**Dwelling Unit:** A building or portion thereof, designed, constructed or used as separate living quarters for one (1) family, including any domestic employees that are employed on the premises, that includes food preparation, sleeping and sanitary facilities. This definition specifically excludes boarding or rooming houses, residential care facilities, inns and hotels. See also Family.

**Easement:** A property owner's authorization for the use by another person of any designated part of the property for a specified purpose.

**Enlargement:** Any increase in the height or the footprint of a structure, e.g., through extensions or additions to any side.

**Extraction of Earth Resources:** A use involving the on-site removal of surface and subsurface materials, including soil, sand, gravel, stone, rock or organic substances other than vegetation, from land or water. Customary extraction operations include sand and gravel pits, rock quarries, and accessory operations such as the crushing, screening, and temporary storage of materials excavated on-site [see Section 4.6].

**Family:** One or more persons related by blood, marriage, civil union, adoption or other form of legal guardianship as recognized by the State of Vermont, or group of not more than six (6) unrelated persons, exclusive of domestic servants, living together as a household. See also Group Home.

**Farm Structure:** As defined by the Vermont Secretary of Agriculture, a structure or structures used for agricultural production, that meets one or more of the following: 1) is used in connection with the sale of \$1,000 or more of agricultural products in a normal year; 2) is used in connection with the raising, feeding and management of the minimum specified number of adult animals: four (4) equines, five (5) cattle or bison, 15 swine, 15 goats, 15 sheep, 15 fallow or red deer, 50 turkeys or geese, 100 laying hens or ducks, 250 broilers, pheasant, Chukar partridge or Coturnix quale, three (3) camelids, four (4) ratites, 30 rabbits or 1,000 pounds of cultured trout; 3) is used by a farmer filing with the Internal Revenue Service a 1040-F income tax statement in at least one of the past two years; 4) is on a farm with a business and farm management plan approved by the Secretary. In accordance with the Act [§4413(d)], this definition includes farm buildings, silos, enclosures and fences, but specifically excludes dwellings for human habitation. See also Agriculture; Accepted Agricultural Practices.

**FCC:** Federal Communications Commission. The government agency that is responsible for regulating telecommunications in the United States.

**Fence:** An assemblage of materials, which may include metal, stone, wood, or any combination, erected and placed on the ground for purposes of limiting visual or physical access, and/or to mark a property boundary. Agricultural fences of any height, and other fences or walls six (6) feet or less in height, that do not obstruct public rights-of-way are specifically exempted from these regulations [see Section 7.2].

**Financial Institution:** A bank, savings and loan, finance, mortgage or investment company.

**Fiscal Impact Analysis:** An analysis of the costs and revenues associated with a specific development application. Also sometimes known as a cost-revenue analysis.

**Flood Hazard Area:** Defined as a “regulated flood hazard area” in Article 9.

**Floor Area/Gross:** The total area of all floors of a building as measured to the outside surfaces of exterior walls, including halls, stairways, elevator shafts, attached garages, enclosed porches and balconies, but excluding interior vehicular parking and loading spaces, or any space where the floor to ceiling height is less than six (6) feet.

**Forestry:** The use and management of woodlands for purposes of timber production and harvesting for commercial, wildlife and/or conservation purposes. This definition specifically excludes permanent sawmills, lumber yards and other similar facilities used for the processing and/or manufacturing of wood and wood products, but may include as accessory units portable sawmills and equipment used on-site in association with timber harvesting operations.

**Frequency:** The number of cycles completed each second by an electromagnetic wave measured in hertz (hz).

**Frontage:** See Lot Frontage.

**Funeral Home:** A building or part thereof used for human funeral services. Such building may also contain: space and facilities for preparation of the dead for interment or cremation; the performance of autopsies and associated surgical procedures; the storage and sale of caskets, funeral urns and related funeral supplies; and the storage of funeral vehicles, but shall not include facilities for cremation.

**Garage Sale:** The casual sale or offering at any one time of new, used, or second hand items of tangible personal property to the general public, that is generally advertised by terms such as garage sale, yard sale, rummage sale, attic sale, lawn sale, porch sale, barn sale or similar phrase [see Exemptions under Section 7.2].

**Gas Station:** An establishment principally used for the sale of automobile or motor vehicle fuels, lubricants, and related motor vehicle products, and/or that has facilities for fueling motor vehicles. This definition specifically excludes automobile and motor vehicle repair services and sales, and the sale of food and unrelated convenience or grocery items [see Section 4.8]. See also Motor Vehicle Service; Mixed Use.

**Grade, Finished:** Completed surface of grounds, lawns, walks, paved areas and roads that have been brought to grades as shown in associated plans.

**Grade, Natural:** The initial, original surface of ground within a proposed building or structure footprint, as measured from contour elevations prior to any site clearing, filling or excavation.

**Group Home:** In accordance with the Act [§4412(1)], a residential care home operating under state licensing or registration, that serves not more than eight (8) persons who have a handicap or disability as defined in state statutes [9 V.S.A 4501] and meets the requirements of Section 4.9. See also Residential Care Facility.

**Hazardous Waste Facility:** A facility that stores, processes, neutralizes, reclaims, treats or disposes of hazardous waste for which a notice of intent to construct has been received under state law [10 V.S.A. 6606(a)].

**Height:** The distance above ground of a structure as measured vertically from the average finished grade at the base of the structure to the highest point of the structure or roof surface, excluding the chimney [see Section 3.6]. See also Grade, Finished.

**Historic Sites and Structures:** As listed in the *East Montpelier Town Plan* or on the Vermont State Register of Historic Places or on the National Register of Historic Places.



**Home Child Care:** A state registered or licensed child care home serving six (6) or fewer children on a full-time basis, and up to four (4) additional children on a part-time basis, which is conducted within a single family dwelling by a resident of that dwelling [see Section 4.10]. See also Day Care Facility.

**Home Industry:** An expanded home-based business conducted by the resident of a single family dwelling that meets the specific standards set out in Section 4.10 of this bylaw. See also Home Occupation; Home Child Care.

**Home Occupation:** An accessory use conducted within a dwelling or accessory building by the residents thereof, that is clearly secondary to the dwellings use for living purposes, does not change the residential character thereof and meets the specific standards set out in Section 4.10.

**Hotel/Motel:** A building or buildings containing bedrooms and other facilities rented out to provide overnight accommodations to transient travelers, and having a management entity operating the building(s) and providing services such as maid service, a central switchboard, or dining facilities to occupants of the lodging facility. See also Bed & Breakfast.

**Interference:** An undesirable effect caused by electromagnetic signals. FCC “Type 1” interference refers to interference regulated by the FCC and affecting other FCC licensees or other entities over which the FCC has jurisdiction. FCC “Type 2” interference refers to electromagnetic disturbances to business, institutional, medical, and home electronic equipment.

**Junk:** Any scrap or waste material that is collected, stored, kept, or handled for salvage, resale or conversion to another use.

**Junk Yard:** See Salvage Yard.

**Kennel:** Any premises in which the care, boarding, breeding, grooming, or training of four (4) or more dogs, cats, or other domestic animals is done for primarily commercial or monetary purposes. See also Veterinary Clinic.

**Land Development:** The division of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining operation, excavation or landfill, and any change in the use of any building or other structure, land or extension of use of land. See also Subdivision.

**Light Industry:** A use providing for the fabrication of goods predominately from previously prepared materials into finished products or parts, including processing, assembly treatment, packaging, incidental storage, sales and distribution of such products of components. See also Manufacturing.

**Loading Area:** One or more spaces logically and conveniently located for bulk pickups and deliveries, scaled to accommodate delivery vehicles. Required off-street loading areas are not to be included as off-street parking spaces in the computation of required off-street parking space [see Section 3.11].

**Location:** For purposes of regulating telecommunications facilities, references to site location shall be the exact longitude and latitude, to the nearest tenth of a second. Bearing or orientation should be referenced to true north.

**Lot:** (1) Any parcel of land that is occupied or is to be occupied by a principal structure or use, or a mixed use as defined herein and allowed under Section 4.11, and associated accessory structures and/or uses and open space, that has sufficient area to meet the dimensional requirements of these regulations; (2) a portion of land in a subdivision or plat that is separated from other portions by a property line. See also Contiguous Land; Lot, Existing; Lot of Record.

**Lot, Area (Lot Size):** The total land area within the boundaries (lot lines) of a lot, exclusive of the area designated for any proposed road rights-of-way as measured within the boundaries of the right-of-way.

**Lot, Corner:** A lot at the junction of and abutting on two or more intersecting roads where the interior angle of the intersection does not exceed 135 degrees. A lot abutting a curved street shall be deemed a corner lot if the tangents to the curve, at the points of intersection of the side lot lines with the street, intersect at an interior angle of less than 135 degrees.

**Lot Depth:** The minimum horizontal distance measured at right angles from the street line of the lot to the rear lot line of such a lot.

**Lot/Existing:** An identifiable and separate parcel of land legally in existence as of the effective date of these regulations. The merger of any lot prior or subsequent to the effective date of these regulations shall terminate its separate existence for the purpose of these regulations [see also Section 3.10]. See also Nonconforming Lot.

**Lot Frontage:** The distance that a lot fronts a road, measured along the road right-of-way from the intersection of one lot line to the intersection of the other lot line. See also Lot Width.

**Lot Line:** The boundary line of a lot: a property line.

**Lot Line, Front:** Lot line that physically borders the public or private road or public waterway.

**Lot of Record:** Any lot that individually, or as part of a subdivision, has been recorded in the East Montpelier Town Office.

**Lot Size:** See Lot Area.

**Lot Width:** For lots without road frontage, the horizontal distance between side lot lines as measured along a straight line paralleling the front lot line at the minimum required setback distance. See also Lot Frontage.

**Manufacturing:** The processing, treatment and/or conversion of raw or semi-finished materials into a different form or state. This definition does not include the processing of agricultural goods raised on the premises, which falls under the definition of agriculture. See also Light Industry.

**Manufactured Home:** A structure, transportable in one or more sections, that is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include a “recreation vehicle.”

**Medical Clinic:** A building or portion of a building containing offices and facilities for providing medical, dental, chiropractic, therapeutic, or other licensed health care professional services for outpatients only.

**Micro-Cell:** A low-power mobile radio service wireless telecommunications facility used to provide increased capacity in high call-demand areas or to improve coverage in areas of weak coverage.

**Mixed Use:** A building or parcel containing two (2) or more principal uses that are otherwise allowed as permitted or conditional uses in the district in which the building or parcel is located [see Section 4.11]. Also see Planned Unit Development.

**Mobile Home:** A prefabricated single family dwelling unit that: (1) is designed for continuous residential occupancy; (2) is designed to be moved on wheels, as a whole or in sections, (3) on arrival at the site, is complete and ready for occupancy except for incidental unpacking, assembly, and placing on supports or a permanent foundation, or installation as a unit in a previously prepared structure; and (4) contains the same water supply and wastewater disposal systems as immovable housing [see Section 3.18]. See also Camper; Dwelling, Single Family; Mobile Home Park.

**Mobile Home Park:** A parcel of land under single or common ownership or control which contains, or is designed, laid out or adapted to accommodate three (3) or more mobile homes to be occupied for living purposes [see Sections 3.5 and 4.11]. See also Mobile Home.

**Mobile Home Sales:** An establishment, including land and/or a building, for which the principal use is the sale of mobile homes. This may include customary accessory structures or uses, such as an office, an enclosed sales room, and a parking area.

**Modification of an Existing Telecommunications Tower or Structure:** Any change, or proposed change, in dimensions of an existing and permitted tower or other structure designed to support telecommunications transmission, receiving and/or relaying antennas and/or equipment.

**Monitoring:** For purposes of regulating telecommunications facilities, the measurement, by the use of instruments in the field, or non-ionizing radiation exposure at a site as a whole, or from telecommunications facilities, towers, antennas or repeaters.

**Monitoring Protocol:** For purposes of regulating and monitoring telecommunications facilities, the testing protocol, such as the Cobbs Protocol, or the FCC Regulations [Title 47, Part 1, Section 1.1307 referenced as IEEE C95.3 1991], or one substantially similar, including compliance determined in accordance with the National Council on Radiation Protection and Measurements (Reports 86 and 119), which is to be used to monitor the emissions and determine exposure risk from existing and new telecommunications facilities.

**Monopole:** A single self-supporting vertical pole with no guy wire anchors, usually consisting of a galvanized or other unpainted metal or a wooden pole with below-grade foundations.

**Motor Vehicle Sales:** A building, lot or portion thereof used for the sale and/or rental of automobiles, trucks, motorcycles, or other motor vehicles.

**Motor Vehicle Service:** An establishment whose principal purpose is the repair of motor vehicles, including body shops, general vehicle and engine repair shops, and rebuilding and/or reconditioning shops. Gasoline stations are specifically excluded from this definition. See also Gas Station; Motor Vehicle Sales.

**Municipal Land Use Permit:** As defined in Section 4303 of the Act, to include as issued by the municipality: (1) final zoning, subdivision, site plan or building permits or approvals relating to subdivision and land development; (2) septic or sewage system permits; (3) final official minutes of meetings which relate to permits or approvals, which serve as the sole evidence of such permits or approvals; (4) certificates of compliance or similar certificates; and (5) any amendments to the previously listed permits, approvals and/or certificates.

**Municipal Plan:** The municipal plan for the Town of East Montpelier, as most recently adopted in accordance with the Act.

**Neighborhood Business:** A retail or other commercial establishment in which the total allowable square footage, number of employees, and the operation of the business and/or type or nature of the goods or services offered for sale are limited by supplemental district standards for the zoning district within which the use is located [see Table 2.4].

**Non-Conforming Lot:** A lot lawfully in existence as of the effective date of these regulations, which does not conform within these regulations, including zoning district dimensional, density or coverage requirements, or other applicable dimensional requirements of these regulations [see Section 3.9]. See also Non-conforming Structure; Non-conforming Use.

**Non-Conforming Structure:** A type of non-conformity, defined for purposes of these regulations as a structure or part thereof lawfully in existence as of the effective date of these regulations, which is not in compliance with the provisions of these regulations, including but not limited to building bulk, dimensions, height, setbacks, area, yards, density or off-street parking or loading requirements, where such structure conformed to all applicable laws, ordinances, and regulations prior to the enactment of these regulations [see Section 3.10]. See also Non-conforming Use.

**Non-Conforming Use:** A type of non-conformity, defined for purposes of these regulations as the use of land or a structure lawfully in existence as of the effective date of these regulations which does not conform with these regulations, including but not limited to allowed uses within the district in which it is located, where such use conformed to all applicable laws, ordinances and regulations prior to the enactment of these regulations [see Section 3.10]. See also Non-conforming Structure.

**Open Space:** Land not occupied by structures, buildings, roads, rights-of-way, and parking lots. Open space may or may not be held in common. “Usable open space” is further characterized as open space that is available and accessible to all occupants of the building or buildings on the lot for purposes of active or passive recreation.

**Out Building:** See Accessory Structure.

**Parking Facility:** A separate off-street parking area, garage or similar structure that is the principal use of a lot. See also Transit Facility.

**Parking Space:** An off-street area which is not less than nine (9) feet in width and 20 feet in depth, exclusive of adequate access or maneuvering area, ramps, columns, etc., which is to be used exclusively as a temporary storage space for a single motor vehicle [see Section 3.11].

**Person:** Any individual, partnership, corporation, association, unincorporated organization, trust or any other legal or commercial entity, including a joint venture or affiliated ownership, which owns or controls land or other property to be subdivided and/or developed under the provisions of these regulations. The word “person” shall also include any municipality or other government agency.

**Personal Communications Services:** Digital wireless telephone technology using higher frequency spectrum than cellular.

**Personal Wireless Services:** Commercial mobile services, unlicensed wireless exchange access services. These services include: cellular services, personal communications services, specialized mobile radio services and paging services.

**Place of Worship:** A building used solely for purposes of assembly and worship by a legally established and recognized religious institution. This definition also includes customary accessory structures such as parish houses [see Section 4.13]. See also Public Facility.

**Planned Residential Development (PRD):** An allowed method of land development for residential use in which an area of land, consisting of one or more parcels, is planned to be developed as a single entity, to include residential dwelling units allowed within a zoning district(s) and associated accessory structures and facilities. In a PRD, zoning district dimensional standards under these regulations [Article 2], including lot size, density, coverage, frontage and setback requirements, may be modified or waived to provide flexibility in subdivision and site design in order to promote desired types and patterns of development [see Article 5]. See also Planned Unit Development.

**Plat:** A map or representation on paper, Mylar or other accepted material, of a piece of land subdivided into lots and roads, drawn to scale.

**Principal Structure:** A structure or building in which the main, primary or principal use of the property is conducted. Attached accessory dwellings, garages, porches or carports, or other structures that share a common wall and/or roof, or are connected by an enclosed breezeway, and are considered part of the principal structure.

**Private Club:** A corporation, organization, or association or group of individuals existing for charitable, fraternal, social, recreational, or educational purposes, for cultural enrichment or to further the purposes of agriculture, which owns, occupies, or uses certain specified premises, which is not organized or operated for a profit, and the benefits of which are available primarily to members only.

**Professional/Business Office:** a room, suite of rooms or building used for conducting the affairs of a business, profession or government, or as used as an accessory to personal services, industry and other uses. The on-premise retail sale of goods is specifically excluded from this definition.

**Public Facility:** A building or other facility owned, leased, held, used, and/or controlled exclusively for public purposes by a municipality, state or federal government, regulated utility or railroad. Such facilities include, but may not be limited to municipal buildings and garages, water and wastewater facilities, power generation and transmission facilities, and educational facilities [see Section 4.13].

**Radial Plots:** Radial plots are the result of drawing equally spaced lines (radials) from the point of the antenna, calculating the expected signal and indicating this graphically on a map. The relative signal strength may be indicated by varying the size or color at each point being studied along the radial. A threshold plot uses a mark to indicate whether that point would be strong enough to provide adequate

coverage, i.e., the points meeting the threshold of adequate coverage. The draw back is the concentration of points close to the antenna and the divergence of points far from the site near the end of the radials.

**Reasonable Use:** A use of real property which is allowed within the district in which the property is located, which provides some (but not necessarily all) potential benefit to the owner, and which does not lead to unreasonable interference with another's use of property, or with the natural flow of water.

Reasonable use does not mean highest and best use; nor does it include accessory uses, structures, or additions which may be customary, but are not necessary, to the existing or intended principal use (e.g., garages, swimming pools).

**Reconstruct:** To replace or rebuild a building or structure which has been substantially destroyed or demolished without regard to a cause.

**Recreation Facility (Indoor):** A building or structure designed, equipped and used for sports, leisure time, and other recreational activities, except for such facilities which are accessory to an approved educational facility or a residential use. This includes, but may not be limited to, bowling alleys, skating rinks, gymnasiums, fitness facilities, and indoor swimming pools. See also Community Center; Cultural Facility.

**Recreation Facility (Outdoor):** A facility for outdoor recreation, including but not limited to a tennis or basketball court, athletic field, in-ground swimming pool, or cross-country skiing center, except for such facilities which are accessory to an approved education facility, public park, or a residential use.

**Repeater:** A small receiver/relay transmitter and antenna of relatively low power output designed to provide service to areas that are not able to receive adequate coverage directly from a base or primary station.

**Residential Care Facility:** A facility licensed by the state which provides primarily non-medical residential care services to seven or more individuals in need of personal assistance essential for sustaining the activities of daily living, or for the protection of the individual, on a 24-hour a day basis. See also Day Care Facility; Group Home.

**Restaurant:** Premises where food and drink are prepared, served, and consumed primarily within the principal building.

**Retail Sales:** Premises where goods or merchandise are offered for retail sale or rent to the general public for personal, business, or household consumption and services incidental to the sale of such goods are provided. This definition specifically excludes the retail sale of gasoline or motor vehicles and other separately regulated retail uses defined herein.

**Road:** Any public or private right-of-way serving three (3) or more lots, which is designed and intended for use by motor vehicles. The word "road" shall mean the entire right-of-way. See also Driveway.

**Road Classifications:** All town highways are classified into one or another of the following classes, in accordance with state statutes [19 V.S.A. §302]: (1) Class 1 town highways are town highways, designated by the state, which form the extension of a state highway route and which carry a state highway route number. (2) Class 2 town highways are town highways, designated by the Selectboard with the approval of the state, as the most important highways in town, including improved highways connecting neighboring towns and places which, by their nature, carry more than normal traffic. (3) Class 3 town highways, as designated by the Selectboard in consultation with the state, are traveled town highways other than Class 1 or 2 highways which, at a minimum are negotiable under normal conditions all seasons of the year by a standard manufactured car. This would include, but not be limited to, sufficient surface and base, adequate drainage, and sufficient width capable to provide winter maintenance. (4) Class 4 town highways, designated by the Selectboard, are all other town highways. (5) Trails shall not be considered highways and the town shall not be responsible for any maintenance, including culverts and bridges.

**Road/Private:** Any road or street which is not publicly owned and maintained, excluding private driveways serving one or two lots. See also Road; Driveway.

**Road/Public:** A road that is constructed within the boundaries of an officially deeded and/or accepted public right-of-way, including municipal, state and federal highways.

**Roof and/or Building Mount Telecommunications Facility:** A telecommunications facility in which antennas are mounted to an existing structure on the roof (including rooftop appurtenances) or a building face.

**Salvage Yard:** A facility or area for storing, keeping, selling, dismantling, shredding, or salvaging of discarded material or scrap metal. This definition includes, but is not limited to, “junkyards” as defined by the state.

**Sanitary Landfill:** An engineered facility for the disposal of solid waste, identified in the Central Vermont Solid Waste Management District Implementation Plan and certified by the state [10 V.S.A. Chapter 159], which is designed and operated to minimize public health and environmental impacts.

**Self-Storage Facility:** A building or buildings consisting of small, self-contained units that are leased or owned for the storage of business and household goods.

**School:** A public, private or parochial institution licensed by the State of Vermont to provide educational instruction to students. Such facilities may also include accessory recreational and dining facilities, and may be used as officially designated temporary emergency shelters [see Section 4.13]. See also Public Facility.

**Setback:** A horizontal distance from a road, lot line, boundary or other delineated feature (e.g., a stream bank or channel, shoreline, or wetland area), to the nearest part of a building or structure on the premises. In the case of a public highway or private road, the distance shall be measured from the centerline of the highway or private road [see Section 2.3(E)].

**Setback, Front:** The distance between the nearest portion of any structure or proposed structure on a lot and the centerline of the public or private road.

**Setback, Side and Rear:** The distance between the nearest portion of any structure or proposed structure on a lot and the side and rear property lines.

**Sign:** Any structure, display, device, material, object or representation which is designed or used to advertise, direct or call attention to any property, establishment, business, enterprise, profession, product, or service or other matter from any public right-of-way [see Section 3.12]. This definition includes logos and other outdoor advertising displayed on walls, canopies, and exterior windows.

**Significant Wildlife Habitat Areas:** Habitats identified in the town plan as supporting rare, threatened or endangered species.

**Silviculture:** See Forestry.

**Stealth Design:** A telecommunications facility design intended to blend into the surrounding environment. Examples of stealth designed facilities may include architecturally screened roof-mounted antennas, building-mounted antennas painted to match the existing structure, antennas integrated into architectural elements (like clock towers, bell steeples, silos), antenna structures designed to look like light poles, and structures designed to resemble natural features such as trees or rock outcroppings.

**Story:** That part of any building, excluding cellars and basements, between the surface of any floor and the surface of the next floor above it, or if there is no floor above it, then the space between a floor and the ceiling above it. See also Story, Half.

**Story/Half:** Any space partially within the roof framing, where the clear height of not more than 50% of such space between the top of the floor beams and the structural ceiling level is 7 ½ feet or more.

**Stream:** Any surface water course in the Town of East Montpelier as depicted by the U.S. Geological Survey on topographic maps, the zoning map, Vermont Base Map orthophotos, or as identified through site investigation; excluding artificially created irrigation and drainage channels. See also Stream Channel; Stream Banks.

**Stream Banks:** Physiographic features that normally contain streams within a channel. The banks are distinct from the streambed, which is normally wetted and provides a substrate that supports aquatic organisms. For purposes of these regulations, “**Top of Bank**” is defined as the point of the average high water mark as delineated by the area where woody vegetation starts growing. “**Top of Slope**” is defined as a break in the slope adjacent to steep-banked streams that have little or no floodplain.

**Stream Channel:** A defined area that demonstrates clear evidence of the permanent or intermittent passage of water and includes, but may not be limited to, bedrock channels, gravel beds, sand and silt beds, and swales. A stream bank may define the usual boundaries, but not the flood boundaries, of a stream channel. Artificially created water courses such as agricultural irrigation and drainage ditches are specifically excluded from this definition. See also Stream; Stream Banks.

**Street:** See Road.

**Street Line:** The dividing line between a lot and a public or private road or street, typically defined by the edge of the road right-of-way.

**Strip Development:** Sometimes referred to as “sprawl,” strip development is a pattern of land use that is characterized by dispersed, automobile-dependent development outside of compact urban and village centers, along highways and in the rural countryside. Strip development is often characterized by low density, inefficient use of land and a dependence on the auto for access.

**Structurally Able:** For purposes of regulating telecommunications facilities, the determination that a tower or structure is capable of safely carrying the load imposed by the proposed new antenna(s) under all reasonably predictable conditions, as determined by a professional structural engineering analysis including the wind load or any other structural requirements.

**Structure:** Any construction, assemblage or other combination of materials on the land for occupancy or use, including but not limited to buildings, additions to buildings, mobile homes, tennis courts, swimming pools, airstrips, relay or radio antennae, gas station canopies, and tanks for the outdoor storage of gas or oil. Specifically excluded from this definition are sidewalks, driveways, roads, parking areas, signs, service lines, walls and fences, and the subsurface components of potable water and sewage disposal systems. Other structures shall be exempted from these regulations only in accordance with the Act [§4446] and these regulations [see Section 7.2]. See also Accessory Structure; Building.

**Subdivider:** Any person(s) who shall lay out for the purpose of transfer or ownership or right to use any subdivision or part thereof. The term shall include an applicant for subdivision approval. See also Applicant.

**Subdivision:** The division of any parcel of land into two or more parcels, lots or other legal division of land for the purposes of offer, transfer, sale, lease, conveyance or development [see Section 6.2]. The term includes the resubdivision of a previously subdivided parcel, amended subdivisions, and the division of land held in common among several owners, and shall also include the development of a parcel as a planned residential or planned unit development. See Boundary (Lot Line) Adjustment.

**Subdivision/Major:** A subdivision of land resulting in the creation of four (4) or more lots.

**Subdivision/Minor:** Amendments to an approved subdivision plan that will not substantially change the nature of the previously approved plan or conditions of approval, or a subdivision which results in the creation of three (3) or fewer lots.

**Substantial Improvement:** Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure either: (1) before the improvement or repair is started, or (2) if the structure has been damaged and restored, before the damage occurred. For the purpose of administering flood hazard area regulations [Article 9], refer to the definition of “cumulative substantial improvement.”

**Substantially Commenced:** For purposes of these regulations, to include initial site preparation, the installation of an access, and the installation of a foundation, water and/or wastewater system on-site, in accordance with these regulations and all permits and approvals.

**Substantially Destroyed:** Fifty percent (50%) or more of the structure has been damaged and/or the damaged structure is no longer structurally sound, habitable or safe for its intended use.

**Telecommunications Equipment Shelter:** A structure located at a base station designed principally to enclose equipment used in connection with telecommunications transmissions, including any foundation that may be required.

**Telecommunications Facility:** All equipment (including repeaters) with which a telecommunications provider broadcasts and receives radio frequency signals which carry their services. This facility may be sited on one or more towers or structure(s) owned and permitted by the provider or its agent of record or another owner or entity [see Section 4.14].

**Telecommunications Facility Site:** A property, or any part thereof, which is owned or leased by one or more telecommunications providers and upon which one or more telecommunications facilities and any required landscaping are located.

**Telecommunications Provider:** An entity licensed by the FCC to provide telecommunications services to individuals or institutions.

**Telecommunications Tower:** a guyed, monopole, or self-supporting tower, constructed as a freestanding structure or in association with a building, other permanent structure or equipment, containing one or more antennas intended for transmitting and/or receiving television, AM/FM radio, digital, microwave, cellular, telephone, or similar forms of electronic communication.

**Temporary Structure:** A structure designed for limited use with no foundation or footings, which is easily relocated and which remains in place for less than 12 months. Trailers that were intended for on-road usage, box vans, shipping containers and similar containers, shall be considered structures if they are used for storage on a parcel for more than 12 months. Structures in existence for more than 12 months shall be considered permanent and require a permit.

**Temporary Wireless Telecommunications Facilities:** Any tower, pole, antenna, or other facility designed for use while a permanent wireless telecommunications facility is under construction, rehabilitation or restoration.

**Tiled Coverage Plots:** Tiled plots result from calculating the signal at uniformly spaced locations on a rectangular grid, or tile, of the area of concern. Tiled plots (in comparison to radial plots): (1) provide a uniform distribution of points over the area of interest; (2) usually allow the same grid to be used as different sites are examined; and (3) do not necessitate the transmitter site to be within the grid or area of interest. As with radial plots, the graphic display or plot can be either signal strength or adequate threshold. Tile plotting requires more topographic data and longer (computer) execution time than radial plotting, but is preferable for comparative analysis.

**Transfer Station/Recycling Center:** A facility certified by the state that functions as a collection point for solid waste and recyclable material that will subsequently be transported to a state-approved landfill or disposal facility. The facility will include, at a minimum, a receiving hopper and compacting equipment [see Section 4.13]. See also Public Facility.

**Transit/Transportation Facility:** A building, structure, or area designed and intended for use by persons changing transportation modes, including but not limited to bus shelters and park-and-ride facilities.

**Undue Adverse Affect (Impact):** An unnecessary or excessive affect or impact that violates a clearly stated community standard, to include a provision of these regulations or other applicable municipal bylaws and ordinances, or a policy of the *East Montpelier Town Plan*, and which cannot be avoided through site or design modifications, on or off-site mitigation, or other conditions of approval.

**Use:** The specific purpose for which a parcel of land or structure is designated, designed or intended, or for which it may be used and maintained. See also Accessory Use; Structure.



**Veterinary Clinic:** A building or part thereof used for the care, diagnosis, treatment and temporary boarding of animals. See also Kennel.

**Warehouse/Storage:** One or more structures used for the storage of goods and materials, and not as a primary location or outlet for business or retail uses. See also Self-Storage Facility.

**Wetland:** As defined by Vermont Wetland Rules, as most recently amended, to include “those areas of the state which are inundated by surface or groundwater with a frequency sufficient to support vegetation or aquatic life that depend on saturated or seasonally saturated soil conditions for growth and reproduction.” Such areas include, but are not limited to marshes, swamps, sloughs, potholes, fens, river and lake overflows, mud flats, bogs and ponds, but exclude such areas where food and crops are grown in connection with farming activities. The location of wetlands on a particular parcel, as indicated on State Wetland Inventory Maps, shall be confirmed through site investigation.

**Wildlife Refuge:** a designated area owned and/or managed by a public or nonprofit entity principally for the purpose of sustaining wildlife habitat and/or wildlife populations, which may also be open to the public for hunting and outdoor recreation. Designated trails and parking areas, and storage and maintenance structures may be allowed as accessory to the principal use.

**Withdraw or Withdrawal:** The intentional removal by any method or instrument of groundwater from a well, spring or combination of wells or springs.

**Yard Sale:** See Garage Sale.

**Zone of Influence:** the area surrounding a pumping well within which the water table or potentiometric surface has been changed due to a groundwater withdrawal.

## ARTICLE 9: FLOOD HAZARD AREA REGULATIONS

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### Section 9.1 Statutory Authorization

To effect the purposes of 10 V.S.A. Chapter 32, and in accordance with 24 V.S.A. §4424, there is hereby established an ordinance for areas at risk of flood damage in the Town of East Montpelier, Vermont. Except as additionally described below, all administrative procedures follow municipal procedures under 24 V.S.A. Chapter 117.

### Section 9.2 Statement of Purpose

It is the purpose of this ordinance to:

- (A) Implement the goals, policies, and recommendations in the current municipal plan;
- (B) Minimize and prevent 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 and other flood related hazards;
- (C) Ensure that the design and construction of development in flood and other hazard areas are accomplished in a manner that minimizes or eliminates the potential for flood and loss or damage to life and property;
- (D) Manage all flood hazard areas designated pursuant to 10 V.S.A. §753; and
- (E) Make the state, municipalities, and individuals eligible for federal flood insurance and other federal disaster recovery and hazard mitigation funds as may be available.

### Section 9.3 Lands to Which These Regulations Apply

- (A) **Regulated Flood Hazard Areas.** These regulations shall apply to the **Floodway, Special Flood Hazard Area and River Corridors** (hereafter called “hazard areas”) in the Town of East Montpelier, Vermont as described below. These hazard areas overlay any other existing zoning districts, and the regulations herein are the minimum standards that must be met before meeting the additional standards applicable in the underlying district. These hazard areas include:
  - (1) The **Floodway**, which is the channel of a river or stream and the adjacent land where water moves fastest during a storm and poses the greatest danger. The floodway must be kept free of development to prevent floodwaters from rising. For regulatory purposes, the Floodway is defined in Section 9.13 and shown on the Federal Emergency Management Agency’s most current flood insurance studies and maps. These studies and maps are incorporated and adopted into these regulations by reference.
  - (2) The **Special Flood Hazard Area**, which is the area that has a 1% chance of flooding in any year and includes the floodway. For regulatory purposes, the Special Flood Hazard Area is defined in Section 9.13 and shown on the Federal Emergency Management Agency’s most current flood insurance studies and maps published by the Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), National Flood Insurance Program (NFIP), as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. §753, which are hereby adopted and declared to be part of these regulations.
  - (3) The **River Corridor**, which is the land along rivers and streams that is prone to erosion, and the area needed to accommodate a geomorphically stable river or stream channel. Erosion ranges from gradual bank erosion to catastrophic changes in river channel location and dimension during major storms. For regulatory purposes, the River Corridors are determined as the most current River Corridors mapped and published by the Vermont Agency of Natural Resources, beginning with the East Montpelier River Corridor, dated 2/27/2015, which are hereby adopted by reference. Where River Corridors are not mapped, the standards in Section 9.6 (C) shall apply to the area measured as fifty (50) feet from the top of the stream bank or slope. [See also Section 3.12 of the general regulations.]

**(B) Base Flood Elevations and Floodway Limits in Special Flood Hazard Areas.** Where available, base flood elevations and floodway limits (or data from which a community can designate regulatory floodway limits) provided by the National Flood Insurance Program in the Flood Insurance Study, and accompanying maps, shall be used to administer and enforce these regulations. In Special Flood Hazard Areas, where base flood elevations and/or floodway limits have not been provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps, base flood elevations and floodway data provided by FEMA, or available from State or Federal agencies or other sources, shall be obtained and utilized to administer and enforce these regulations.

**(C) Interpretation.** The information presented on any maps, or contained in any studies, adopted by reference, is presumed accurate.

- (1) If uncertainty exists with respect to the boundaries of the Special Flood Hazard Area or the floodway, the location of the boundary shall be determined by the Zoning Administrator using the Federal Emergency Management Agency’s most current flood insurance studies and maps. If the applicant disagrees with the determination made by the Zoning Administrator, a Letter of Map Amendment from FEMA shall *constitute proof*.
- (2) If uncertainty exists with respect to the boundaries of the River Corridor, the location of the boundary shall be determined by the Zoning Administrator using the Vermont Agency of Natural Resources’ most current River Corridor Map. If the applicant disagrees with the determination made by the Zoning Administrator, a letter of determination from the Vermont Agency of Natural Resources shall *constitute proof*.

#### Section 9.4 Summary Table: Development Review in Hazard Areas

The hazard areas are not appropriate sites for new structures nor for development that increases the base flood elevation or obstructs the ability of rivers or streams to establish and maintain a geomorphically stable channel.

#	Activity	Hazard Area		
		Floodway	Special Flood Hazard Area	River Corridors
	P Permitted C Conditional Use Review X Prohibited E Exempted			
1	New Structures	X	X	X
2	New Structures in Designated Village Center	X	C	C
3	Storage	X	X	X
4	Substantial Improvements to Existing Structures	C	C	C
5	Non-Substantial Improvements to Existing Structures	C	P	C
6	Small Accessory Structures	X	P	C
7	At Grade Parking	C	P	C
8	Replacement water supply or septic systems	C	C	C
9	Fill as needed to elevate existing structures	C	C	C
10	Fill	X	X	X
11	Grading	C	C	C
12	Road maintenance	E	E	E
13	Road improvements	C	C	C
14	Bridges and culverts	C	C	C
15	Channel management	C	C	C
16	Recreational vehicles	C	P	P
17	Open space, recreation	E	E	E
18	Forestry	E	E	E
19	Agriculture	E	E	E

## Section 9.5 Development Review in Hazard Areas

- (A) **Permit.** A permit is required from the Zoning Administrator for all development in all areas defined in Section 9.3. Development that requires conditional use approval, non-conforming use approval, or a variance from the Development Review Board (DRB) under these flood hazard regulations, must have such approvals prior to the issuance of a permit by the Zoning Administrator. Any development subject to municipal jurisdiction in the designated hazard areas shall meet the criteria in Sections 9.5 and 9.6.
- (B) **Permitted Development.** For the purposes of review under these regulations, the following development activities in the Special Flood Hazard area where located outside of the floodway and outside of the River Corridors, and meeting the Development Standards in Section 9.6, require only a permit from the Zoning Administrator:
- (1) Non-substantial improvements;
  - (2) Accessory structures;
  - (3) Development related to on-site septic or water supply systems;
  - (4) Building utilities;
  - (5) At-grade parking for existing buildings; and
  - (6) Recreational vehicles.
- (C) **Prohibited Development in Special Flood Hazard Area and River Corridors**
- (1) New residential or non-residential structures (including the placement of manufactured homes);
  - (2) Storage or junk yards;
  - (3) New fill except as necessary to elevate existing structures above the base flood elevation;
  - (4) Accessory structures in the floodway;
  - (5) Critical facilities in all areas affected by mapped flood hazards; and
  - (6) All development not exempted, permitted, or conditionally permitted.
- (D) **Conditional Use Review.** Conditional use review and approval by the Development Review Board is required prior to the issuance of a permit by the Zoning Administrator for the following proposed development:
- (1) Substantial improvement, elevation, relocation, or flood proofing of existing buildings;
  - (2) New or replacement storage tanks for existing structures;
  - (3) Grading, excavation; or the creation of a pond;
  - (4) Improvements to existing roads;
  - (5) Bridges, culverts, channel management activities, or public projects which are functionally dependent on stream access or stream crossing;
  - (6) Public utilities;
  - (7) Improvements to existing primary structures in the River Corridors that do not expand the footprint of the existing structure more than 500 square feet;
  - (8) Accessory structures in the River Corridors, of 500 square feet or less, that represent minimal investment;
  - (9) Building utilities in the River Corridors;
  - (10) At-grade parking for existing buildings in the River Corridors;

- (11) Development in a floodway; and
- (12) Notwithstanding the provisions of Section 9.4 and Section 9.5, new structures in the Designated Village Center.

(E) **Exempted Activities.** The following are exempt from regulation under this bylaw:

- (1) The removal of a building or other structure in whole or in part;
- (2) Maintenance of existing roads and storm water drainage;
- (3) Silvicultural (forestry) activities conducted in accordance with the Vermont Department of Forests and Parks Acceptable Management Practices; and
- (4) Agricultural activities conducted in accordance with the Vermont Department of Agriculture's Accepted Agricultural Practices (AAP). Prior to the construction of farm structures, the farmer must notify the Zoning Administrator in writing of the proposed activity. The notice must contain a sketch of the proposed structure including setbacks.

(F) **Variances.** Variances shall be granted by the Development Review Board only in accordance with 24 V.S.A. §4469, and in accordance with the criteria for granting variances found in 44 C.F.R. 60.6 of the National Flood Insurance Program regulations.

- (1) A variance for development within the River Corridor may be allowed if, based on a review by Vermont Agency of Natural Resources, it is determined that the proposed development will not obstruct the establishment and maintenance of a geomorphically stable river or stream channel.
- (2) Any variance issued in the Special Flood Hazard Area will not increase flood heights. The variance will inform the applicant in writing over the signature of a community official that the issuance of a variance to construct a structure below the base flood elevation: (a) increases the risk to life and property, and (b) will result in increased flood insurance premiums up to amounts as high as \$25 for \$100 coverage. Such notification shall be maintained with a record of all variance actions.

(G) **Nonconforming Structures and Uses.** The Development Review Board may, after public notice and hearing, approve the repair, relocation, replacement, or enlargement of a nonconforming structure within a flood hazard area provided that:

- (1) The proposed development is in compliance with all the Development Standards in Section 9.6 of this bylaw;
- (2) A nonconforming structure that is substantially damaged or destroyed may be reconstructed only in circumstances when the structure cannot be relocated to a less hazardous location on the parcel. The lowest floor of the reconstructed structure must be rebuilt to one foot or more above the base flood elevation, and the structure must otherwise comply with all requirements of the National Flood Insurance Program;
- (3) Nonconforming structures or uses shall be considered abandoned when such structures or uses are discontinued for more than 12 months; and
- (4) An individual manufactured home lot in an existing manufactured home park that is vacated shall not be considered a discontinuance or abandonment of nonconformity. Replacement manufactured homes must be placed so as to meet the development standards in this bylaw.

## **Section 9.6 Development Standards**

The criteria below are the minimum standards for development in the flood hazard areas. Where more than one zone or area is involved, the most restrictive standard shall apply.

(A) **Floodway Areas**

- (1) Development or any encroachments, above grade and less than one foot above the base flood elevation, within the regulatory floodway as determined in Section 9.3 (B), is prohibited unless it

has been demonstrated through hydrologic and hydraulic analyses, performed in accordance with standard engineering practice, by a registered professional engineer certifying that the proposed development will result in no increase in flood levels during the occurrence of the base flood, and will not increase any risk to surrounding properties, facilities, or structures from erosion or flooding.

- (2) Public utilities may be placed underground, and the analyses may be waived, where a licensed professional engineer certifies that there will be no change in grade and the utilities will be adequately protected from scour.
- (3) Where applicable, all development shall meet standards under Section 9.6 (B).

#### **(B) Special Flood Hazard Area**

- (1) **All Development.** All development shall be reasonably safe from flooding and:
  - (a) Be designed, operated, maintained, modified, and adequately anchored to prevent flotation, collapse, or lateral movement of the structure during the occurrence of the base flood;
  - (b) Be constructed with materials resistant to flood damage;
  - (c) Be constructed by methods and practices that minimize flood damage;
  - (d) Be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
  - (e) Be adequately drained to reduce exposure to flood hazards;
  - (f) Be located as to minimize conflict with changes in channel location over time and the need to intervene with such changes; and
  - (g) Be required to locate any fuel storage tanks (as needed to serve an existing building in the Special Flood Hazard Area) a minimum of one foot above the base flood elevation and be securely anchored to prevent flotation; or storage tanks may be placed underground, if securely anchored as certified by a qualified professional.
- (2) **Residential Development.** Structures to be substantially improved that are located in Zones A and AE shall be located such that the lowest floor, including basement, is at least one foot above the base flood elevation. This must be documented, in as-built condition, with a FEMA Elevation Certificate.
- (3) **Non-Residential Development**
  - (a) Substantial improvements in Zones A or AE shall meet the standards in Section 9.6(B)(3); or,
  - (b) Have the lowest floor, including basement, together with attendant utility and sanitary facilities be designed so that, two feet above the base flood elevation, the structure is 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. Elevations must be documented for the structure, in as-built condition, with a FEMA Elevation Certificate.
  - (c) A permit for a building proposed to be floodproofed 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) **Subdivisions and Planned Unit Developments** that include land within this overlay district must be accessible by dry land access outside this overlay district. New subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions) that are greater than 50 lots or 5 acres, whichever is the lesser, shall include base flood elevation data.
- (5) **Fully enclosed areas below grade** on all sides (including below grade crawlspaces and basements) are prohibited.

- (6) **Fully enclosed areas that are above grade**, below the lowest floor, below Base Flood Elevation and subject to flooding shall:
- (a) Be used solely for parking of vehicles, building access, or storage, and such a condition shall be clearly stated on any permit.
  - (b) Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either 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 net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- (7) **Recreational Vehicles:** Recreational Vehicles must be capable of being moved, fully registered and ready for highway use.
- (8) **Accessory Structures.** A small accessory building of 500 square feet or less that represents a minimal investment need not be elevated to the base flood elevation, provided the building:
- (a) Shall not be used for human habitation;
  - (b) Shall be designed to have low flood damage potential;
  - (c) Shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
  - (d) Shall be firmly anchored to prevent flotation; and
  - (e) Shall have service facilities such as electrical and heating equipment elevated or floodproofed.
- (9) **Water Supply Systems.** New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
- (10) **Sanitary Sewage Systems.** 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.
- (11) **On-Site Waste Disposal Systems.** Replacement on-site waste disposal systems shall be located to avoid impairment to the systems or contamination from the systems during flooding.
- (12) **Watercourse Carrying Capacity.** The flood carrying and sediment transport capacity within any altered or relocated portion of a watercourse shall be maintained, and any alteration or relocation shall not result in any decrease of stream stability.
- (13) **Development in Designated Village Center.** New structures within the Designated Village Center shall be located such that the lowest floor, including basement, is at least one foot above the base flood elevation. This must be documented, in as-built condition, with a FEMA Elevation Certificate.

### C. River Corridors

- (1) All development within this district shall meet the following standards, as applicable to the proposed use or activity.
- (a) Improvements to existing structures, and any associated fill as needed to comply with elevation requirements in the Special Flood Hazard Area, shall not decrease the distance between the existing primary building and the top of bank;
  - (b) Accessory structures may be located within 50 feet of the existing primary building, provided that the location does not decrease the distance between the existing primary structure and the top of bank;
  - (c) Bridge and culvert projects must have a Stream Alteration Permit;
  - (d) Channel management activities must be authorized by the Agency of Natural Resources; and

- (e) New structures within the Designated Village Center shall not decrease the average distance between existing primary structures on adjacent properties or 50 feet, whichever is greater, from the top of bank.
- (2) The Development Review Board, in consultation with the River Management Program (RMP) of the Vermont Agency of Natural Resources, must find that conditional uses within the River Corridor shall not:
  - (a) Increase the susceptibility of that or other properties to fluvial erosion damage;
  - (b) Increase the potential of materials being swept onto other lands or into the stream and causing damage to other properties from fluvial erosion; or
  - (c) Cause an undue burden on public services and facilities including roads, bridges, culverts and emergency service providers during and after fluvial erosion events.

## **Section 9.7 Procedures**

### **A. Application Submission Requirements.** Applications for development shall include:

- (1) Where applicable, a site plan that depicts the proposed development, all water bodies, Special Flood Hazard Areas, Floodways, River Corridors, the shortest horizontal distance from the proposed development to the top of bank of any stream, any existing and proposed drainage, any proposed fill, and 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.
- (2) A Vermont Agency of Natural Resources Project Review Sheet that shall identify all State and Federal agencies from which permit approval is required for the proposal and shall be filed as a required attachment to the town permit application. The identified permits, or letters indicating that such permits are not required, shall be submitted to the Zoning Administrator and attached to the permit before work can begin.

### **B. Referrals**

- (1) Prior to issuing a permit, a copy of the application and supporting information shall be submitted by the Zoning Administrator to the State National Flood Insurance Program Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section 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.
- (2) Adjacent communities and the Stream Alteration Engineer at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section shall be notified at least 30 days prior to issuing any permit for the alteration or relocation of a watercourse and copies of such notification shall be submitted to the Administrator of the National Flood Insurance Program. Any permit issued shall assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

### **C. Decisions.** The Development Review Board shall consider comments from the National Flood Insurance Program Coordinator at the Agency of Natural Resources. The DRB may recess the proceedings on any application pending submission of additional information.

### **D. Records.** The Zoning Administrator shall maintain a record of:

- (1) All permits issued for development in areas of special flood hazard;
- (2) An Elevation Certificate with the as-built elevation (consistent with the datum of the elevation on the NFIP maps for the community) of the lowest floor, including basement, of all new, substantially improved, or flood proofed buildings (not including accessory buildings) in the Special Flood Hazard Area;



- (3) The elevation (consistent with the datum of the elevation on the NFIP maps for the community) to which buildings have been floodproofed;
- (4) All floodproofing certifications required under this regulation; and
- (5) All decisions of the DRB (including variances and violations), including justification for their issuance.

### **Section 9.8 Warning of Disclaimer of Liability**

This ordinance does not imply that land outside of the hazard areas or land use permitted within such districts, will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Town of East Montpelier, or any town official or employee thereof, for any flood or erosion damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

### **Section 9.9 Validity & Severability**

If any portion of this ordinance is held unconstitutional or invalid by a competent court, the remainder of this ordinance shall not be affected.

### **Section 9.10 Precedence of Ordinance**

The provisions of this ordinance shall not in any way impair or remove the necessity of compliance with any other applicable ordinances. Where this ordinance imposes a greater restriction, the provisions of this ordinance shall take precedence.

### **Section 9.11 Certificate of Compliance**

The Zoning Administrator must approve a Certificate of Compliance in accordance with the provisions of Section 7.4 before a structure or use permitted under the provisions of this chapter is occupied or commenced. The Zoning Administrator must not approve a Certificate of Compliance until the applicant has provided copies of all necessary state and federal permits.

### **Section 9.12 Enforcement & Penalties**

- (A) It shall be the duty of the Zoning Administrator to enforce the provisions of this ordinance. Whenever any development occurs contrary to these flood hazard area regulations, the Zoning Administrator, in his/her discretion, shall institute appropriate action in accordance with the provisions of 24 V.S.A. §1974a, or pursuant to 24 V.S.A. §4451 or 24 V.S.A. §4452 to correct the violation. No action may be brought unless the alleged offender has had at least a seven-day warning notice by certified mail. An action may be brought without the seven-day notice and opportunity to cure if the alleged offender repeats the violation after the seven-day notice period and within the next succeeding twelve months. The seven-day warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days.
- (B) If the structure is still noncompliant after the opportunity to cure has passed, the Zoning Administrator shall submit a declaration to the Administrator of the NFIP requesting a denial of flood insurance. Section 1316 of the National Flood Insurance Act of 1968, as amended, authorizes FEMA to deny flood insurance to a property declared by a community to be in violation of their flood hazard area regulations. The declaration shall consist of: (a) the name of the property owner and address or legal description of the property sufficient to confirm its identity or location, (b) a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance, (c) a clear statement that the public body making the declaration has authority to do so, and a citation to that authority, (d) evidence that the property owner has been provided notice of the violation and the prospective denial of insurance, and (e) a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

### **Section 9.13 Definitions (for terms in Article 9)**

**Base Flood:** The flood having a one percent chance of being equaled or exceeded in any given year.

**Base Flood Elevation (BFE):** The height of the base flood, 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 average depth of the base flood, usually in feet, above the ground surface.

**Basement:** Any area of the building having its floor elevation (below ground level) on all sides.

**Building Utilities:** Building support systems including any heating, ventilating, and air conditioning (HVAC) systems, fuel systems, electrical systems, sewage management systems, or potable (drinking) water systems.

**Channel:** An area that contains continuously or periodic flowing water that is confined by banks and a streambed.

**Channel width (or bankfull width):** The width of a stream channel when flowing at a bankfull discharge. The bankfull discharge is the flow of water that first overtops the natural banks. This flow occurs, on average, about once every 1 to 2 years.

**Critical Facilities:** Police stations, fire and rescue facilities, hospitals, shelters, schools, nursing homes, water supply and waste treatment facilities, and other structures the community identifies as essential to the health and welfare of the population and that are especially important following a disaster. The type and location of a business, such as a grocery or gas station for example, may raise its status to a Critical Facility.

**Cumulative Substantial Improvement:** See Substantial Improvement.

**Designated Village Center:** The core of a traditional settlement, typically comprised of a cohesive mix of residential, civic, religious, commercial, and mixed-use buildings, arranged along a main street and intersecting streets, that are within walking distance for residents who live within and near the core. The Town of East Montpelier's Village Center Boundary map as designated by the Vermont Agency of Commerce and Community Development is incorporated and adopted into these regulations by reference.

**Development:** Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

**Existing manufactured home park or subdivision:** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.

**Expansion to an existing manufactured home park or subdivision:** The preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

**Fill:** Any placed material that changes the natural grade, increases the elevation, or diminishes the flood storage capacity at the site.

**Flood:** (1) 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. (2) 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

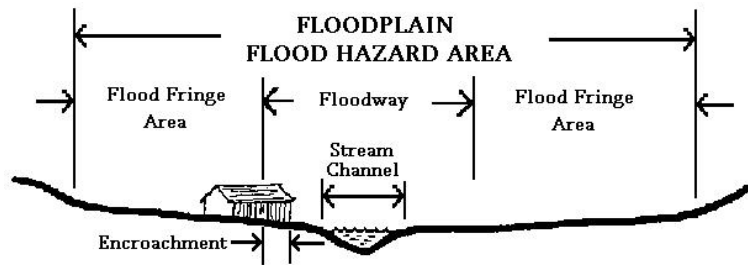
natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

**Flood Insurance Rate Map (FIRM):** An official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

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

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

**Flood proofing:** 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.



FLOOD PLAIN CROSS SECTION

**Floodway:** 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.

**Fluvial Erosion:** Erosion caused by streams and rivers. Fluvial erosion can be catastrophic when a flood event causes a rapid adjustment of the stream channel size and/or location.

**Functionally dependent use:** A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water.

**Geomorphically stable river or stream channel:** The condition in which the sediment and water input from the watershed are in balance. Thus a geomorphically stable river or stream channel experiences little erosion, stores organic material and nutrients in its floodplain, and provides aquatic and riparian habitat diversity.

**Historic Structure:** Any structure that is: (1) 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; (2) certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district, or a district preliminarily determined by the Secretary to qualify as a registered historic district; (3) individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (4) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (a) by an approved state program as determined by the Secretary of the Interior, or (b) directly by the Secretary of the Interior in states without approved programs.

**Legislative Body:** The Selectboard in the case of a town, the trustees in the case of an incorporated village, and the mayor, alderpersons, and city council members in the case of a city, and the supervisor in the case of an unorganized town or gore.

**Letter of Map Amendment (LOMA):** A letter issued by the Federal Emergency Management Agency officially removing a structure or lot from the flood hazard zone based on information provided by a licensed 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.

**Lowest Floor:** 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 CFR 60.3.

**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 attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle."

**Manufactured home park or subdivision:** A parcel (or contiguous parcels) of land divided into three or more manufactured home lots for rent or sale.

**New construction:** *For the purposes of determining insurance rates,* new construction means structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. *For floodplain management purposes,* new construction means structures for which the start of construction commenced on or after the effective date of the floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

**New manufactured home park or subdivision:** A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the floodplain management regulations adopted by a community.

**Non-residential:** Includes, but is not limited to: small business concerns, churches, schools, nursing homes, farm buildings (including grain bins and silos), pool houses, clubhouses, recreational buildings, government buildings, mercantile structures, agricultural and industrial structures, and warehouses.

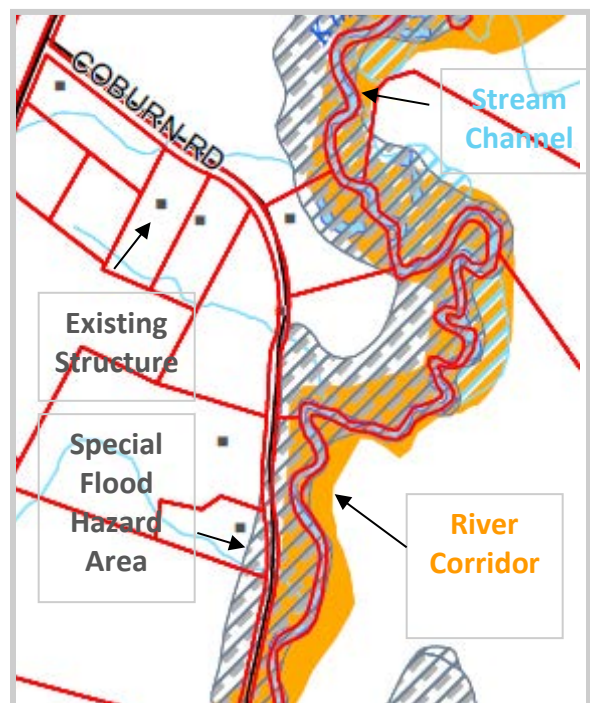
**Public Utilities:** Those utilities using underground or overhead transmission, distribution or collection lines or systems, including but not limited to electric, telephone, water, sanitary sewer and storm sewer utilities.

**Recreational vehicle:** A vehicle which is: (1) built on a single chassis; (2) 400 square feet or less when measured at the largest horizontal projection; (3) designed to be self-propelled or permanently towable by a light duty truck; and (4) designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

**River Corridor:** The land area adjacent to a river that is required to accommodate the dimensions, slope, plan form, and buffer of the naturally stable channel and that is necessary for the natural maintenance or natural restoration of a dynamic equilibrium condition, as that term is defined in 10 V.S.A. §1422, and for minimization of fluvial erosion hazards. The River Corridor is delineated by the Agency of Natural Resources (ANR), in accordance with the ANR River Corridor Protection Guide.

**Scour:** Degradation of a material due to *hydrodynamic forces*. "Scour" is a specific form of the more general term "erosion."

**Special Flood Hazard Area:** The land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard



Boundary Map (FHBM). After detailed ratemaking has been completed in preparation for publication of the Flood Insurance Rate Map (FIRM), Zone A usually is refined into Zones A, AO, AH, A1-30, AE, A99, AR, AR/AI-30, AR/AE, AR/AO, AR/AH, AR/A, VO or V1-30, VE, or V. For purposes of these regulations, the term “special flood hazard area” is synonymous in meaning with the phrase “area of special flood hazard.”

**Start of Construction:** 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, regardless of whether or not that alteration affects the external dimensions of the building.

**Structure:** *For floodplain management purposes*, a **structure** is a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. *For insurance purposes*, a **structure** means: (1) a building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site; (2) a manufactured home (a “manufactured home,” also known as a mobile home, is a structure built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or (3) a travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community’s floodplain management and building ordinances or laws. For the latter purpose, “structure” does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in (3) of this definition, or a gas or liquid storage tank.

**Substantial damage:** 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:** Any reconstruction, rehabilitation, addition or other improvement of a structure, during any 5-year period, the cumulative cost of which equals or exceeds fifty percent (50%) 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: (1) any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or (2) any alteration of a structure listed on the state or National Register of Historic Places, provided that the alteration will not preclude the structure's continued designation as a historic structure.

**Top of Bank:** That vertical point along a stream bank where an abrupt change in slope is evident. For streams in wider valleys it is the point where the stream is generally able to overflow the banks and enter the floodplain. For steep and narrow valleys, it will generally be the same as the top of slope.

**Violation:** The failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR 60.3 is presumed to be in violation until such time as that documentation is provided.