

## ARTICLE 4. SPECIFIC USE STANDARDS

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### Section 4.1 Applicability

(A) 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 5.4 or site plan review under Section 5.3. 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 or 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 5.4 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 5.4:

- (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, 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 5.4, the Development Review Board shall also find that an adaptive reuse complies with the following:

- (1) adequate water, septic and off street parking capacity exist 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 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 in 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 5.4 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 districts 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 serve 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 Board of Adjustment. 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 4.6.1 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 5.4. 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 high 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 revegetation.

(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 4.6.2 Withdrawal of Ground Water Resources

(A) The withdrawal of groundwater, including spring water, for non-domestic purposes, which exceeds ~~57,600~~20,000 gallons per day may be allowed in designated zoning districts subject to conditional use review under Section 5.4. ~~and subject to the state's public trust provisions.~~ 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, ~~and surface waters,~~ ~~and including 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 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 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 account, 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 withdrawal of groundwater for emergency fire fighting purposes.

#### **Section 4.7 Gas Stations**

(A) A gasoline station may be allowed in designated zoning districts subject to site plan review under Section 5.3 or conditional use review under Section 5.4, 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 lighting shall not be used to contribute to 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 4.8 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 5.4.

### Section 4.9 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 occupation 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 5.4 (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 & 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 4.10 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 5.5.
- (3) The mixed use shall meet all applicable general regulations under Article 3, including but not limited to sign and parking requirements.

#### **Section 4.11 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 5.4 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 any 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 recreation land or open space required under subsection (2). Landscaping along the perimeter of the park shall be approved by the Development Review Board in accordance with Section 5.4.
  - (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 also 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 Board of Adjustment.
  - (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 applicable state regulations, including regulations pertaining relating 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 4.12 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 or uses must meet applicable district requirements, and may be subject to site plan review under Section 5.5 or conditional use review under Section 5.4; 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.

<b>TABLE 4.1 PROTECTED PUBLIC USES</b>	
<b>Facility</b>	<b>Specified District(s)</b>
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., §6606a]	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 4.13 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 5.4 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) **Exemptions.** The following wireless telecommunications facilities are exempt from the requirements of this section: police, fire, ambulance, and 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.

- (1) 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/Commercial 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 ft. 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 5.4. 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 5.2, 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 or 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 micro-cells 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 or 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 radiofrequency 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 number, 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) 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.
- (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 5.4. 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) Proposed site plans of the entire development, drawn at a minimum at the 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 Board of Adjustment 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 a 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 varying 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 design, 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 be not 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 in order 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 a 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.