**Town of Berlin, Vermont**

# LAND USE AND DEVELOPMENT REGULATIONS

DRAFT FOR PLANNING COMMISSION REVIEW
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# PART 1. GENERAL

## Chapter 100. Legal Framework

ⓘ *The purpose of this chapter is to establish a legal foundation for these regulations.*

### Section 1001. Title

1001.A These are the Town of Berlin's *Land Use and Development Regulations* and constitute the town's zoning and subdivision regulations.

### Section 1002. Authority

1002.A The Town of Berlin has adopted these regulations in accordance with and as authorized by the *Vermont Planning and Development Act*, 24 VSA Chapter 117.

### Section 1003. Purpose

1003.A These regulations implement the goals and policies of the *Berlin Town Plan* and the *Vermont Planning and Development Act*. They are intended to:

(1) Provide for orderly community growth;

(2) Protect public health, safety and welfare;

(3) Allow for balanced housing and economic development that meets the needs of the community and region;

(4) Protect environmental quality and conserve natural, agricultural, scenic and historic resources; and

(5) Promote approaches to land use and development that are consistent with smart growth principles.

### Section 1004. Equal Treatment of Housing

1004.A These regulations are intended to allow the development of housing in accordance with statutory requirements. They:

(1) Allow mobile homes, modular homes and prefabricated homes to the same extent as conventional homes.

(2) Allow mobile home parks to the same extent as other residential subdivisions or developments.

(3) Permit accessory dwelling units in all zoning districts that allow single-family homes and as an accessory use to any pre-existing single-family home in accordance with *Section 3101.

(4) Allow multi-family housing in appropriate zoning districts.

(5) Treat group homes the same as any other single-family home (see *Section 3105).

### Section 1005. Applicability

1005.A Unless specifically exempted in these regulations (see *Chapter 110), all land development in the Town of Berlin requires a zoning permit or subdivision approval issued in accordance with these regulations.

ⓘ *Land development means constructing, installing, reconstructing, converting, structurally altering, relocating or enlarging any building or structure; mining, excavating, filling or grading land; changing or extending the use of land or a structure; adjusting or relocating the boundary between two parcels; or dividing a parcel into two or more lots.*

### Section 1006. Relationship with Other Laws or Regulations

1006.A If any provision of these regulations is more restrictive than any other law or regulation, the provision of these regulations will apply.

1006.B If any provision of another law or regulation is more restrictive than required under these regulations, the provision of the other law or regulation will apply.

1006.C The provisions regulating development within the special flood hazard area in *Section 2203 will take precedence over any other provision of these regulations.

### Section 1007. Effective Date

1007.A Upon adoption by the Town of Berlin, these regulations and any subsequent amendments will take effect in accordance with state statute. See *Appendix * for a history of the town's adoption and amendment of these regulations.

### Section 1008. Amendment or Repeal

1008.A These regulations may be amended or repealed in whole or part at any time in accordance with state statute.

### Section 1009. Severability

1009.A If a court of competent jurisdiction invalidates any provision of these regulations, that decision will not affect the validity, application or enforcement of the remaining provisions of these regulations.

### Section 1010. Disclaimer of Liability

1010.A These regulations do not create any liability on the part of the town, its officials, agents, employees or representatives for alleged damages that result from reliance on these regulations or any lawful administrative action or decision taken under these regulations.

# Chapter 110. Exemptions

ⓘ *The purpose of this chapter is to allow minor land development without a zoning permit and recognize the land development that is exempted from local zoning by state or federal law.*

### Section 1101. General Exemptions

1101.A Except within the Flood Hazard Overlay District (see *Section 2203), a zoning permit is not required for:

(1) Emergency repair and stabilization of a structure damaged by any cause to the extent necessary to protect public health and safety and to protect the structure from the elements. Further repair, reconstruction or demolition beyond the minimum necessary to stabilize and secure the structure will require a zoning permit (see *Section 1207).

(2) Normal maintenance and repair of an existing structure that does not change any of the structure's exterior dimensions or its use.

(3) Demolition of a structure.

(4) Landscaping, grading and excavating associated with:

(a) Normal maintenance and repair of roads, driveways and parking areas; and

(b) Yard improvements for single-family or two-family residential properties.

(5) An accessory structure to a residential use that:

(a) Is less than 80 square feet in floor area;

(b) Is less than 10 feet in height;

(c) Meets applicable setback requirements for the zoning district; and

(d) Is located on a lot with not more than one other such exempt accessory structure.

(6) A fuel tank serving a dwelling that:

(a) Holds not more than 500 gallons;

(b) Meets applicable setback requirements for the zoning district; and

(c) Is sited, installed and secured in accordance with state and federal regulations.

(7) An outdoor light fixture on single- or two- family residential property with an initial output of not more than 3,000 lumens that is downward directed and shielded as necessary to prevent glare or light trespass off the property.

(8) A swimming pool without a permanent foundation that meets applicable setback requirements for the zoning district.

(9) A handicap ramp, uncovered entry stairs or walkway that:

(a) Does not extend into or obstruct a public right-of-way; and

(b) Does not interfere with corner visibility or sight distance for vehicular traffic.

(10) A solar energy device:

(a) That will be installed on and project not more than 10 feet above a sloped roof

(b) Of any height that will be installed on a flat roof (any roof with a slope of not more than 5%).

(11) A non-agricultural fence or wall that (an agricultural fence or wall is an exempt farm structure under *Section 1102):

(a) Is not more than 6 feet in height;

(b) Does not extend into or obstruct a public right-of-way;

(c) Does not interfere with corner visibility or sight distance for vehicular traffic;

(d) Does not result in flooding or ponding of water on abutting property or public rights-of-way.

(e) Does not pose a safety hazard and is not designed to inflict physical harm; and

(f) Is installed so that any support posts are to the inside and the "finished" or "good" side faces out.

(12) A television antenna, radio antenna, satellite dish or similar device used to provide on-site communication service that meets the criteria below:

(a) A roof-, wall-, or ground-mounted dish antenna with a face(s) not more than 15 square feet in area.

(b) A roof- or wall-mounted antenna that does not extend more than 12 feet above the roofline of the building it is attached to.

(c) A freestanding amateur radio antenna and its supporting structure that does not extend more than 50 feet above the ground.

(d) Such devices may exceed zoning district height requirements, but must meet zoning setback requirements.

(13) An antenna used for single-use local business radio dispatch purposes or for police, fire, ambulance or similar emergency dispatch purposes.

(14) Signs listed in *Subsection 3206.D.

(15) Garage sales, yard sales, auctions or similar activities that do not occur for longer than 3 consecutive days and for more than 12 days in any calendar year.

(16) Use of public or private land for non-commercial passive outdoor recreation or community gardening that does not involve the development or use of buildings.

(17) Use of public or private land for hunting, fishing or trapping in accordance with state regulations that does not involve the development or use of buildings.

(18) Maintenance of essential services.

(19) Construction or maintenance of a road, sidewalk, path, bridge, culvert, or other infrastructure within a public right-of-way (work within a public right-of-way requires a permit from VTrans or the Berlin Selectboard, as applicable).

1101.B Portable structures, temporary structures, moveable structures, storage trailers and other similar structures that may not have a foundation are not automatically exempt. They will be treated the same as permanently located structures with foundations under these regulations.

### Section 1102. Agriculture and Forestry

1102.A A zoning permit is not required to farm or harvest timber in accordance with the state's regulations and required practices.

ⓘ *The Vermont Agency of Agriculture establishes and enforces various rules and regulations for farming, including the Required Agricultural Practices (RAPs). The Vermont Division of Forestry establishes and enforces various rules and regulations for timber harvesting, including the Acceptable Management Practices (AMPs).*

1102.B A landowner will not need a zoning permit to build a farm structure, but:

(1) The landowner must complete a zoning permit application so the Zoning Administrator can confirm that the project is exempt. The Zoning Administrator will not charge the landowner an application fee for an exempt farm structure.

(2) The Zoning Administrator may request that the landowner submit a letter from the Vermont Agency of Agriculture, Food and Markets indicating that the proposed structure qualifies as an exempt farm structure under state statute.

(3) The Zoning Administrator will issue a letter documenting that the landowner may build and use the proposed structure for agricultural purposes without a zoning permit, but informing the landowner that a he/she will need to obtain a zoning permit before converting the structure to a non-agricultural use in accordance with these regulations.

(4) Except for a fence or wall used for agricultural purposes, an exempt farm structure must meet setback requirements unless the applicant provides the Zoning Administrator with a written waiver from the Vermont Secretary of Agriculture.

(5) An exempt farm structure may exceed building height or footprint requirements for the zoning district.

1102.C A zoning permit is required to convert an exempt farm structure from an agricultural to a nonagricultural use.

### Section 1103. Utility, Energy and Telecommunications Infrastructure

1103.A A zoning permit is not required for land development that receives a Certificate of Public Good from the Public Service Board. This includes a small renewable energy system that is connected to the grid (net-metered).

1103.B A zoning permit is not required for telecommunications equipment and related site development that does not exceed a footprint of 300 square feet and a height of 10 feet.

# Chapter 120. Vested Rights & Pre-Existing Development

ⓘ *The purpose of this chapter is to preserve the rights of property owners to maintain lawfully established uses or structures and of applicants who have lawfully filed for and/or received permits or approvals when there are changes to these regulations. It is also to specify how these regulations affect pre-existing land development.*

### Section 1201. Prior Permits and Approvals

1201.A If the Zoning Administrator lawfully issued a zoning permit before the Town of Berlin adopted or amended these regulations, an applicant will not need a new or amended permit for the project. However, if such an applicant does not substantially complete the land development or receive an extension before that permit expires, he/she will need to apply for a new zoning permit under the current regulations (see *Section 4204).

1201.B If an applicant received approval for a phased project before the Town of Berlin adopted or amended these regulations, the Zoning Administrator will issue permits for the land development as approved irrespective of any change in these regulations. However, if such an applicant does not substantially complete the phased project as a whole within the timeframe specified in the approval, he/she will need to apply for a new zoning permit under the current regulations.

1201.C If an applicant lawfully recorded an approved subdivision plat in the town's land records, that plat will remain valid and will not expire irrespective of any change in these regulations.

### Section 1202. Complete Applications

1202.A The Zoning Administrator will review an application based on the regulations in effect at the time he/she determined that the filed application was complete.

### Section 1203. Nonconforming Lots

1203.A A nonconforming lot may continue to exist unchanged indefinitely. If a nonconforming lot comes into common ownership with one or more contiguous lots, it will not be deemed merged with the contiguous lot(s) for the purposes of these regulations (an owner may choose to merge contiguous lots in accordance with *Section 4402).

1203.B An owner may develop a nonconforming lot in accordance with all applicable provisions of these regulations provided that the lot:

(1) Is legally subdivided and able to be conveyed separate from any other lot;

(2) Existed as of the effective date of these regulations;

(3) Is at least ⅛ acre (5,445 square feet) in area; and

(4) Is not less than 40 feet wide or deep.

### Section 1204. Nonconforming Structures

1204.A A nonconforming structure may continue to exist unchanged indefinitely.

1204.B An owner may undertake normal repair and maintenance of a nonconforming structure without a zoning permit in accordance with *Section 1101.

1204.C The Zoning Administrator may issue a zoning permit for development that would expand or alter the exterior dimensions of a nonconforming structure provided:

(1) The proposed development will not result in any portion of the structure encroaching further beyond the existing, nonconforming building line;

(2) The structure is not subject to conditions or restrictions from prior approvals or permits that would otherwise restrict the proposed developed; and

(3) The proposed development would not otherwise require site plan or conditional use approval.

1204.D The Development Review Board may approve a waiver or variance to allow expansion of a nonconforming structure that would result in a portion of that structure encroaching further beyond the existing, nonconforming building line (see *Section 4502 and Section 4503).

1204.E The Development Review Board may approve the reconstruction or replacement of a nonconforming structure as a conditional use if:

(1) In addition to meeting the requirements of *Section 4303, the applicant can demonstrate that due to site-specific conditions he/she cannot reasonably build a conforming replacement structure on the property that would be equivalent in size and function to the nonconforming structure.

### Section 1205. Nonconforming Uses

1205.A A nonconforming use may continue to exist unchanged indefinitely.

1205.B The Development Review Board may approve the expansion, extension or intensification of a nonconforming use as a conditional use.

1205.C The Development Review Board may grant conditional use approval to allow a nonconforming use to be changed to another nonconforming use. In addition to meeting the requirements of *Section 4303, the applicant must demonstrate that:

(1) The proposed nonconforming use is of a less intensive nature than the existing nonconforming use; and

(2) The proposed nonconforming use would be more compatible with the character of the area.

### Section 1206. Abandonment and Discontinuance

1206.A A property owner must not re-establish a nonresidential use without obtaining a zoning permit and any applicable approvals if the use has been abandoned or discontinued for more than one year unless:

(1) If the property owner has had to abandon or discontinue the nonresidential use as result of damage to the structure in which it is housed, he/she may re-establish the use once the structure has been repaired or rebuilt (see *Section 1207).

### Section 1207. Damaged or Destroyed Structures

1207.A See *Section 2203 if the damaged or destroyed structure is located within the Flood Hazard Overlay District.

1207.B Within 60 days of a structure being damaged or destroyed by any cause, the property owner must stabilize and secure it as needed to protect public health and safety, or demolish it.

1207.C The property owner will not need a zoning permit to act under *Subsection 1207.A or to make emergency repairs as needed to protect a damaged structure from the elements in accordance with *Subsection 1101.A(1).

1207.D Except as specifically authorized in *Subsection 1207.B or Subsection 1207.C, the property owner must obtain a zoning permit to repair, reconstruct or replace a damaged or destroyed structure in accordance with the following:

(1) The Zoning Administrator will waive the fee for the zoning permit if the property owner applies for a zoning permit within one year of the structure being damaged or destroyed.

(2) If the damaged or destroyed structure was nonconforming, the property owner may rebuild it provided that:

(a) The structure as reconstructed will not expand or increase the footprint, floor area or height of the structure immediately prior to the damage or destruction.

(b) The structure as reconstructed will not have a greater degree of nonconformity than the structure had immediately prior to the damage or destruction.

(c) He/she obtains a zoning permit for the reconstruction within one year of the structure being damaged or destroyed.

# PART 2. ZONING DISTRICTS & STANDARDS

## Chapter 200. General Provisions

ⓘ *The purpose of this chapter is to establish zoning districts that implement the land use policies of the Berlin Town Plan.*

### Section 2001. Establishment of Base Zoning Districts & Neighborhoods

2001.A These regulations establish the following zoning districts as shown on the Official Zoning Map and described in *Section 2005:

(1) Town Center (TC) District (*Section 2101)

(2) Mixed Use (MU) District (*Section 2102)

(3) Commercial (COM) District (*Section 2103)

(4) Light Industrial (LI) District (*Section 2104)

(5) Industrial (IN) District (*Section 2105)

(6) Residential (RES) District (*Section 2106)

(7) Hamlet (HM) District (*Section 2107)

(8) Rural (RL) District (*Section 2108)

(9) Upland Conservation (UC) District (*Section 2109)

(10) Shoreland Conservation (SC) District (*Section 2110)

### Section 2002. Establishment of Overlay Zoning Districts

2002.A These regulations establish the following overlay districts as shown on the Official Zoning Map and described in *Section 2005:

(1) Airport (AIR) Overlay District (*Section 2201)

(2) Source Water (WTR) Overlay District (*Section 2202)

(3) Flood Hazard (FLD) Overlay District (*Section 2203)

2002.B The overlay districts recognize unique areas that require special consideration to further the purposes of these regulations and the *Berlin Town Plan*.

2002.C Within the overlay districts, the standards of both the base and overlay district apply.

### Section 2003. Official Zoning Map

2003.A The map(s) delineating the boundaries of the various base and overlay zoning districts established in this chapter are incorporated by reference into these regulations and adopted as part of these regulations, and constitute the Official Zoning Map.

2003.B The Official Zoning Map is on file in the town office. A small-scale, unofficial version of the map(s) is found in Appendix *.

### Section 2004. Zoning District Boundaries

2004.A If a specific distance or measurement is not shown on the map, the Zoning Administrator will interpret any Official Zoning Map boundaries indicated as approximately following:

(1) Roads, railroad lines, power lines or rights-of-way to follow the centerlines of such roads, railroad lines, power lines or rights-of-way.

(2) Lot lines or municipal boundaries to follow such lines or boundaries.

(3) Rivers, streams or water bodies to follow the centerlines of such rivers, streams or water bodies.

2004.B The Zoning Administrator will interpret any of the features listed above to be located where they exist on the ground or shown on a survey (prepared and stamped by a Vermont licensed land surveyor) at the time of the interpretation if they vary from their depiction on the Official Zoning Map except that:

(1) A boundary line adjustment or subdivision that changes the location of a lot line will not change the location of any zoning district boundary indicated as following that lot line.

### Section 2005. Use Standards

2005.A **Applicability.** Land development must conform to the use standards for the applicable zoning district unless:

(1) The subject use is a nonconformity and the proposed land development is in conformance with the requirements of *Section 1203.

2005.B **Mixed Uses.** Property owners may use a lot for any combination of uses allowed in the zoning district.

2005.C **Prohibited Uses.** A use not specifically listed as permitted or conditional in a zoning district is prohibited unless the Zoning Administrator determines that the unlisted use:

(1) Is materially similar to a listed use in the same zoning district in accordance with *Subsection 2005.D; or

(2) Is required to be permitted in a zoning district by state or federal law.

2005.D **Materially Similar Uses.** The Zoning Administrator may:

(1) Determine that an unlisted use is materially similar to a listed use allowed in the same zoning district if the proposed use has similar functions, characteristics and impacts to a listed use allowed in the same zoning district; or

(2) Refer the applicant to the Development Review Board to determine whether an unlisted use is materially similar to a listed use allowed in the same district.

2005.E **Principal Buildings.** Property owners may locate more than one principal building on a lot in accordance with the following:

(1) The total amount of development on the lot must not exceed the maximum density allowed in the district.

(2) No more than 2 detached single-family homes may be located on any lot unless approved as part of a planned unit development.

(3) Each building must meet the applicable dimensional standards of the zoning district.

(4) The distance between new buildings or between a new building and an existing building must not be less than twice the side setback required in the zoning district, unless they are attached.

(5) Approval of multiple principal buildings on a lot will not constitute a right to subdivide or separately convey those structures except in accordance with these regulations.

### Section 2006. Dimensional Standards

2006.A **Applicability.** Land development must conform to the dimensional standards for the applicable zoning district unless:

(1) The subject lot or structure is a nonconformity and the proposed land development is in conformance with the requirements of *Section 1203;

(2) The applicant receives a waiver (*Section 4502) or variance (*Section 4503) from the Development Review Board; or

(3) The proposed land development will be approved as a planned unit development.

2006.B **Lot Frontage.** All lots must front on a public or private road as specified in each zoning district and in accordance with the following:

(1) An existing lot without the minimum required frontage on public or private road must have access to such a road over an easement or right-of-way not less than 20 feet wide for single-and two-family residential lots and 50 feet wide for all other lots.

(2) Lots that front on more than one road will only be required to meet minimum frontage requirements on one road.

(3) All new lots created under these regulations must have the minimum frontage on a public or private road unless the Development Review Board:

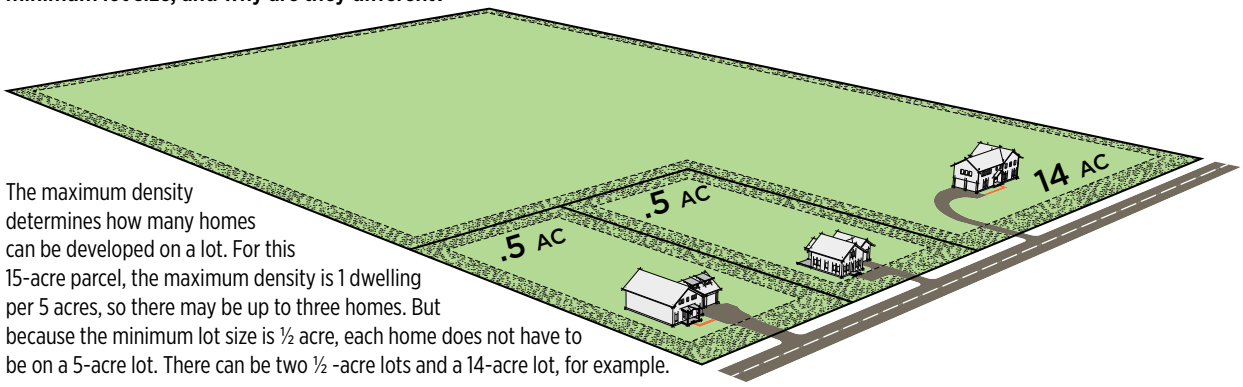
(a) Approves a lot with less frontage as part of a planned unit development in accordance with the provisions of **Error! Reference source not found.**;

(b) Waives or modifies the frontage requirement for new residential lots in the Rural or Upland Conservation districts that will be clustered and accessed from shared driveways, provided that each lot has access to a public or private road over an easement or right-of-way not less than 20 feet wide; or

(c) Waives or modifies the frontage requirement for new lots in the Rural, Shoreland Conservation or Upland Conservation districts that will be used for farming, forestry or conservation purposes, provided that each lot has access to a public or private road over an easement or right-of-way not less than 50 feet wide.

2006.C **Lot Size and Residential Density.** Certain districts have both a minimum lot size and a maximum residential density. In rural areas, this is intended to allow the creation of small house lots in order to minimize fragmentation of larger parcels of land that are used for agriculture, forestry or open space purposes. In residential and mixed use areas, this is intended to allow higher-density, multi-family housing.

**Why is there both a maximum density and minimum lot size, and why are they different?**




The maximum density determines how many homes can be developed on a lot. For this 15-acre parcel, the maximum density is 1 dwelling per 5 acres, so there may be up to three homes. But because the minimum lot size is ½ acre, each home does not have to be on a 5-acre lot. There can be two ½ -acre lots and a 14-acre lot, for example.

# Chapter 210. Base Zoning Districts

ⓘ *The purpose of this chapter is to describe the use and development standards that apply in each zoning district.*

## Section 2101. Town Center (TC) District

2101.A **Purpose.** The intent of the Town Center District is to recognize and reinforce this area as a regional service center by:

(1) Establishing a well-defined, mixed-use, compact and walkable center.

(2) Transforming Fisher Road and Berlin Mall Road into pedestrian-friendly streets defined by sidewalks, street trees and landscaping, and buildings located close to the road.

(3) Encouraging infill with smaller buildings along Fisher Road and Berlin Mall Road, and within underutilized parcels and parking lots.

(4) Attracting regional-scale retail and service uses that will reuse and/or redevelop sites and buildings over time in response to evolving lifestyle preferences and market needs.

(5) Promoting site designs that feature reduced parking footprints, landscaping and green infrastructure.

(6) Encouraging quality and efficient construction with durable, low-maintenance materials and distinctive architectural designs.

(7) Allowing for higher density housing in areas that can be served by public infrastructure and transit.

2101.B **Permitted Uses.** The Zoning Administrator may issue a zoning permit for the following uses:

(1) Multi-family dwelling
(2) Accessory dwelling
(3) Home occupation
(4) Home business
(5) Family childcare home
(6) Congregate living
(7) Assisted living
(8) Skilled nursing services
(9) Bed and breakfast or inn
(10) Rooming or boarding house
(11) Hotel or motel
(12) Shop or store
(13) Open market
(14) Lawn, garden or farm supply sales
(15) Lumber or building materials sales
(16) Sales lot
(17) Rental and leasing
(18) Office or personal/business service
(19) Restaurant
(20) Tavern
(21) Media broadcast facility or studio
(22) Data center or information services
(23) Indoor recreation
(24) Outdoor recreation
(25) Religious facility
(26) Healthcare facility
(27) Education facility
(28) Government facility
(29) Cultural facility
(30) Funeral home or cremation facility
(31) Supervision or rehabilitative services
(32) Daycare facility
(33) Transit facility
(34) Essential services
(35) Communication antenna
(36) Agriculture or forestry

(37) The applicant must receive site plan approval from the Development Review Board before the Zoning Administrator may issue a zoning permit for any of the uses not underlined.

(38) The applicant must obtain conditional use approval from the Development Review Board before the Zoning Administrator may issue a permit for:

(a) Construction of more than 16,000 square feet of commercial or industrial space;

(b) A multi-family or mixed-use development containing more than 16 dwelling units; or

(c) A use with drive-through or drive-in service.

2101.C **Conditional Uses.** The applicant must obtain conditional use approval from the Development Review Board before Zoning Administrator may issue a zoning permit for the following:

(1) Single-family dwelling
(2) Two-family dwelling
(3) Fueling station
(4) Repair and service
(5) Light industry
(6) Warehouse or storage
(7) Wholesale trade
(8) Laboratory or research facility
(9) Parking
(10) Communication tower

2101.D **Dimensional Standards.** Land development within this district must conform to the following:

| | | |
|---|---|---|
| (1) | Lot size | 20,000 sf min |
| (2) | Lot frontage | 90 ft min |
| (3) | Lot coverage | 70% max |
| (4) | Front setback | 10 ft min to 80 ft max as measured from the edge of ROW |
| (5) | Side setback | 10 ft min or 25 ft if abutting a rural or residential district |
| (6) | Rear setback | 10 ft min or 50 ft if abutting a rural or residential district |
| (7) | Riparian setback | 20 ft min |
| (8) | Residential density | 1 dwelling unit per 2,000 sf of lot area max |
| (9) | Floor area ratio | 3.0 max |
| (10) | Building height | 25 ft min to 60 ft max |

2101.E **Walkability Standards.** Land development that requires major site plan approval (see *Section 4302) must meet or exceed the following standards:

(1) Installing and maintaining a sidewalk at least 5 feet wide along the lot frontage in accordance with Paragraph 3203.E(1).

(2) Providing at least one building entrance that faces the road and sidewalk.

(3) Installing and maintaining internal walkways from the sidewalk and any parking lots or transit stops to the building entrance(s) that are designed to separate pedestrian and vehicle traffic.

2101.F **Architectural Standards.** Land development that requires major site plan approval (see *Section 4302) to construct or renovate a principal building must meet or exceed the following standards:

(1) Orienting buildings to the road.

(2) Incorporating visible changes in wall plane and roof form that break up wide facades into multiple bays. A bay must not be more than 40 feet wide.

(3) Featuring a regular pattern of windows and entries on the facade. The façade of new retail buildings must incorporate a storefront design with clear glass windows offering views into the building interior that comprise a minimum of 60% of the ground-level wall area up to 10 feet above the finished grade. For new building facades wider than 40 feet, the bay with the principal entrance must have a storefront design and the Development Review Board may waive or modify the requirement for the remaining bays provided they incorporate other elements of architectural interest and/or screening as required below.

(4) Screening any stretches of solid or blank walls between windows/entries that are more than 40 feet in length with landscaping.

(5) Locating any vehicle or service entrances to the side or rear of the building.

### Section 2102. Mixed Use (MU) District

2102.A **Purpose.** The intent of the Mixed Use District is to recognize and reinforce these areas as neighborhood service centers by:

(1) Fostering mixed-use and integrated land use patterns.

(2) Promoting high-quality site and building design.

(3) Allowing for higher density housing in areas with access to major transportation corridors, transit, services and/or public infrastructure.

(4) Ensuring that commercial and industrial uses will be located, scaled, designed and operated to minimize adverse impacts on nearby residential uses.

2102.B **Permitted Uses.** The Zoning Administrator may issue a zoning permit for the following uses:

(1) <u>Accessory dwelling</u>
(2) <u>Home occupation</u>
(3) Home business
(4) <u>Family childcare home</u>
(5) Bed and breakfast or inn
(6) Rooming or boarding house
(7) Hotel or motel
(8) Shop or store
(9) Open market
(10) Lawn, garden or farm supply sales
(11) Lumber or building materials sales
(12) Sales lot
(13) Repair and service
(14) Rental and leasing
(15) Office or personal/business service
(16) Restaurant
(17) Tavern
(18) Warehouse or storage
(19) Laboratory or research facility
(20) Media broadcast facility or studio
(21) Data center or information services
(22) Wholesale trade
(23) Indoor recreation
(24) Outdoor recreation
(25) Religious facility
(26) Healthcare facility
(27) Education facility
(28) Government facility
(29) Cultural facility
(30) Cemetery
(31) Funeral home or cremation facility
(32) Daycare facility
(33) Parking
(34) <u>Essential services</u>
(35) <u>Communication antenna</u>
(36) <u>Agriculture or forestry</u>
(37) Stable or equine facility
(38) Kennel

(39) The applicant must receive site plan approval from the Development Review Board before the Zoning Administrator may issue a zoning permit for any of the uses not underlined.

(40) The applicant must obtain conditional use approval from the Development Review Board before the Zoning Administrator may issue a permit for:

(a) Construction of more than 12,000 square feet of commercial or industrial space; or

(b) A use with drive-through or drive-in service.

2102.C **Conditional Uses.** The applicant must obtain conditional use approval from the Development Review Board before Zoning Administrator may issue a zoning permit for the following:

(1) Single-family dwelling
(2) Two-family dwelling
(3) Multi-family dwelling
(4) Congregate living
(5) Assisted living
(6) Skilled nursing services
(7) Fueling station
(8) Contractor's yard
(9) Light industry
(10) Supervision or rehabilitative services
(11) Transit facility
(12) Communication tower
(13) Extracting, quarrying or stone cutting
(14) Rural enterprise

2102.D **Dimensional Standards.** Land development within this district must conform to the following:

| | | |
|---|---|---|
| (1) | Lot size | 30,000 sf min |
| (2) | Lot frontage | 120 ft min |
| (3) | Lot coverage | 60% max |
| (4) | Front setback | 20 ft min to 100 ft max as measured from the edge of ROW |
| (5) | Side setback | 25 ft min or 50 ft if abutting a rural or residential district |
| (6) | Rear setback | 25 ft min or 100 ft if abutting a rural or residential district |
| (7) | Riparian setback | 30 ft min |
| (8) | Residential density | 1 dwelling unit per 10,000 sf of lot area max |
| (9) | Floor area ratio | 1.5 max |
| (10) | Building height | 35 ft max |

2102.E **Access Management Standards.** Applicants must design any land development within this district that requires major site plan approval to eliminate any pre-existing areas with uncontrolled or undefined access from the road in accordance with the access management standards of *Section 3203.

### Section 2103. Commercial (COM) District

2103.A **Purpose.** The intent of the Commercial District is to recognize and reinforce this area as a regional commercial center by:

(1) Fostering interconnected land use patterns and access management that improve traffic flow.

(2) Promoting high-quality site designs that feature reduced parking footprints, landscaping, green infrastructure and pedestrian circulation.

(3) Encouraging quality and efficient construction with durable, low-maintenance materials and distinctive architectural designs.

(4) Protecting water quality in the Stevens Branch.

2103.B **Permitted Uses.** The Zoning Administrator may issue a zoning permit for the following uses:

(1) <u>Accessory dwelling</u>
(2) <u>Home occupation</u>
(3) Home business
(4) <u>Family childcare home</u>
(5) Bed and breakfast or inn
(6) Rooming or boarding house
(7) Hotel or motel
(8) Shop or store
(9) Open market
(10) Lawn, garden or farm supply sales
(11) Lumber or building materials sales
(12) Sales lot
(13) Fueling station
(14) Repair and service
(15) Rental and leasing
(16) Office or personal/business service
(17) Restaurant
(18) Tavern
(19) Light industry
(20) Warehouse or storage
(21) Laboratory or research facility
(22) Media broadcast facility or studio
(23) Data center or information services
(24) Wholesale trade
(25) Indoor recreation
(26) Outdoor recreation
(27) Healthcare facility
(28) Daycare facility
(29) Parking
(30) Transit facility
(31) Rail transportation facility
(32) Truck transportation facility
(33) <u>Essential services</u>
(34) <u>Communication antenna</u>
(35) Communication tower
(36) <u>Agriculture or forestry</u>
(37) Kennel
(38) Rural enterprise

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(39) The applicant must receive site plan approval from the Development Review Board before the Zoning Administrator may issue a zoning permit for any of the uses not underlined.

(40) Accessory dwellings, home occupations or businesses and family childcare homes are allowed only as an accessory use to a pre-existing dwelling.

2103.C **Conditional Uses.** The applicant must obtain conditional use approval from the Development Review Board before Zoning Administrator may issue a zoning permit for the following:

(1) Multi-family dwelling
(2) Contractor's yard
(3) Religious facility
(4) Education facility
(5) Government facility
(6) Cultural facility
(7) Funeral home or cremation facility
(8) Extracting, quarrying or stone cutting

2103.D **Dimensional Standards.** Land development within this district must conform to the following:

| | | |
|---|---|---|
| (1) | Lot size | 30,000 sf min |
| (2) | Lot frontage | 120 ft min |
| (3) | Lot coverage | 70% max |
| (4) | Front setback | 20 ft min to 100 ft max as measured from the edge of ROW |
| (5) | Side setback | 25 ft min or 50 ft if abutting a rural or residential district |
| (6) | Rear setback | 25 ft min or 100 ft if abutting a rural or residential district |
| (7) | Riparian setback | 30 ft min |
| (8) | Residential density | 1 dwelling unit per 6,000 sf of lot area max |
| (9) | Floor area ratio | 1.0 max |
| (10) | Building height | 45 ft max |

2103.E **Access Management Standards.** Applicants must design any land development within this district that requires major site plan approval to eliminate any pre-existing areas with uncontrolled or undefined access from the road in accordance with the access management standards of *Section 3203.

### Section 2104. Light Industrial (LI) District

2104.A **Purpose.** The intent of the Light Industrial District is to recognize and reinforce this area as a regional industrial and commercial center by:

(1) Providing a location primarily for industrial and service businesses near the airport and major transportation corridors.

(2) Maintaining a safe, healthy and attractive environment that will allow the town to retain and attract businesses.

(3) Encouraging quality and efficient construction with durable, low-maintenance materials.

(4) Guiding uses that would be incompatible with nearby industrial and services businesses to other areas of town.

(5) Protecting surrounding rural and residential districts from any adverse impacts associated with industrial and service businesses.

2104.B **Permitted Uses.** The Zoning Administrator may issue a zoning permit for the following uses:

(1) <u>Accessory dwelling</u>
(2) <u>Home occupation</u>
(3) Home business
(4) <u>Family childcare home</u>
(5) Office or personal/business service
(6) Light industry
(7) Warehouse or storage
(8) Laboratory or research facility
(9) Media broadcast facility or studio
(10) Data center or information services
(11) Wholesale trade
(12) Daycare facility
(13) Parking
(14) Transit facility
(15) Air transportation facility
(16) Rail transportation facility
(17) Truck transportation facility
(18) <u>Essential services</u>
(19) <u>Communication antenna</u>
(20) Communication tower
(21) <u>Agriculture or forestry</u>
(22) Rural enterprise

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(23) The applicant must receive site plan approval from the Development Review Board before the Zoning Administrator may issue a zoning permit for any of the uses not underlined.

(24) Accessory dwellings, home occupations or businesses and family childcare homes are allowed only as an accessory use to a pre-existing dwelling.

2104.C **Conditional Uses.** The applicant must obtain conditional use approval from the Development Review Board before Zoning Administrator may issue a zoning permit for the following:

(1) Hotel or motel
(2) Shop or store
(3) Lawn, garden or farm supply sales
(4) Lumber or building supply sales
(5) Sales lot
(6) Repair and service
(7) Rental and leasing
(8) Restaurant
(9) Contractor's yard
(10) Heavy industry
(11) Salvage yard or recycling facility
(12) Composting facility
(13) Religious facility
(14) Healthcare facility
(15) Government facility
(16) Funeral home or cremation facility
(17) Extracting, quarrying or stone cutting

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(17) Uses with drive-through or drive-in service are prohibited.

(18) The Development Review Board may only approve lodging, retail and service uses upon finding that the proposed land development will:

(a) Be compatible with the purpose of this district; and

(b) Not adversely impact the ability of surrounding property owners to use or develop their land for industrial purposes.

2104.D **Dimensional Standards.** Land development within this district must conform to the following:

| | | |
|---|---|---|
| (1) | Lot size | 40,000 sf min |
| (2) | Lot frontage | 150 ft min |
| (3) | Lot coverage | 70% max |
| (4) | Front setback | 50 ft min as measured from the road centerline |
| (5) | Side setback | 25 ft min or 100 ft if abutting a rural or residential district |
| (6) | Rear setback | 25 ft min or 100 ft if abutting a rural or residential district |
| (7) | Riparian setback | 40 ft min |
| (9) | Floor area ratio | 1.0 max |
| (10) | Building height | 40 ft max |

2104.E **Access Management Standards.** Applicants must design any land development within this district that requires major site plan approval to eliminate any pre-existing areas with uncontrolled or undefined access from the road in accordance with the access management standards of *Section 3203.

### Section 2105. Industrial (IND) District

2105.A **Purpose.** The intent of the Industrial District is to attract and retain industrial and service businesses by:

(1) Providing suitable sites for heavier, more intensive or more land consumptive businesses in proximity to major transportation and utility infrastructure.

(2) Guiding uses that would be incompatible with industrial uses to other areas of town.

(3) Protecting surrounding rural and residential districts from any adverse impacts associated with industrial uses.

2105.B **Permitted Uses.** The Zoning Administrator may issue a zoning permit for the following uses:

(1) Accessory dwelling
(2) Home occupation
(3) Home business
(4) Family childcare home
(5) Contractor's yard
(6) Light industry
(7) Heavy industry
(8) Warehouse or storage
(9) Laboratory or research facility
(10) Media broadcast facility or studio
(11) Data center or information services
(12) Wholesale trade
(13) Salvage yard or recycling facility
(14) Composting facility
(15) Funeral home or cremation facility
(16) Parking
(17) Transit facility
(18) Rail transportation facility
(19) Truck transportation facility
(20) Essential services
(21) Communication antenna
(22) Communication tower
(23) Agriculture or forestry
(24) Extracting, quarrying or stone cutting
(25) Rural enterprise

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(26) The applicant must receive site plan approval from the Development Review Board before the Zoning Administrator may issue a zoning permit for any of the uses not underlined.

(27) Accessory dwellings, home occupations or businesses and family childcare homes are allowed only as an accessory use to a pre-existing dwelling.

2105.C **Conditional Uses.** The applicant must obtain conditional use approval from the Development Review Board before Zoning Administrator may issue a zoning permit for the following:

(1) Lawn, garden or farm supply sales
(2) Lumber or building supply sales
(3) Repair and service
(4) Rental and leasing
(5) Office or personal/business service
(6) Government facility
(7) Daycare facility

2105.D **Dimensional Standards.** Land development within this district must conform to the following:

| | | |
|---|---|---|
| (1) | Lot size | 80,000 sf min |
| (2) | Lot frontage | 180 ft min |
| (3) | Lot coverage | 60% max |
| (4) | Front setback | 50 ft min as measured from the road centerline |
| (5) | Side setback | 25 ft min or 50 ft if abutting a rural or residential district |
| (6) | Rear setback | 25 ft min or 100 ft if abutting a rural or residential district |
| (7) | Riparian setback | 50 ft min |
| (9) | Floor area ratio | 0.5 max |
| (10) | Building height | 35 ft max |

2105.E **Access Management Standards.** Applicants must design any land development within this district that requires major site plan approval to eliminate any pre-existing areas with uncontrolled or undefined access from the road in accordance with the access management standards of *Section 3203.

### Section 2106. Residential (RES) District

2106.A **Purpose.** The intent of the Residential District is to protect and promote compact and efficient residential neighborhoods in areas close to major transportation corridors and services that are or can reasonably be served by public transit and infrastructure.

2106.B **Permitted Uses.** The Zoning Administrator may issue a zoning permit for the following uses:

(1) Single-family dwelling
(2) Two-family dwelling
(3) Multi-family dwelling
(4) Accessory dwelling
(5) Home occupation
(6) Home business
(7) Family childcare home
(8) Bed and breakfast or inn
(9) Rooming or boarding house
(10) Religious facility
(11) Cemetery
(12) Essential services
(13) Communication antenna
(14) Agriculture or forestry

(15) The applicant must receive site plan approval from the Development Review Board before the Zoning Administrator may issue a zoning permit for any of the uses not underlined.

(16) The applicant must obtain conditional use approval from the Development Review Board before the Zoning Administrator may issue a permit for a multi-family development containing more than 8 dwelling units.

2106.C **Conditional Uses.** The applicant must obtain conditional use approval from the Development Review Board before Zoning Administrator may issue a zoning permit for the following:

(1) Congregate living
(2) Assisted living
(3) Skilled nursing services
(4) Outdoor recreation
(5) Educational facility
(6) Government facility
(7) Cultural facility
(8) Funeral home or cremation facility
(9) Daycare facility
(10) Transit facility
(11) Rural enterprise

(13) Rural enterprises are only allowed on lots at least 5 acres in size.

2106.D **Dimensional Standards.** Land development within this district must conform to the following:

| | | |
|---|---|---|
| (1) | Lot size | 12,000 sf min |
| (2) | Lot frontage | 60 ft min |
| (3) | Lot coverage | 40% max |
| (4) | Front setback | 50 ft min as measured from the road centerline |
| (5) | Side setback | 15 ft min |
| (6) | Rear setback | 30 ft min |
| (7) | Riparian setback | 30 ft min |
| (8) | Residential density | 1 dwelling unit per 6,000 sf of lot area max |
| (9) | Floor area ratio | 0.3 max |
| (10) | Building footprint | 6,000 sf max |
| (11) | Building height | 35 ft max |

2106.E **Walkability Standards.** Applicants must design any land development within this district that requires major site plan or major subdivision approval to:

(1) Install and maintain a sidewalk at least 5 feet wide along the lot frontage in accordance with Paragraph 3203.E(1).

(2) Install and maintain internal walkways from any sidewalk, parking lots or transit stops to the building entrance(s) that are designed to separate pedestrian and vehicle traffic.

### Section 2107. Hamlet (HAM) District

2107.A **Purpose.** The Hamlet District is intended to recognize and reinforce the historic rural hamlet of Riverton by:

(1) Maintaining a mix of uses within a well-defined, compact area.

(2) Preserving and extending the traditional settlement pattern characterized by small lots and shallow setbacks.

(3) Protecting and enhancing historic buildings and rural character.

2107.B **Permitted Uses.** The Zoning Administrator may issue a zoning permit for the following uses:

(1) Single-family dwelling
(2) Two-family dwelling
(3) Accessory dwelling
(4) Home occupation
(5) Home business
(6) Family childcare home
(7) Bed and breakfast or inn
(8) Shop or store
(9) Lawn, garden or farm supply
(10) Office or personal/business service
(11) Restaurant
(12) Tavern
(13) Media broadcast facility or studio
(14) Data center or information services
(15) Indoor recreation
(16) Outdoor recreation
(17) Religious facility
(18) Healthcare facility
(19) Education facility
(20) Government facility
(21) Cultural facility
(22) Cemetery
(23) Funeral home or cremation facility
(24) Daycare facility
(25) Essential services
(26) Communication antenna
(27) Agriculture or forestry

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(28) The applicant must receive site plan approval from the Development Review Board before the Zoning Administrator may issue a zoning permit for any of the uses not underlined.

(29) The applicant must obtain conditional use approval from the Development Review Board before the Zoning Administrator may issue a permit for construction of more than 3,000 square feet of commercial or industrial space.

(30) Uses with drive-through or drive-in service are prohibited.

2107.C **Conditional Uses.** The applicant must obtain conditional use approval from the Development Review Board before Zoning Administrator may issue a zoning permit for the following:

(1) Multi-family dwelling
(2) Congregate living
(3) Assisted living
(4) Rooming or boarding house
(5) Open market
(6) Lumber or building materials sales
(7) Fueling station (must front on Rt. 12)
(8) Repair and service
(9) Light industry
(10) Warehouse or storage
(11) Laboratory or research facility
(12) Wholesale trade
(13) Supervision or rehabilitative services
(14) Stable or equine facility
(15) Extracting, quarrying or stone cutting
(16) Rural enterprise

2107.D **Dimensional Standards.** Land development within this district must conform to the following:

| | | |
|---|---|---|
| (1) | Lot size | 16,000 sf min for residential uses<br>40,000 sf min for mixed and nonresidential uses |
| (2) | Lot frontage | 90 ft min |
| (3) | Lot coverage | 80% max |
| (4) | Front setback | 40 ft min as measured from the road centerline |
| (5) | Side setback | 10 ft min |
| (6) | Rear setback | 20 ft min |
| (7) | Riparian setback | 20 ft min |
| (8) | Residential density | 1 dwelling unit per 8,000 sf of lot area max |
| (9) | Floor area ratio | 1.0 max |
| (10) | Building footprint | 6,000 sf max |
| (11) | Building height | 35 ft max |

### Section 2108. Rural (RL) District

2108.A **Purpose.** The Rural District is intended to protect rural character, working landscape and environmental quality by:

(1) Promoting the productive use of rural land for farming, forestry and traditional outdoor recreation uses.

(2) Preventing strip development and rural sprawl along major road corridors.

(3) Keeping the overall density of residential development low while encouraging clustering of new homes to minimize loss and fragmentation of farmland and forests.

(4) Protecting fragile natural resources including steep slopes, high elevations, wetlands, surface waters, wildlife corridors and habitat, and large forest blocks.

2108.B **Permitted Uses.** The Zoning Administrator may issue a zoning permit for the following uses:

(1) Single-family dwelling
(2) Two-family dwelling
(3) Accessory dwelling
(4) Home occupation
(5) Family childcare home
(6) Bed and breakfast or inn
(7) Outdoor recreation
(8) Religious facility
(9) Cemetery
(10) Essential services
(11) Communication antenna
(12) Agriculture or forestry
(13) Stable or equine facility
(14) Game, fishing or wildlife reserve

(15) The applicant must receive site plan approval from the Development Review Board before the Zoning Administrator may issue a zoning permit for any of the uses not underlined.

2108.C **Conditional Uses.** The applicant must obtain conditional use approval from the Development Review Board before Zoning Administrator may issue a zoning permit for the following:

(1) Multi-family dwelling
(2) Home business
(3) Rooming or boarding house
(4) Lawn, garden or farm supply
(5) Lumber or building materials sales
(6) Contractor's yard
(7) Warehouse or storage
(8) Media broadcast facility or studio
(9) Wholesale trade
(10) Composting facility
(11) Education facility
(12) Government facility
(13) Cultural facility
(14) Daycare facility
(15) Communication tower
(16) Kennel
(17) Extracting, quarrying or stone cutting
(18) Rural enterprise

(19) Retail uses are only allowed on lots fronting on a Class 2 road or state highway.

2108.D **Dimensional Standards.** Land development within this district must conform to the following:

| | | |
|---|---|---|
| (1) | Lot size | ½ acre min for residential uses<br>5 acre min for mixed and nonresidential uses |
| (2) | Lot frontage | 120 ft min |
| (3) | Lot coverage | 20% max |
| (4) | Front setback | 60 ft min from the road centerline |
| (5) | Side setback | 20 ft min |
| (6) | Rear setback | 20 ft min |
| (7) | Riparian setback | 50 ft min |
| (8) | Residential density | 1 du per 2 acres accessed from a Class 2 road or state hwy<br>1 du per 5 ac not accessed from a Class 2 road or state hwy |
| (9) | Floor area ratio | 0.5 max for lots <1 acre<br>0.2 max for lots 1 acre to <5 acres<br>0.1 max for lots 5 acres or more |
| (10) | Building height | 35 ft max |

2108.E **Rural Standards.** Applicants must design any land development within this district that requires major site plan or major subdivision approval to meet or exceed the following standards:

(1) Fitting new development into the rural landscape in a manner that:
   (a) Keeps development from dominating the view from the road;
   (b) Maintains scenic views;
   (c) Incorporates existing site elements such as open meadows, tree lines, landmark trees, or hedgerows; and
   (d) Keeps the amount of impervious surface to the minimum necessary to accommodate the proposed use; and
   (e) Minimizes disturbance of steep slopes and alteration of natural grades.

(2) Locating and designing development to minimize the fragmentation of productive farmland and large forest blocks.

(3) Preserving open space and natural vegetation to the maximum extent within and around the site.

(4) Locating and designing outdoor use areas to:
   (a) Avoid visual clutter;
   (b) Maintain an attractive roadscape; and
   (c) Screen utilitarian site elements and functions.

## Section 2109. Upland Conservation (UC) District

2109.A **Purpose.** The Upland Conservation District is intended to protect environmental quality, rural character, and the working landscape by:

(1) Conserving fragile natural resources including steep slopes, high elevations, wetlands, surface waters, wildlife corridors and habitat, and large forest blocks.

(2) Keeping the overall density of residential development in the remote areas of town very low and minimizing loss and fragmentation of forest blocks and farmland.

(3) Promoting the productive use of rural land for farming, forestry and traditional outdoor recreation uses.

2109.B **Permitted Uses.** The Zoning Administrator may issue a zoning permit for the following uses:

(1) Single-family dwelling
(2) Two-family dwelling
(3) Accessory dwelling
(4) Home occupation
(5) Family childcare home
(6) Essential services
(7) Agriculture or forestry

(8) The applicant must obtain conditional use approval from the Development Review Board before the Zoning Administrator may issue a permit for any land development proposed to be located above an elevation of 1,500 feet.

2109.C **Conditional Uses.** The applicant must obtain conditional use approval from the Development Review Board before Zoning Administrator may issue a zoning permit for the following:

(1) Bed and breakfast or inn
(2) Home business
(3) Outdoor recreation
(4) Education facility
(5) Government facility
(6) Communication antenna
(7) Communication tower
(8) Stable or equine facility
(9) Game, fishing or wildlife reserve
(10) Extracting, quarrying or stone cutting
(11) Rural enterprise

2109.D **Dimensional Standards.** Land development within this district must conform to the following:

| | | |
|---|---|---|
| (1) | Lot size | 1 acre min for residential uses<br>10 acre min for mixed and nonresidential uses |
| (2) | Lot frontage | 180 ft min |
| (3) | Lot coverage | 15% max |
| (4) | Front setback | 70 ft min from the road centerline |
| (5) | Side setback | 30 ft min |
| (6) | Rear setback | 30 ft min |
| (7) | Riparian setback | 50 ft min |
| (8) | Residential density | 1 du per 10 acres |
| (9) | Floor area ratio | 0.1 max |
| (10) | Building height | 35 ft max |

2109.E **Rural Standards.** Applicants must design any land development within this district that requires major site plan or major subdivision approval to meet or exceed the following standards:

(1) Locating and designing development to minimize the fragmentation of forest blocks and productive farmland.

(2) Preserving open space and existing natural vegetation to the maximum extent within and around the site.

(3) Fitting new development into the rural landscape in a manner that:

(a) Keeps development from dominating the view from the road;

(b) Maintains scenic views and ridgelines;

(c) Incorporates existing site elements such as open meadows, tree lines, landmark trees, or hedgerows;

(d) Keeps the amount of impervious surface to the minimum necessary to accommodate the proposed use; and

(e) Minimizes disturbance of steep slopes and alteration of natural grades.

## Section 2110. Shoreland Conservation (SC) District

2110.A **Purpose.** The Shoreland Conservation District is intended to protect water quality, rural character, and the scenic landscape around Berlin Pond by:

(1) Conserving fragile natural resources including shorelands, wetlands, surface waters, wildlife corridors and habitat, and open space.

(2) Keeping the overall density of residential development around the pond low and maintaining the rural and residential character of the area.

(3) Promoting the use of rural land for farming, forestry and traditional outdoor recreation uses.

2110.B **Permitted Uses.** The Zoning Administrator may issue a zoning permit for the following uses:

(1) Single-family dwelling
(2) Two-family dwelling
(3) Accessory dwelling
(4) Home occupation
(5) Family childcare home
(6) Essential services
(7) Agriculture or forestry

2110.C **Conditional Uses.** The applicant must obtain conditional use approval from the Development Review Board before Zoning Administrator may issue a zoning permit for the following:

(1) Bed and breakfast or inn
(2) Home business
(3) Outdoor recreation
(4) Education facility
(5) Government facility
(6) Communication antenna
(7) Communication tower
(8) Stable or equine facility
(9) Game, fishing or wildlife reserve
(10) Rural enterprise

2110.D **Dimensional Standards.** Land development within this district must conform to the following:

| | | |
|---|---|---|
| (1) | Lot size | 1 acre min for residential uses<br>5 acre min for mixed and nonresidential uses |
| (2) | Lot frontage | 180 ft min |
| (3) | Lot coverage | 15% max |
| (4) | Front setback | 70 ft min from the road centerline |
| (5) | Side setback | 30 ft min |
| (6) | Rear setback | 30 ft min |
| (7) | Riparian setback | 50 ft min |
| (8) | Residential density | 1 du per 5 acres |
| (9) | Floor area ratio | 0.1 max |
| (10) | Building height | 35 ft max |

2110.E **Rural Standards.** Applicants must design any land development within this district that requires major site plan or major subdivision approval to meet or exceed the following standards:

(1) Locating and designing development to minimize the fragmentation of forest blocks and productive farmland.

(2) Preserving open space and existing natural vegetation to the maximum extent within and around the site.

(3) Fitting new development into the rural landscape in a manner that:

(a) Keeps development from dominating the view from the road;

(b) Maintains scenic views of Berlin Pond;

(c) Incorporates existing site elements such as open meadows, tree lines, landmark trees, or hedgerows;

(d) Keeps the amount of impervious surface to the minimum necessary to accommodate the proposed use; and

(e) Minimizes disturbance of land within 250 feet of Berlin Pond and the alteration of natural grades.

# Chapter 220. Overlay Zoning Districts

ⓘ *The purpose of this chapter is to establish overlay zoning districts that supplement or supersede the standards of the underlying zoning district in order to address special conditions or resources that require additional or modified regulations.*

## Section 2201. Airport (AIR) Overlay District

2201.A **Purpose.** The purpose of the Airport Overlay District is to protect operations at the Edward F. Knapp State Airport and to ensure a compatible relationship between the airport and other development in the vicinity.

2201.B **Applicability.** The Airport Overlay District includes all land depicted on the Overlay District Map. All land use and development within this overlay district must conform to the standards of this section in addition to the requirements of the applicable base zoning district.

2201.C **Height Limitations.** Property owners must not install or construct structures or allow vegetation to grow in excess of a height that would interfere with airport operations as determined by the Zoning Administrator after consultation with the Airport Manager. The Zoning Administrator may:

(1) Require the applicant to submit documentation from a licensed engineer certifying that the proposed land development will not result in any airspace obstruction.

(2) Require the applicant to provide the maximum height of all proposed structures or vegetation based on the established airport elevation.

2201.D **Performance Standards.** Land use and development within this overlay district must not:

(1) Create electrical, magnetic or other emissions that would interfere with the operation of aircraft, aircraft communication, or aircraft guidance systems.

(2) Generate smoke, steam, dust or other air emissions that would impair visibility in a manner that creates a hazard to aviation.

(3) Result in light or glare that would impair visibility in a manner that creates a hazard to aviation.

(4) Install or use lights, signals or signs that could be confused with airport navigational lights or markings.

(5) Attract birds, waterfowl or other wildlife in a manner that creates a hazard to aviation.

(6) Otherwise endanger the landing, taking off or maneuvering of aircraft.

2201.E **Hazard Marking and Lighting.** The Zoning Administrator or Development Review Board may require the applicant to install, operate and maintain markers and lights as necessary to indicate the presence of a hazard to aircraft as a condition of approval.

2201.F **Referral.** The Zoning Administrator must:

(a) Send a copy of all complete applications for development within the Airport Overlay District to the Airport Manager.

(b) Not act to approve or deny the application for 30 days following the referral or until comments have been received, whichever is sooner, in accordance with *Section 4202.

### Section 2202. Source Water Protection (WTR) Overlay District

2202.A **Purpose.** The purpose of the Source Water Protection Overlay District is to prevent contamination, promote recharge and maintain the supply of the town's drinking water sources.

2202.B **Protection Areas.** The Source Water Protection Overlay District includes the following zones as depicted on *map:

(1) **Zone A.** Zone A, the Drinking Water Critical Impact Zone, is the area within Zones 1 and 2 identified in a water system's Source Protection Plan.

(2) **Zone B.** Zone B, the Drinking Water Potential Impact Zone, is the area within Zone 3 identified in a water system's Source Protection Plan.

2202.C **Uses.** The Town of Berlin prohibits the following uses within Zone A, but may allow them as a conditional use within Zone B to the extent allowed in the underlying zoning district:

(1) Funeral home or cemetery
(2) Golf course
(3) Stormwater management facility
(4) Highway maintenance facility
(5) Contractor's yard
(6) Extracting, quarrying or stone cutting
(7) Landfill or waste management facility
(8) Composting facility
(9) Underground storage tanks
(10) Bulk storage of flammable, combustible, toxic or hazardous materials
(11) Extraction or use of more than 10,000 gallons of water per day for purposes other than supplying the water system associated with the protection area

2202.D **Performance Standards.** Property owners must undertake land use and development within this overlay district as follows:

(1) Applicants must locate proposed development outside the overlay district to the maximum extent feasible.

(2) All facilities must adhere to applicable federal and state standards for the storage, handling, use and disposal of materials or wastes that have the potential to contaminate the drinking water supply if released into the environment.

(3) Any above ground facility (including open lagoons or ponds) involving the collection, handling, production, manufacture, use, storage, transfer or disposal of materials or wastes that have the potential to contaminate the drinking water supply if released into the environment must have a secondary containment system that:

(a) Is designed to intercept any leak or spill from the primary containment vessel or structure;

(b) Is provided with an overflow recovery catchment area (sump).

(c) Is easily inspected; and

(d) Capable of containing 110% of the largest volume of storage (a larger volume of storage may be necessary if precipitation will be able to collect in the secondary containment system).

(4) Any below ground facility (including storage tanks and pipes) containing or carrying of materials or wastes that have the potential to contaminate the drinking water supply if released into the environment must:

(a) Have double walls and inspectable sumps.

(b) Include a monitoring system and secondary standpipe for monitoring and recovery.

(5) All facilities involving the collection, handling, production, manufacture, use, storage, transfer or disposal of materials or wastes that have the potential to contaminate the drinking water supply if released into the environment must maintain an up-to-date contingency plan for preventing contamination of the drinking water supply should floods, fires, other natural catastrophes, equipment failure or other releases occur.

(6) All releases of materials or wastes that have the potential to contaminate the drinking water supply must be report to the Town of Berlin.

2202.E **Referral.** The Zoning Administrator must:

(a) Send a copy of all complete applications for development within the Source Water Protection Overlay District requiring Development Review Board approval to the water system operator and the Vermont Agency of Natural Resources Drinking Water and Groundwater Protection Division.

(b) Not act to approve or deny the application for 30 days following the referral or until comments have been received, whichever is sooner, in accordance with *Section 4202.

### Section 2203. Flood Hazard (FLD) Overlay District

2203.A **Purpose.** The Flood Hazard Overlay District regulates land development within the special flood hazard area to:

(1) Avoid and minimize the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flooding;

(2) Ensure that land development within flood hazard areas will be reasonably safe and will not reduce the ability of the floodplain to perform its natural function to store and transport flood waters; and

(3) Manage flood hazard areas in accordance with state and federal regulations so that the Town of Berlin, its residents and businesses will remain eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds.

2203.B **Precedence.** Any provision of this section will take precedence if it imposes a greater restriction than another provision of these regulations or any other town, state or federal regulations.

2203.C **Liability.** The provisions of this section do not:

(1) Imply that land outside this overlay district or that land development undertaken in conformance with this section will be free from flooding; and

(2) Create liability on the part of the Town of Berlin, or any town official or employee, for flood damage.

2203.D **Applicability.** The provisions of this section apply to the special flood hazard area as established in the most recent flood insurance studies and maps published by the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program as follows:

(1) The Town of Berlin has adopted the flood insurance studies and maps by reference and incorporated them into these regulations.

(2) If there is uncertainty with regard to the boundary of the special flood hazard area, the applicant may provide a letter of map amendment from FEMA to certify its location.

2203.E **Base Flood Elevations and Floodway Limits.** The Town of Berlin will use the base flood elevations and floodway limits provided by the National Flood Insurance Program to administer and enforce the provisions of this section except:

(1) The applicant must provide the information necessary to demonstrate conformance with the standards of this section where the National Flood Insurance Program has not provided base flood elevations and/or floodway limits. The applicant must use data from FEMA or other federal or state agencies where available.

2203.F **Applicability.** A property owner must obtain a zoning permit for all development (as specifically defined in this section) within the special flood hazard area not listed in *Subsection 2203.G as exempt.

2203.G **Uses.** The Town of Berlin may allow land use and development within the special flood hazard area that conforms to the standards of *Subsection 2203.H as specified below and to the extent allowed in the base zoning district:

| | | WITHIN THE FLOODWAY | OUTSIDE THE FLOODWAY | |
|---|---|---|---|---|
| | | | Rural Conservation Residential | All Other Districts |
| (1) | **Pre-Existing Structures and Uses** | | | |
| (a) | Non-substantial improvements to existing structures | P | P | P |
| (b) | Substantial improvements to existing structures | C | P | P |
| (c) | Replacement of existing structures | C | C | P |
| (d) | Reconstruction of substantially damaged structures | – | C | P |
| (e) | Demolition | EXEMPT | EXEMPT | EXEMPT |
| (f) | At grade parking accessory to existing uses | C | P | P |
| (g) | Outdoor storage accessory to existing uses | – | P | P |
| (h) | Replacement water or wastewater systems | C | P | P |
| (i) | Replacement storage tanks | C | P | P |
| (j) | Utilities serving existing structures | C | P | P |
| (k) | Fill needed to elevate existing structures | C | P | P |
| (l) | Maintenance of road or stormwater infrastructure | EXEMPT | EXEMPT | EXEMPT |
| (2) | **New Structures and Uses** | | | |
| (a) | Single- and two-family dwellings | – | – | – |
| (b) | Other principal and large accessory structures | – | – | C |
| (c) | Small accessory structures (500 sf or less) | – | P | P |
| (d) | New water or wastewater systems | – | P | P |
| (e) | New storage tanks | – | – | C |
| (f) | Utilities serving new structures | – | P | P |
| (g) | Fill needed to elevate new structures | – | P | P |
| (h) | Outdoor storage accessory to new uses | – | – | C |
| (3) | **Other Land Use and Development** | | | |
| (a) | Water-dependent structures and uses | P | P | P |
| (b) | Open space and passive recreation uses | EXEMPT | EXEMPT | EXEMPT |
| (c) | Agriculture and forestry | EXEMPT | EXEMPT | EXEMPT |
| (d) | Ponds | C | P | P |
| (e) | Stream channel management | P | P | P |
| (f) | Improvement of road or stormwater infrastructure | C | P | P |
| (g) | Grading or excavating | C | C | P |
| (h) | Fill for purposes other than elevating structures | – | – | C |
| (i) | Public utilities | C | C | P |
| (j) | Critical facilities | – | – | – |

(4) Any use not listed as exempt, permitted (P) or conditional (C) above is prohibited.

(5) A use listed as exempt above is exempt from meeting the standards of this section, but still may require a zoning permit under other provisions of these regulations.

2203.H **Development Standards.** Development within the special flood hazard area must conform to all of the following:

(1) **All Development.** All development must be:

(a) Located outside the special flood hazard area or on the least hazardous portion of the lot that can reasonably accommodate the proposed development;

(b) Reasonably safe from flooding;

(c) Adequately drained to reduce exposure to flooding;

(d) Designed, operated, maintained, modified, and adequately anchored to prevent flotation, collapse, release, or lateral movement of the structure, including the effects of buoyancy;

(e) Constructed with materials resistant to flood damage;

(f) Constructed using methods and practices that minimize flood damage (the Town of Berlin strongly recommends that applicants follow the flood construction requirements of the International Building Code or International Residential Code, as applicable);

(g) Constructed with electrical, heating, ventilation, plumbing, 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 a flood;

(h) Constructed with any fuel storage tanks located above the base flood elevation or placed underground, and securely anchored to prevent flotation; and

(i) Constructed without fully enclosed areas below grade on all sides (including below-grade crawlspaces and basements).

(2) **No Base Flood Elevation.** Where base flood elevations have not been determined, the applicant must demonstrate that the cumulative effect of the proposed development, when combined with all other existing and anticipated encroachment, will not increase the base flood elevation more than 1 foot at any point within the Town of Berlin, as certified by a registered professional engineer based on technical data that conforms to standard engineering practice.

(3) **Elevation Certificate.** The applicant must document the base flood elevation and the specific elevation to which new or substantially improved structures are floodproofed with a FEMA floodproofing certificate.

(a) The Zoning Administrator must have a completed FEMA floodproofing certificate and other certifications required under these regulations on file prior to issuing a certificate of compliance.

(4) **Residential Structures.** Applicants must locate and design new or substantially improved residential structures with the lowest floor (including basement) elevated at least 1 foot above the base flood elevation. Applicants must securely anchor manufactured homes (whether on their own lot or within a manufactured home park) to a permanent foundation system to resist flotation, collapse and lateral movement.

(5) **Manufactured Home Parks.** Applicants must securely anchor manufactured homes to be placed or substantially improved within a manufactured home park to a permanent foundation system to resist flotation, collapse and lateral movement and must elevate the structure's lowest floor at least 1 foot above the base flood elevation except:

(a) If it is not possible to elevate a manufactured home within an existing manufactured home park to at least 1 foot above the base flood elevation, the structure's lowest floor must be supported by reinforced piers or other equivalent foundation elements that are at least 48 inches above grade and be securely anchored to an adequately anchored foundation system t resist flotation, collapse and lateral movement.

(6) **Nonresidential Structures.** Applicants must locate and design new or substantially improved nonresidential structures:

(a) With the lowest floor (including basement) elevated at least 1 foot above the base flood elevation; or

(b) So that the structure, together with attendant utility and sanitary facilities, is watertight to least to 2 feet above the base flood elevation with walls that will be substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy as certified by a registered professional engineer or architect.

(7) **Above-Grade Development within Floodways.** The Town of Berlin prohibits encroachment (including fill) and above-grade development within the floodway unless a registered professional engineer performs hydrologic and hydraulic analyses in accordance with standard engineering practice and certifies that the proposed development will:

(a) Not result in any increase in flood levels during the base flood;

(b) Not increase any risk to surrounding properties, facilities or structures from erosion or flooding; and

(c) Not result in any net increase in impervious surface within the floodway.

(8) **Below-Grade Development within Floodways.** Applicants may place utilities underground within the floodway provided that a registered professional engineer certifies that there will be no change in grade and the utilities will be adequately protected from scour.

(9) **Subdivisions and PUDs.** Applicants for new or expanded subdivisions, planned unit developments or manufactured home parks must provide base flood elevation data and design the project:

(a) With lots, home sites and/or building envelopes located outside the special flood hazard area to the maximum extent feasible;

(b) With lots, home sites and/or building envelopes that can be developed in accordance with the provisions of this section;

(c) To be accessible by dry land outside the special flood hazard area;

(d) To minimize flood damage within flood-prone areas;

(e) To provide adequate drainage to reduce exposure to flood hazards; and

(f) With utilities and facilities, such as water, wastewater, and electrical systems, that will be located and constructed to minimize or eliminate flood damage.

(10) **Fully Enclosed Areas Below the Lowest Floor.** The Zoning Administrator must condition approval of any zoning permit on the applicant using any fully enclosed areas, not including basements, that are below the lowest floor and below the base flood elevation solely for storage, parking and building access. Additionally, applicants must design such areas:

(a) To automatically equalize hydrostatic flood forces on exterior walls by allowing floodwaters to enter and exit the enclosed area as certified by a registered professional engineer or architect; or

(b) With a minimum of two openings having a total net area of at least 1 square inch for every square foot of enclosed area subject to flooding. The bottom of all openings must be no higher than 1 foot above grade. Openings may be equipped with screens, louvers, valves or other devices if they automatically allow floodwaters to enter and exit the enclosed area.

(11) **Small Accessory Structures.** A small accessory structure (floor area of 500 square feet or less) does not have to be elevated above the base flood level if it meets the criteria of Paragraph (10), above.

(12) **Recreational Vehicles.** A recreational vehicle located within the special flood hazard area must:

(a) Be fully licensed and ready for highway use;

(b) Be on its wheels or jacking system;

(c) Be attached to the site by only quick disconnect type utilities; and

(d) Have no permanently attached additions or accessory structures.

(13) **Utilities.** Applicants must locate new or replacement building or public utilities outside the special flood hazard area to the greatest extent feasible. If the applicant will locate utilities within the special flood hazard area, he/she must locate and design the utilities to:

(a) Minimize or eliminate the infiltration of floodwaters into the system;

(b) Minimize or eliminate discharges from the system into floodwaters;

(c) Avoid impairment of the system during flooding; and

(d) Avoid contamination from the system during flooding.

(14) **Stream Channel Management.** The applicant must:

(a) Maintain the flood carrying and sediment transport capacity within the altered or relocated portion of any watercourse; and

(b) Not reduce stream stability as a result of any stream channel management activities.

(15) **Water-Dependent Structures.** Applicants must obtain a stream alteration permit from the Vermont Agency of Natural Resources for bridges, culverts and other water-dependent structures, which by their nature must be placed in or over a watercourse.

2203.I **Nonconformities.** Applicants must obtain conditional use approval from the Development Review before the Zoning Administrator may issue a permit to substantially improve, repair after substantial damage, relocate, replace or enlarge a nonconforming structure within the special flood hazard area as follows:

(1) The proposed development must conform to the applicable development standards in *Subsection 2203.H.

(2) If a nonconforming structure is substantially damaged or destroyed, the applicant:

(a) Must not substantially improve the structure if it is located within the floodway unless it is a water-dependent structure.

(b) May reconstruct the structure in its original location outside the floodway only when the structure cannot reasonably be relocated to a less hazardous location on the property.

(3) The applicant must rebuild a nonconforming structure that is substantially damaged or destroyed above the base flood elevation and must otherwise comply with all requirements of the National Flood Insurance Program.

2203.J **Variances.** In addition to the applicable criteria and procedures in *Section 4503, the Development Review Board must only approve variances within the special flood hazard area as follows:

(1) The Development Review Board may only issue variances for development that is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(2) The Development Review Board must not approve variances within the floodway unless the applicant can demonstrate that no increase in flood levels during the base flood would result.

(3) The applicant must demonstrate that the granting of the variance will not:

(a) Result in increased flood heights, additional threats to public safety or extraordinary public expense;

(b) Create nuisances;

(c) Cause fraud on or victimization of the public; or

(d) Conflict with existing local laws or ordinances.

2203.K **Administrative Requirements.** In addition to the requirements of Part 4 of these regulations, the following special administrative procedures apply within this overlay district:

(1) **Project Review Sheet.** The applicant must submit a Vermont Agency of Natural Resources Project Review Sheet as part of a complete application. The applicant must submit evidence that he/she obtained all state or federal permits identified on the Project Review Sheet to the Zoning Administrator prior to commencing any work.

(2) **Referral.** The Zoning Administrator must:

(a) Send a copy of all complete applications for development within the Special Flood Hazard Area to the State National Flood Insurance Program Coordinator.

(b) Send copies of the complete application to adjacent upstream and downstream

communities, the Stream Alteration Engineer at the Vermont Agency of Natural Resources, the Army Corps of Engineers, and the Federal Insurance Administrator if the application involves the alteration or relocation of a watercourse.

(c) Not act to approve or deny the application for 30 days following the referral or until comments have been received, whichever is sooner, in accordance with *Section 4202.

(3) **Certificate of Compliance.** The Zoning Administrator must issue a certificate of compliance in accordance with *Section 4208 for all development within the special flood hazard area. Before issuing a certificate of compliance, the Zoning Administrator must inspect the premises and ensure that the applicant has obtained all permits identified on the Project Review Sheet.

(4) **Records.** The Zoning Administrator must properly file and maintain a record of all elevation certificates, as-built elevations, letters of map amendment, base flood elevations, floodway determinations, flood proofing certifications, and other data or certifications required under this section.

(5) **Enforcement.** The Zoning Administrator must:

(a) Send a copy of any notice of violation issued in accordance with *Chapter 470 within the special flood hazard area to the State National Flood Insurance Program Coordinator.

(b) Notify the Administrator of the National Flood Insurance Program in writing of the violation and request a denial of flood insurance for the property, if the violation is not resolved.

(c) Report any violation of the state's Accepted Agricultural Practices within the special flood hazard area to the Secretary of Agriculture for enforcement.

2203.L **Definitions.** The terms below are specifically defined as used in this section. All other terms are as defined in *Chapter 530.

(1) BANKFULL DISCHARGE means the flow of water that first overtops a channel's natural banks, and which occurs once every one to two years on average.

(2) BANKFULL WIDTH (see definition of channel width).

(3) BASE FLOOD means the flood having a 1% chance of being equaled or exceeded in any given year, commonly known as the 100-year flood.

(4) BASE FLOOD ELEVATION (BFE) means the elevation of the water surface resulting from the base flood. The BFE is usually shown on the Flood Insurance Rate Map.

(5) BASEMENT means any area of a building with a floor elevation that is below ground level on all sides.

(6) CHANNEL means an area that contains continuously or periodic flowing water that is confined by banks and a streambed.

(7) CHANNEL WIDTH means the width of a channel when it is flowing at a bankfull discharge. Also referred to as the bankfull width.

(8) COMMON PLAN OF DEVELOPMENT means a phased project to improve a structure or lot over a period of time.

(9) CRITICAL FACILITIES means structures the community identifies as essential to residents' health and welfare and that are especially important following a disaster such as fire and rescue facilities, hospitals, disasters, shelters, police stations, schools, nursing homes, water supply treatment facilities, grocery stores, and fueling stations.

(10) DEVELOPMENT means any human-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.

(11) FILL means any placed material that changes the natural grade, increases the elevation, or diminishes the flood storage capacity of land.

(12) FLOOD means either:

(a) A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of surface waters, the unusual and rapid accumulation or runoff of surface waters from any source, and/or mudslides caused by flooding that result in a river of liquid and flowing mud; or

(b) The collapse or subsidence of land along a water body as a result of erosion or undermining that is caused by waves or currents of water exceeding anticipated cyclical levels, or that is suddenly caused by an unusually high water level in a natural water body, accompanied by a severe storm, flash flood or similar unforeseeable event that results in flooding.

(13) FLOOD INSURANCE RATE MAP (FIRM) means an official map on which the National Flood Insurance Program Administrator has delineated the special flood hazard areas and the risk premium zones within the town. The map for Berlin is now available in PDF or GIS formats as a Digital Flood Insurance Rate Map (DFIRM).

(14) FLOOD INSURANCE STUDY (FIS) means an examination, evaluation and determination of flood hazards and the corresponding water surface elevations, or of mudslide and/or flood-related erosion hazards.

(15) FLOODPLAIN or FLOOD-PRONE AREA means any land area susceptible to being inundated by water from any source (see definition of flood).

(16) FLOOD PROOFING means any combination of structural and non-structural additions, changes or modifications to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, buildings and their contents.

(17) FLOODWAY or REGULATORY FLOODWAY means the channel of a river, stream 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 1 foot at any point. Special flood hazard areas and floodways may be shown on separate panels or sheets of the FIRM.

(18) HISTORIC STRUCTURE means any structure that is:

(a) Listed individually on the National Register of Historic Places or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(b) Certified or preliminary determined by the Secretary of the Interior as

contributing the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district; or

(c) Individually listed on the Vermont Register of Historic Places.

(19) LETTER OF MAP AMENDMENT (LOMA) means a letter issued by the Federal Emergency Management Agency officially removing a structure or lot from the special flood hazard area based on information provided by a registered professional engineer or surveyor. FEMA issues a LOMA when upon the landowner demonstrating that a structure or lot is located above the base flood elevation and has been inadvertently included in the special flood hazard area.

(20) LOWEST FLOOR means the lowest floor of the lowest enclosed area within a building, including a basement. An unfinished or flood-resistant enclosure used solely for storage, parking or building access will not be considered a building's lowest floor if it is built in conformance with Paragraph 251.H(10).

(21) MANUFACTURED HOME means a building, 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. This definition specifically excludes recreational vehicles.

(22) MANUFACTURED HOME PARK means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

(23) MANUFACTURED HOME PARK, EXISTING means a manufactured home park for which the construction of facilities for serving the sites on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of roads, and either final site grading or the pouring of concrete pads) was completed before the Town of Berlin adopted floodplain management regulations. Any expansion to an existing manufactured home park resulting in additional manufactured home sites will be considered new construction.

(24) NEW CONSTRUCTION means structures for which the start of construction commenced after the Town of Berlin adopted floodplain management regulations, and includes any subsequent improvements to such structures.

(25) RECREATIONAL VEHICLE means a vehicle that is:

(a) Built on a single chassis;

(b) 400 square feet or less when measured at the largest horizontal projection;

(c) Designed to be self-propelled or permanently towable by a light-duty truck; and

(d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

(26) SPECIAL FLOOD HAZARD AREA means the floodplain within the Town of Berlin that is subject to being inundated by the base flood. The special flood hazard area is usually labeled Zone A or AE in the flood insurance study and on the flood insurance rate maps. The base flood elevation has not been determined in Zone A. In Zone AE, the base flood elevations are shown on the flood insurance rate maps.

(27) START OF CONSTRUCTION means the date the Zoning Administrator issued a zoning permit provided that the actual start of construction was within 180 days of the permit date. Development is subject to the flood insurance rate map and flood regulations in effect at the start of construction.

(28) START OF CONSTRUCTION, ACTUAL means the date of:

(a) The first placement of permanent construction of a principal structure on a site, such as pouring a slab or footings, installing piles, constructing columns, or any work beyond the stage of site preparation or excavation;

(b) The placement of a manufactured home on a foundation; or

(c) The first alteration of any wall, ceiling, floor or other structural part of a building.

(29) STRUCTURE means:

(a) A building with two or more outside rigid walls and a fully secured roof that is affixed to a permanent site;

(b) A gas or liquid storage tank that is principally above ground; or

(c) A manufactured home.

(30) SUBSTANTIAL DAMAGE means damage of any origin sustained by a structure that results in the cost of restoring the structure to its pre-damage condition equaling or exceeding 50% of the market value of the structure before the damage occurred.

(31) SUBSTANTIAL IMPROVEMENT:

(a) Means any reconstruction, rehabilitation, addition or other improvement of a structure that cumulatively over three years or over a common plan of development costs 50% or more of the market value of the structure before the start of construction of the improvement.

(b) Means any repair of a substantially damaged structure.

(c) But does not mean any improvement of a structure to correct existing violations of state or town health, sanitary or safety code identified by the applicable code enforcement officer to the minimum extent necessary to assure safe living conditions.

(d) But does not mean any alteration of a historic structure that will not preclude the structure's continued designation as a historic structure.

(32) TOP OF BANK means that vertical point along a stream bank where an abrupt change in slope is evident. For streams in wider valleys, it is generally the point where the stream is able to overflow the banks and enter the floodplain. For streams in steep and narrow valleys, it is generally the same as the top of slope.

(33) TOP OF SLOPE means either:

(a) A break in slopes adjacent to steep-banked streams that have little or no floodplain; or

(b) A break in slope where the side slopes adjacent to an incised or deeply cut channel meet floodplains that have been abandoned or are undergoing abandonment.

(34) VIOLATION means the failure of a structure or other development to be fully compliant with the provisions of this section. The Zoning Administrator will presume that a structure or other development without the elevation certificate, other certifications or other evidence of compliance required in these regulations to be in violation until the property owner provides that documentation.

# PART 3. DEVELOPMENT STANDARDS

## Chapter 300. General Standards

### Section 3001. Fences and Walls

3001.A **Applicability.** All non-agricultural fences and walls must be designed and located in accordance with the provisions of this section.

3001.B **Location.** Fences or walls are not subject to front, side or rear setbacks. The support posts must be placed on and faced towards the inside of the subject property and the finished surface of the fence or wall must face the abutting property or road.

3001.C **Front Yard.** In the Town Center district, fences or walls located within a front yard must not exceed a height of 4½ feet and must not obscure vision above a height of 3 feet at any intersection.

3001.D **Materials.** A fence or wall must not be constructed of barbed wire, razor wire or similar materials capable of inflicting significant physical injury unless required by state or federal regulation.

3001.E **Retaining Walls.** Applicants must design retaining walls as follows:

(1) No individual retaining wall may exceed 12 feet in height (this will not be interpreted to prevent the repair or reconstruction of a pre-existing retaining wall that is more than 12 feet in height).

(2) All retaining walls more than 4 feet in height must be designed by a professional engineer or licensed landscape architect, and must be topped by a fence, hedge or similar barrier. For a system of terraced walls, only the uppermost wall will require a barrier if the terraced sections below are not readily accessible from other portions of the property.

(3) The height of a retaining wall will be measured from the grade at the base of the face of the wall to the grade at the back of the wall immediately above at the location along the wall where those two grades are the furthest apart.

(4) The Town of Berlin encourages applicants to terrace retaining walls. To be considered separate walls, a horizontal distance of at least 8 feet must separate the two retaining walls

### Section 3002. Temporary Construction-Related Structures and Uses

3002.A The Zoning Administrator may issue a permit to allow temporary structures and uses in conjunction with and to be located on the site of approved land development including, but not limited to, offices, trailers, dumpsters, storage buildings and signs in accordance with this subsection.

3002.B A construction dumpster must:

(1) Not be located so that it impedes pedestrian or vehicular access to and from adjoining properties, or otherwise creates an unsafe condition for pedestrian and vehicular

traffic;

(2) Clearly identify the owner's name and telephone number;

(3) Be clearly labeled for the purpose of collecting construction materials only; and

(4) Be routinely emptied so it does not create an unsightly or dangerous condition on the property.

### Section 3003. Camping Units

3003.A A resident may locate not more than 3 camping units (campers, travel trailers, RVs, cabins, lean-tos, tents, etc.) on his/her residential property to be used for non-commercial, recreational purposes. Such units must not be occupied for more than 90 days in any calendar year.

3003.B Any parcel of land that is occupied by or designed to accommodate more than 3 camping units will be considered a campground

### Section 3004. Outdoor Lighting

3004.A **Applicability.** All outdoor lighting not exempted under Chapter 110 or regulated under Chapter 320 must be designed, installed and operated in accordance with the provisions of this section.

3004.B **Shielding.** All outdoor light fixtures must be fully or partially shielded.

3004.C **Total Output.** The total output of all light fixtures on the property must not exceed 20,000 lumens. This will not include the output of light fixtures that are exempt under Chapter 110 or security lighting that is only on when activated by a motion detector.

3004.D **Total Output.** Outdoor lighting must not cause glare or light trespass off the property.

### Section 3005. Riparian Buffers

3005.A **Purpose.** The purpose of this section is to protect and enhance the overall quality, natural function, ecological health, scenic benefits, and recreation potential of the town's water resources by establishing riparian buffers to mitigate the impact of development on surface waters.

3005.B **Applicability.** The provisions of this section apply to all land within riparian setbacks as established for each zoning district in Part 2 of these regulations.

3005.C **General Standards.** Natural woody vegetation must be retained or allowed to re-establish within riparian setbacks except that:

(1) The riparian setback does not apply to water-dependent structures and uses.

(2) Up to 20% of the area within the riparian setback or 800 square feet, whichever is greater, may be used for water access, outdoor recreation, or outdoor seating. That area may be covered with mowed lawn, decks, patios, walkways or other impervious surfaces.

(3) Pre-existing structures and impervious surfaces within riparian setbacks may continue to be maintained and used as established, but their configuration and/or use may only be modified in accordance with *Subsection 3211.E below.

(4) Invasive, hazard, sick or dying vegetation may be removed provided that woody vegetation is allowed to re-establish, and existing vegetation may be maintained within riparian setbacks.

3005.D **Waivers.** The Development Review Board may allow natural woody vegetation to be removed or not re-established within the riparian setback (in excess of the amount allowed above) if the applicant will maintain or re-establish an equivalent or greater area of contiguous natural woody vegetation within and/or abutting the riparian buffer.

3005.E **Previously Developed Sites.** The Development Review Board may allow applicants to redevelop or modify the footprint of pre-existing structures or impervious surfaces within riparian setback provided that the total footprint is not increased and the applicant demonstrates that:

(1) The proposed land development cannot reasonably be accommodated on any portion of the lot outside the riparian setback;

(2) The proposed land development will not have new or greater (as compared to existing conditions) adverse impact on the natural functions of the surface water and land within the riparian buffer; and

(3) He/she will maintain or re-establish natural woody vegetation in the remainder of riparian setback.

# Chapter 310. Special Use Standards

ⓘ *This chapter establishes supplemental regulations that address the unique development challenges of certain land development. It includes additional standards, exceptions to the standards or alternative standards for particular uses, structures and facilities.*

### Section 3101. Accessory Dwelling Unit

3101.A The Zoning Administrator may issue a zoning permit for one accessory dwelling unit (ADU) within or associated with any owner-occupied, single-family dwelling that meets all the following:

(1) The ADU must be clearly subordinate to the primary dwelling and must have facilities and provisions for independent living, including sleeping, food preparation and sanitation.

(2) The ADU must not exceed 900 square feet or 30% of the total habitable floor area of the primary dwelling (prior to creation of the ADU), whichever is greater.

(3) The ADU must not have more than 2 bedrooms.

(4) The ADU must meet applicable dimensional standards and parking requirements (see *Section 3202).

(5) The ADU must share a driveway with the primary dwelling unit.

(6) The owner must reside on the property, but may live in either the primary or ADU.

### Section 3102. Home Occupation

3102.A The Zoning Administrator may issue a zoning permit to allow a resident to use a minor portion of his/her residential property for an occupation that is customary in residential areas and does not have an undue adverse effect upon the character of the area. A home occupation must:

(1) Occur entirely within a dwelling or an accessory building.

(2) Not alter the residential character of the property.

(3) Occupy an area that does not exceed 40% of the habitable floor area of the dwelling.

(4) Not have non-resident employees working on site.

(5) Not be evident from beyond the property line except that there may be 1 non-illuminated sign not more than 4 square feet in area and 6 feet in height.

(6) Meet the performance standards in *Section 3208.

### Section 3103. Home Business

3103.A In certain zoning districts, a resident may obtain a permit to operate a small business from his/her residential property. A home business must:

(1) Be compatible with the character of the area.

(2) Not have more than 4 non-resident employees working on site.

(3) Meet the site plan standards in *Chapter 320.

### Section 3104. Family Child Care Home

3104.A The Zoning Administrator may issue a zoning permit to allow a resident to operate a family childcare home from his/her residential property. A family childcare home must:

(1) Be state registered or licensed.

(2) Provide care for no more than 6 full-time and 4 part-time children.

(3) Not alter the residential character of the property.

(4) Not have more than 1 non-illuminated sign, which must not exceed 4 square feet in area and 6 feet in height.

(5) Meet the performance standards in *Section 3208.

### Section 3105. Group Home

3105.A A group home is a by-right use of a single-family dwelling if it will:

(1) Be operated under state licensing or registration;

(2) Serve not more than 8 residents who have a handicap or disability as defined in state statute; and

(3) Not be located closer than 1,000 feet to another existing or permitted group home.

3105.B A zoning permit will:

(1) Not be required for an existing single-family dwelling to be used as a group home.

(2) Be required to construct a new dwelling that will be used a group home.

(3) Be required for other land development associated with a group home to the same extent as would be required if the dwelling was occupied by any household.

### Section 3106. Campground

3106.A In certain zoning districts, campgrounds may be allowed as an outdoor recreation use in accordance with the following:

(1) No camping unit may be occupied between December 1 and March 31 except for primitive campsites within a public park or recreation area.

(2) The overall density of a campground must not exceed 10 camping units per acre.

(3) A campground must have a resident manager. This provision will not apply to a site that provides primitive campsites as an accessory use to a public park or recreation area.

(4) A campground may include one single-family dwelling for the campground manager, which may be occupied year-round.

### Section 3107. Bed-and-Breakfast or Inn

3107.A **Bed-and-Breakfast.** A single-family dwelling may be used as a bed-and-breakfast in specified zoning districts in accordance with the following:

(1) A bed-and-breakfast must not have more than 5 guest rooms.

(2) The maximum occupancy period for any guest room must be less than 30 days.

(3) A resident of the dwelling must operate the bed-and-breakfast.

(4) Meals must not be provided to the general public.

3107.B **Inn.** Inns are allowed specified districts in accordance with the following:

(1) An inn must be residential in scale and character.

(2) Guest rooms may be located in the principal and/or any accessory buildings on the property.

(3) An inn must not have more than 20 guest rooms.

(4) The maximum occupancy period for any guest room must be less than 30 days.

(5) An inn may include accessory uses such as restaurants, taverns, event venues, fitness centers or spas that are open to the general public upon review and approval by the Development Review Board as a conditional use.

(6) The inn must have a resident manager.

### Section 3108. Rooming or Boarding House

3108.A A single-family dwelling may be used as a rooming or boarding house in specified zoning districts in accordance with the following:

(1) A rooming or boarding house must not rent out more than 5 rooms unless approved by the Development Review Board as a conditional use.

(2) A resident of the dwelling must operate the rooming or boarding house.

(3) No more than 2 adults may be housed in each room.

(4) Rooms must not be offered for rent for less than a continuous period of 30 days.

(5) Rooms must not include private kitchen facilities.

(6) Renters may share common kitchen facilities.

(7) Meals may be provided to renters, but must not be provided to the general public.

### Section 3109. Hotel or Motel

3109.A A hotel or motel may include accessory uses such as restaurants, taverns, event venues, fitness centers or spas that are open to the general public.

3109.B The number of guest rooms in a hotel or motel must not exceed 1 per 400 square feet of gross floor area.

3109.C Unless approved as an extended stay hotel or motel, the maximum occupancy period for any guest room must be less than 30 days.

3109.D An extended stay hotel or motel will be allowed only after review and approval by the Development Review Board as a conditional use.

3109.E An extended stay hotel or motel must be operated in accordance with the standards below or it will be considered a residential use and will be subject to all applicable regulations and codes for dwellings:

(1) An extended stay hotel or motel includes any facility in which 50% or more of the guest rooms:

(a) Have facilities for the storage, refrigeration and preparation of food; and

(b) Are advertised, offered, designed or utilized for weekly or monthly occupancy.

(2) All guest rooms designed or used for extended stay occupancy must be a minimum of 220 square feet in area and must include:

(a) A full bathroom with a toilet, sink, and a bathtub, shower or bathtub/shower combination.

(b) A full kitchen with a sink, refrigerator, and a stove, range top or oven.

(3) A minimum of 200 square feet of usable open space suitable for passive recreation and accessible to all guests will be required per extended stay guest room. The open space area must not be less than 30 feet in any dimension.

### Section 3110. Automobile Repair or Service

3110.A All automobile repair or service activities must be carried out within an enclosed building.

3110.B A non-operable, disabled, wrecked or partially dismantled vehicle or vehicle parts remaining on site for more than 30 days must be stored out of view from the road and adjoining property.

3110.C The Town of Berlin considers the outdoor storage of 4 or more unregistered motor vehicles on any property for more than 90 days to be operation of a salvage yard. Operation of a salvage yard without required state and town permits is a violation of these regulations.

### Section 3111. Drive-Through or Drive-In Facility

3111.A Drive-through or drive-in facilities may be allowed in specified districts in accordance with the following:

(1) A drive-through facility is composed of one or more stacking lanes and a service area.

(a) The stacking lane is the space occupied by vehicles queuing for drive-through service.

(b) The service area includes all the space and elements (menu boards, pick-up windows, transaction windows, speakers, automated teller machines, etc.) used to provide drive-through service.

(2) Stacking lanes and service areas must be located to the side or rear of the building.

(3) Stacking lanes and service areas must not be located within zoning district setbacks.

(4) Stacking lanes must be clearly signed, marked and separated from travel lanes.

(5) One or more designated pedestrian crossings must be provided across any stacking lane that separates parking from the building.

(6) Each stacking space within a stacking lane must be a minimum of 20 feet in length by 10 feet in width.

(7) Parking spaces dedicated for drive-in service may count towards the minimum parking requirement under Section 3202.

(8) Drive-through and drive-in facilities must be located a sufficient distance from property lines and screened to prevent adverse impacts, including but not limited to noise and light trespass, on adjacent properties.

(9) Drive-through and drive-in facilities must be designed and operated so that vehicles awaiting or receiving service do not block access or circulation within the site or cause traffic to queue on the road.

### Section 3112. Fueling Station

3112.A **Lots.** A fueling station must be located on a lot that is at least 20,000 square feet in area with at least 150 feet of frontage, or the zoning district minimum if greater.

3112.B **Fuel Pumps, Islands and Tanks.** All fuel pumps, islands and tanks must be:

(1) Set back at least 30 feet or the district minimum from all property lines, whichever is greater.

(2) Located to the side or rear of the principal building if above ground.

3112.C **Canopies.** Fueling station canopies must be designed in accordance with the following:

(1) Canopies must be set back at least 20 feet from all property lines or the district minimum, if greater.

(2) Light fixtures must be recessed into the underside of the canopy so as not to protrude below the canopy surface by more than 2 inches. Canopy lighting must be in accordance with *Paragraph 3205.F(3).

(3) Canopy fascia that incorporate franchise or corporate identification elements will be considered wall signs and counted towards the total amount of signage allowed under Section 3206.

### Section 3113. Mini-Warehouse (Self-Storage Facility)

3113.A Mini-warehouse buildings must have sloped roofs with a pitch of not less than 4:12.

3113.B Mini-warehouse buildings fronting on the road must be oriented with their short side facing the road to the maximum extent feasible. If storage unit doors will face the road, they must be screened with a combination of landscaping and fencing.

3113.C All mini-warehouse buildings on the premises must be compatible in design, materials and color with one another.

3113.D Mini-warehouse buildings must use solid, muted exterior colors that would help blend the buildings into the surrounding landscape and must not use patterns or vibrant colors that would call attention to the buildings.

3113.E All goods stored on the premises must be kept within fully enclosed buildings.

3113.F No hazardous materials, hazardous waste, industrial solid waste, medical waste, municipal solid waste, septage or waste oil may be stored on the premises.

3113.G No business activity other than the rental of storage units may be conducted on the premises unless approved as a mixed-use development.

3113.H No activity other than storage of property may be conducted on the premises by an employee, storage unit renter or other person including but not limited to vehicle maintenance or repair and use of tools or equipment.

### Section 3114. Energy Generation Facilities

3114.A **Applicability.** The standards of this subsection apply to energy generation facilities not exempted in *Section 1101 or Section 1103.

3114.B **Setbacks.** An energy generation structure must be set back at least a distance equal to the structure's height from all property lines or the district minimum setback requirement, whichever is greater, except if it is building mounted.

3114.C **Height.** The height of a ground-mounted solar energy generating apparatus must not exceed 35 feet. A solar energy generating apparatus mounted on a building wall must not extend above the lowest portion of the roof. A solar energy generating apparatus mounted on a building roof must not extend more than 10 feet above the roof surface. The height of a wind energy apparatus must not exceed 120 feet.

3114.D **Removal.** A facility that has been out-of-service for more than 180 days will be considered abandoned and must be removed unless the owner can demonstrate to the Zoning Administrator an intent to resume the energy generation use at a specified future time.

### Section 3115. Utility Facilities

3115.A **Applicability.** The standards of this subsection apply to utility facilities not exempted in *Section 1103.

3115.B **District Standards.** Minimum lot size and frontage requirements will not apply to lots housing utility facilities.

3115.C **Site Security.** Utility facilities must be designed and maintained to prevent unauthorized access and protect public safety.

3115.D **Buffer.** A landscaped buffer at least 15 feet deep must be provided around the site perimeter.

### Section 3116. Wireless Communications Facilities

3116.A **Purpose.** The purpose of this subsection is to:

(1) Minimize the impacts of wireless communication facilities on surrounding areas by establishing standards for location, structural integrity and compatibility;

(2) Accommodate the growing need and demand for wireless communications facilities;

(3) Encourage the location and collocation of wireless communications equipment on existing structures in order to minimize visual, aesthetic, public safety and ecological impacts and reduce the need for additional antenna support structures;

(4) Provide for the replacement and/or removal of nonconforming or discontinued antennas and antenna support structures; and

(5) Respond to the policies of the Telecommunications Act of 1996 by not unreasonably discriminating between providers of functionally equivalent personal wireless service and not effectively prohibiting provision of personal wireless service in the Town of Berlin.

3116.B **Applicability.** Except as specifically exempted in *Section 1103, the standards of this subsection apply to the installation, construction or modification of the following wireless communications facilities:

(1) Existing and proposed antennas and supporting structures;

(2) Replacement antennas and supporting structures;

(3) Broadcast antennas and supporting structures;

(4) Collocated and combined antennas on existing antenna supporting structures;

(5) Roof-mounted antennas and supporting structures;

(6) Surface-mounted antennas;

(7) Stealth wireless communications facilities; and

(8) Amateur radio antennas and support structures with an overall height greater than 50 feet.

3116.C **De Minimis Impact.** The Zoning Administrator may administratively approve and issue a zoning permit for an application for a wireless communication facility if he/she determines that it conforms to all applicable provisions of these regulations and imposes no or de minimis impact on any criteria established in these regulations. The Zoning Administrator will only consider an application to have a de minimis impact if it meets all of the following:

(1) The height and width of the facility or support structure, excluding equipment, antennas or ancillary improvements, will not increase;

(2) The total amount of impervious surface, including access roads, associated with the facility or support structure will not increase by more than 300 square feet;

(3) Any addition, modification or replacement of an antenna or other equipment will not extend vertically more than 10 feet above and horizontally more than 10 feet from the facility or support structure; and

(4) Any additional or replacement equipment, antennas or ancillary improvements, excluding cabling, will not increase the aggregate surface area of the faces of the equipment, antennas or ancillary improvements on the facility or support structure by more the 75 square feet.

3116.D **Pre-Application Conference.** Prior to submitting an application for a wireless communication facility under this subsection (excluding applications determined to have de minimis impact), the applicant must meet with the Zoning Administrator for a pre-application conference. Among the matters to be addressed at the pre-application conference are:

(1) The proposed location, type of facility, overall height and number of antennas;

(2) The expected date of application and preliminary schedule for development review;

(3) The ability of any proposed antenna supporting structure to accommodate future collocations;

(4) Alternative locations or facility configurations that may result in reduced impacts on adjacent properties and the surrounding neighborhood;

(5) Compatible colors for the proposed facility;

(6) The vantage points from which any required photo-simulated, post-construction renderings must be oriented; and

(7) Application requirements.

3116.E **Application Requirements.** Applicants for a wireless communication facility may be required to submit any the following to determine compliance with the provisions of this subsection:

(1) A signed statement from the facility's owner or owner's agent state that the radio frequency emissions comply with Federal Communications Commission (FCC) standards for such emissions.

(2) Proof that the proposed wireless communications facility has been designed to withstand sustained winds of 110 mph and at 15-second wind gust of 130 mph.

(3) Proof that the proposed antenna supporting structure has been designed so that, in the event of a structural failure, the facility will collapse within the boundaries of the lot on which it is located.

(4) An FCC license, and construction development approval if applicable, to transmit radio signals in the Town of Berlin.

(5) The name, address and telephone contact information for the owner of any proposed or existing antenna supporting structure, and a statement that such information will be updated annually or more frequently if there is a change in ownership. Failure to report annually for two consecutive years will be considered evidence of possible discontinuance.

(6) A stamped structural analysis of the proposed wireless communications facility prepared by a professional engineer, indicating the proposed and future loading capacity of the facility.

(7) Photo-simulated post-construction renderings of the proposed wireless communications facility, equipment enclosures and ancillary appurtenances as they would look after construction from locations determined during the pre-application conference.

(8) Proof of compliance with Federal Aviation Administration regulations of objects affecting navigable airspace.

(9) Shared use plan.

(10) Existing wireless communications facilities to which the proposed facility will be a hand-off candidate, including latitude, longitude and power levels of each.

(11) A graphical representation and an accompanying statement of the coverage area planned for the cell to be served by the proposed facility.

(12) A graphical representation and an accompanying statement of the search area used to locate the proposed facility.

(13) A radio frequency plot indicating the coverage of existing wireless communications sites and that of the proposed site sufficient to demonstrate geographic search area, coverage prediction and design radius.

(14) A statement by a qualified professional engineer specifying the design structural failure modes of the proposed facility.

(15) Antenna heights and power levels of the proposed facility and all other facilities on the subject property.

3116.F **Siting Priorities.** No new communication towers will be permitted unless an applicant demonstrates that the proposed antenna cannot be accommodated on an existing building or structure or by construction of a stealth facility. In order to justify the construction of a communication tower, the applicant must provide a statement of position, qualifications and experience by a licensed radio frequency engineer demonstrating that the alternatives below (listed in order of preference) do not constitute feasible alternatives:

(1) Collocated or combined antennas;

(2) Surface-mounted antennas;

(3) Roof-mounted antenna supporting facility; and

(4) Stealth wireless communications facility.

3116.G **Collocated or Combined Antennas.** The following standards will apply to all collocated or combined antennas:

(1) Collocations must not increase the overall height of an antenna supporting structure except in accordance with *Paragraph 3116.K(1), below.

(2) Collocations will be approved only in accordance with the standards for visual impact and antenna type expressed in *Paragraph 3116.K(4), below.

(3) Antenna supporting structures and ancillary appurtenances, including transmission lines, must maintain a galvanized gray finish or other contextually-compatible color as determined by the Development Review Board, except as otherwise required by the FAA and FCC.

3116.H **Surface-Mounted Antennas.** The following standards will apply to all surface-mounted antennas:

(1) Surface-mounted antennas and associated ancillary appurtenances must maintain a color that is the same as the surface to which they are attached unless the Development Review Board finds that another color will be more contextually compatible.

(2) Transmission lines must be camouflaged or otherwise shielded with an appropriate material that is the same color as, or a color consistent with, the building or structure to which they are attached.

(3) Surface-mounted antennas must be placed at least 15 feet above the ground and, where proposed to be placed on a building, must be placed so that no portion of the antenna is less than 3 feet below the roof line.

(4) Surface-mounted antennas will be approved only in accordance with the standards for visual impact and antenna-type expressed in *Paragraph 3116.K(4), below.

3116.I **Roof-Mounted Antenna Supporting Facilities.** The following standards will apply to all roof-mounted antennas:

(1) Roof-mounted antennas may be placed only on commercial, industrial, institutional, multi-family or accessory buildings at least 35 feet in height.

(2) The roof-mounted antenna, attachment device, equipment enclosure, and/or any ancillary appurtenance must not extend above the roof line of the building to which it is attached by more than 20 feet.

(3) Roof-mounted structures must have a monopole-type construction.

(4) Roof-mounted structures will be approved only in accordance with the standards for visual impact and antenna type expressed in *Paragraph 3116.K(4), below.

(5) Roof-mounted structures, ancillary appurtenances, and equipment enclosures must maintain a galvanized gray finish unless the Development Review Board finds that another color will be more contextually compatible.

(6) Transmission lines placed on the exterior of a building must be camouflaged or otherwise shielded with an appropriate material that is the same color as, or a color consistent with, the building or structure to which they are attached.

(7) No signs may be placed on any roof-mounted structure, ancillary appurtenances or equipment enclosures.

(8) Roof-mounted structures must be screened by a parapet or other device in order to minimize their visual impact from the lot lines of the subject property. Roof-mounted facilities must be placed as near to the center of the roof as possible.

3116.J **Stealth Wireless Communications Facilities.** No stealth facility may have antennas or ancillary equipment that is readily identifiable from a public vantage point as wireless communications equipment. Stealth facilities must be designed so that they are reasonably consistent with the surrounding built or natural environment. In order to determine compliance with this requirement, the Development Review Board will consider the following:

(1) Overall height;

(2) The compatibility of the proposed facility with surrounding built and natural features;

(3) Scale;

(4) Color;

(5) The extent to which the proposed facility blends with the surrounding environment;

(6) The extent to which the proposed facility has been designed to reasonably replicate a contextually-appropriate non-wireless structure or feature (ex. silo, flagpole, or tree); and

(7) The extent to which the proposed facility is not readily identifiable as a wireless communications facility.

3116.K **Communication Towers.** The following standards will apply to all communication towers:

(1) Towers must be set back a distance at least equal to their overall height from all lot lines (this does not include any guy-wire anchors). A nonconforming replacement structure must not be placed any closer to a lot line than the original structure and the height must not be increased if the minimum setback cannot be met.

(2) Towers must have a monopole-type construction except that broadcast structures taller than 200 feet, amateur radio antennas, and AM broadcast antennas may have a lattice-type construction.

(3) Towers and ancillary appurtenances, including transmission lines, must maintain a galvanized gray finish or other contextually-compatible color as determined by the Development Review Board, except as otherwise required by the FAA and FCC.

(4) Antennas must be configured on communication towers in a manner that is consistent with the character of area and that minimizes adverse visual impacts on adjacent properties. Antenna types that may be permitted (in order of preference) include: (i) flush-mounted; (ii) panel; (iii) whip; and (iv) dish. In order to justify the use of an antenna type lower in the ranked listed above, the applicant must provide a statement of position, qualifications and experience by a licensed radio frequency engineer demonstrating that higher-ranked alternatives cannot be used.

(5) No lights, signals or other illumination will be permitted on any tower or ancillary appurtenances unless the applicant demonstrates that lighting is required by the Federal Aviation Administration (FAA) or Federal Communications Commission (FCC).

(6) Site lighting may be placed in association with an approved equipment enclosure in accordance with *Section 3205 of these regulations. Site lighting must remain unlit except when authorized personnel are present.

(7) No signs may be placed on towers, ancillary appurtenances, equipment enclosures, or any fence or wall except for hazard notification signs as required by state or federal law and one required identification sign not larger than 2 square feet attached to the access gate that lists the federal registration number (if applicable), name of the owner or contact person, and an emergency contact number.

(8) Towers must be designed to accommodate future collocations. The applicant must submit a shared use plan that commits the owner of the proposed tower to accommodate future collocations where reasonable and feasible.

(9) A fence at least 8 feet in height from the finished grade with a locked gate and a landscaped buffer at least 25 feet deep must enclose the base of the tower and associated equipment enclosures.

3116.L **Discontinuance.** The following applies to any antennas and support structures that have not been legally used for a period of at least 180 days:

(1) The Zoning Administrator may make a preliminary determination of discontinuance and may request documentation from the property owner regarding the structure's usage.

(2) If the owner does not provide evidence that the structure remains in use or that resumption of its use is eminent, the Zoning Administrator may make a final determination that use of the structure has been discontinued. Upon make that determination, the Zoning Administrator must send the property owner a written notice of discontinuance by certified mail.

(3) If the property owner does not respond to the notice of discontinuance within 90 days and adequately demonstrate that the structure is not discontinued, the Zoning Administrator will send the property owner a declaration of discontinuance by certified mail.

(4) Within 120 days of the Zoning Administrator issuing the declaration of discontinuance, the property owner must either: (i) dismantle and remove the facility; or (ii) apply for a permit under this subsection to reactive the use of the structure as a wireless communications facility in full conformance with all applicable provisions of these regulations

### Section 3117. Rural Enterprises

3117.A **Purpose.** This section recognizes that Vermont's rural areas are characterized by working landscapes where resource-based economic activities have traditionally flourished. The purpose of this section is to accommodate rural enterprises that support economically viable farm and/or forest lands in the town and region by:

(1) Adding value to local farm or forest products;

(2) Direct marketing of local farm or forest products;

(3) Engaging in agritourism or education; and/or

(4) Offering goods or services needed for farming or forestry.

3117.B **Applicability.** Rural enterprises may be allowed in specified districts in accordance with the provisions of this section.

3117.C **Standards.** A rural enterprise must meet the following standards:

(1) Retail or food service or manufacturing uses must have the sale or use of local farm or forest products as a core element of the business.

(2) Any agricultural buildings converted, modified or expanded to accommodate the business must retain their original form, massing and style, particularly as viewed from public vantage points.

(3) New structures associated with the business must be similar in form, massing and style to residential or agricultural buildings typical in the area.

(4) The overall character of the property as viewed from public vantage points must be predominately rural and agricultural and must not be predominately commercial or industrial.

(5) Any land development associated with a rural enterprise must be located off primary agricultural soils to the maximum extent feasible.

3117.D **Signs.** In addition to signs allowed in accordance with *Section 3206, a rural enterprise may display not more than 6 temporary signs advertising products currently in season as follows:

(1) Each sign must be no more than 8 square feet in area.

(2) The signs may be installed on an approved free-standing sign or structure or the applicant may install not more than 3 permanent support structures for the seasonal signs provided that the overall height (included the mounted signs) will not exceed 8 feet.

(3) An individual seasonal sign may not be displayed for more than 90 days in any calendar year.

### Section 3118. Extraction Operations

3118.A **Applicability.** The provisions of this subsection apply to extraction operations as specified below:

(1) Quarrying or stonecutting is a land development activity principally designed to mine, extract, remove and process limestone, minerals or bedrock materials for commercial purposes.

(2) Sand or gravel excavation is a land development activity principally designed to mine, extract, remove and process unconsolidated sediments for commercial purposes.

(3) Extraction operations may be allowed in specified districts after review and approval by the Development Review Board as a conditional use.

(4) The provisions of this section do not apply to cut and fill operations associated with approved land development.

3118.B **Pre-Existing Sites.** An expansion of a pre-existing or previously approved extraction site will require a complete review of the use as if an original application was being made. The review will consider the relationship and coordination of activities between the original site and the expanded portion of the site. The additional and cumulative impacts that will be caused by the combined operations on factors such as the environment, traffic, safety, noise, air pollution, neighborhoods and adjacent land uses will be of principal concern during this review.

3118.C **Setback Distances.** *Figure 3-01 establishes minimum setback distances for specific on-site activities associated with an extraction operation from adjacent property.

3118.D **Buffer Yards.** A minimum buffer yard of 100 feet must be maintained adjacent to all property boundaries and road rights-of-way in accordance with the following:

(1) No excavation or storage of equipment or materials may occur within the buffer yard.

(2) Natural vegetation must be maintained or supplemented as needed within the buffer yard. The Development Review Board may require additional screening, including berms, to protect adjacent property owners from the impacts of the excavation activity.

(3) The Development Review Board may approve the location of vegetated earthen berms for erosion control or stormwater management purposes within the buffer yard.

3118.E **Operational Standards.** The following minimum operational standards will apply to all excavation operations unless otherwise approved by the Development Review Board:

(1) Any topsoil removed from the surface and retained on the site for reapplication to disturbed areas during reclamation must be carefully removed and stockpiled to prevent erosion.

(2) Extraction activities must be phased. A new phase must not begin until at least 50% of the active/current phase is reclaimed in accordance with the approved reclamation plan and the Zoning Administrator has verified completion of the reclamation. The Development Review Board may place conditions on the size and sequence of the phases.

(3) The applicant must submit and implement plans for erosion control and stormwater management. The Zoning Administrator may periodically inspect the site to ensure compliance with erosion control and stormwater management plans.

(4) An excavation operation must not cause the permanent lowering the water table of surrounding properties.

(5) An excavation operation must not cause the drainage of a wetland except as permitted by the Vermont Agency of Natural Resources.

(6) No excavation activity may occur within riparian areas as established in *Section 3001.

(7) Operational activities, including blasting, excavation, processing and hauling are prohibited between the hours 7 p.m. (or dusk if earlier) and 7 a.m. The Development Review Board may further limit hours as deemed necessary to mitigate impacts to adjacent properties and roads.

(8) Designated truck routes must be used for all hauling and access to the site to the maximum extent feasible. The Development Review Board may impose weight limits on truck leaving the site if the roads serving the site are not suitable for heavy truck traffic. If limits are imposed, the applicant must maintain truck weight records as necessary to demonstrate compliance. The Zoning Administrator may periodically inspect the records to ensure compliance with the established weight limits.

(9) The Development Review Board may impose fencing requirements around the perimeter of the site and/or on portions of the site abutting residential areas, community facilities, other public gathering places.

(10) The applicant must install warning signs on the property and along haul routes as deemed necessary to protect safety and general welfare in the area.

(11) Operations must maintain compliance with local (see *Section 3208) and state standards for noise, dust and vibration, All equipment and machinery must be operated and maintained in such a manner as to minimize dust, noise and vibration. Access and haul roads must be maintained in a dust-free condition by surfacing, watering or other treatment on a regular basis.

(12) Stockpiles must not exceed 50 feet in height. The Development Review Board may further restrict the height of stockpiles as necessary to mitigate their visibility from public vantage points and adjacent property.

3118.F **Reclamation Standards.** Sites must be reclaimed at the completion of extraction activities in accordance with the following:

(1) No approvals or permits for subsequent land development on the extraction site will be issued prior to reclamation of the site.

(2) Topsoil capable of sustaining vegetative growth must be provided and evenly spread on all disturbed areas.

(3) Disturbed areas must be stabilized and seeded at the earliest possible time following completion of extraction operations in an area in accordance with the approved erosion control plan. Progressive reclamation practices must be implemented to continue to reclaim and stabilize disturbed areas prior to moving to a new phase. Final reclamation of each phase must be completed within 6 months of the completion of each phase of the operation.

(4) All equipment, stockpiles, debris, signs, and other materials or improvements associated with excavation must be removed from the site after completion of the activity.

(5) Erosion control measures must be kept in place until permanent vegetation has been established on the site and erosion is controlled.

(6) If the extraction activities will result in the creation of a water body, at the completion of the operation the water body must have a natural form with variation in shoreline and depth.

(7) Following reclamation, no slope on the site must exceed a 2:1 slope (horizontal to vertical) over a distance of 30 feet. The Development Review Board may require a flatter angle if it is shown that the site will not be stable at a 2:1 slope or that vegetation cannot be established on the 2:1 slope. The Development Review Board may waive this requirement for areas of exposed ledge.

(8) In addition to being seeded to prevent erosion, the reclaimed site must be landscaped. The applicant must submit a landscape plan that best suits the ultimate proposed use and design of the site provided that at least 8 deciduous and 8 evergreen large trees are planted for each disturbed acre.

(9) The applicant must submit a master plan for the post reclamation use of the site that demonstrates that the reclaimed site will be suitable for a use allowed in the district and for development in accordance with the applicable provisions of these regulations.

3118.G **Performance Bond.** The Development Review Board may require the applicant to provide a performance bond or other financial security in an amount satisfactory to and approved by the town to ensure that all standards are fully met during operation and that proper site reclamation is completed in a timely manner. Failure to stabilize the site, failure to make necessary repairs and improvements to roads damaged by the excavation activity, failure to reclaim the site as specified in the approved reclamation plan, or any other inconsistencies between the approved operation and reclamation plans and the actual extraction or reclamation activities carried out will be cause for the Town of Berlin to redeem the performance bond or other financial security to make the necessary corrections.

3118.H **Inspection and Monitoring.** As a condition of approval, the Development Review Board may require that the Zoning Administrator inspect the site at a specified interval to ensure that the extraction activity is being undertaken in accordance with the approved plans. As a condition of approval, the Development Review Board may require on-going monitoring of the operation to ensure that extraction activities are not adversely impacting the natural environment, the surrounding neighborhood or public infrastructure.

3118.I **Review Criteria.** The Development Review Board must find that the proposed extraction activity will meet the conditional use criteria and that it will:

(1) Not result in a danger to life or property due to: steep or unstable slopes; unsafe access to the property; excessive traffic; or proximity to existing or planned neighborhoods, parks and roadways.

(2) Adequately mitigate visual, noise, dust and/or excessive on- or off-site environmental impacts on existing or planned neighborhoods, parks and roadways.

(3) Adequately mitigate the effects of the use of trucks and heavy equipment on road safety and maintenance and will not cause excessive congestion of public roads providing access to the site.

(4) Not adversely affect the quality of air, groundwater or surface water, and will minimize impacts of significant ecological resources and natural communities.

(5) Not result in negative impacts on drainage patterns or stormwater management facilities.

(6) Adequately restore the site following completion of the excavation activity so that upon completion any adverse affects to scenic quality, natural landscapes, wildlife or habitat will be mitigated.

(7) Provide buffers to screen unsightly features of the excavation operation year-round from public vantage points and adjoining properties.

(8) Be appropriate in intensity and anticipated duration given the size and location of activity.

Figure 3-01. **Setback Distances for Extraction Activities**

| Required Distance from Adjacent Property in the: | IND District | All Other Districts |
|---|---|---|
| **Excavation areas with an elevation change >10 ft** | 100 ft min | 150 ft min |
| **Stockpiles (long-term storage)** | 100 ft min | 150 ft min |
| **Stockpiles (short-term storage) and loading points** | 100 ft min | 200 ft min |
| **Crushing or processing** | 100 ft min | 500 ft min |
| **Blasting (from a developed property)** | 300 ft min | 500 ft min |

# Chapter 320. Site Plan Standards

## Section 3201. Applicability

3201.A This chapter applies to land development other than one- and two-family dwellings as specified in *Part 2.

## Section 3202. Parking and Loading Areas

3202.A **Purpose.** The purpose of this section is to ensure that development provides adequate off-street parking and loading areas to avoid congestion on surrounding roads while also avoiding excessive parking that results in increased flooding, decreased water quality, increased land consumption and sprawl, and a less attractive and pedestrian-friendly environment.

3202.B **Minimum Amount of Parking.** All land development must provide off-street parking as follows:

(1) The Zoning Administrator will determine the minimum number of spaces based on *Figure 3-02 unless the applicant submits a professionally prepared parking study establishing the amount of parking needed.

(2) The Development Review Board may reduce or eliminate off-street parking requirements to that extent that:

(a) The applicant meets the requirements for shared or off-site parking in *Paragraph 3202.D;

(b) On-street parking exists or is proposed along the lot frontage; and/or

(c) Public parking or a public transit stop exists or is proposed within ¼ mile of the proposed development.

(3) To avoid requiring excess parking, these regulations have set a minimum parking requirement that may be less than what is required for the proposed use. However:

(a) It is the applicant's responsibility to fully meet his/her actual parking need.

(b) The Development Review Board may require an applicant to provide more than the minimum amount of parking if it determines that the additional parking will be necessary.

(c) An applicant proposing to provide less than two spaces per dwelling unit must demonstrate that the amount of off-street parking will be adequate given the location and characteristics of the housing.

3202.C **Maximum Amount of Parking.** The Development Review Board may only approve creation of more than twice the minimum amount of parking as follows:

(1) The applicant must submit a professionally prepared parking study demonstrating that the additional parking is necessary for the proposed use.

(2) The Development Review Board may condition approval of any parking in excess of the minimum on the applicant surfacing the additional area with pervious materials and/or constructing it in phases as warranted to meet future demand.

3202.D **Shared or Off-Site Parking.** The Development Review Board may approve a parking plan to allow two or more uses to share parking spaces and/or for applicants to provide parking off-site as follows:

(1) For shared parking, the applicant must calculate the total amount of parking required by:

(a) Determining the minimum parking requirements based on *Figure 3-02 for each use sharing a parking area as if it were a separate use.

(b) Multiplying each amount by the corresponding percentages for each of the five periods listed in *Figure 3-03.

(c) Calculating the total for each period.

(d) Selecting the highest total as the required minimum number of shared parking spaces.

(2) The Development Review Board will require any shared or off-site parking to be:

(a) Located within a ¼-mile walk of the associated use(s).

(b) Connected to the associated use(s) by a sidewalk or hard-surfaced walkway.

(3) The applicant must submit a written agreement between the owner(s) and lessee(s) of a shared or off-site parking area executed for a minimum of 20 years.

(a) Should the use(s), parties involved, or terms of the agreement change in a manner that would alter the amount of parking provided or required, the applicant must submit a revised agreement for review and approval by the Zoning Administrator in accordance with this section.

(b) Should the agreement expire or otherwise terminate, the use(s) associated with the shared or off-site parking will be in violation of these regulations unless the applicant provides replacement parking in accordance with this section.

(4) The applicant must submit plans showing:

(a) The location of all of the use(s) or building(s) to be served by the proposed shared or off-site parking;

(b) The location of the parking and required walkways (for off-site parking) in relation to the associated use(s) or buildings(s); and

(c) For shared parking, the schedule of timing and quantity of parking each use will need.

3202.E **Loading Areas.** An applicant for a use that will regularly receive deliveries or generate shipments by truck must demonstrate that there will be adequate off-street space:

(a) For loading and unloading without obstructing or interfering with parking and vehicular or pedestrian circulation within the site.

(b) To allow trucks to turn around so that they will not have to back out into the road or back into the property from the road.

3202.F **Location of Parking and Loading Areas.** The applicant must:

(1) Locate required parking and loading areas on the same site as the use or structure it serves unless the Development Review Board approves a parking plan in accordance with *Subsection 3202.D.

(2) Not locate required parking and loading areas (inclusive of vehicle overhang) within minimum front, side or rear setbacks except:

(a) Parking areas shared by adjoining properties may be located within a common side or rear setback provided that the Development Review Board approves a parking plan in accordance with *Subsection 3202.D.

(b) Parking of personal vehicles is allowed within any lawful residential driveway.

(3) Locate loading areas and service entrances to the side or rear of the building.

3202.G **Dimensional Standards.** The applicant must design off-street parking and loading areas as follows:

(1) **Parking Spaces.** The applicant must design off-street parking spaces to be at least 9 feet wide by 18 feet deep and accessible from a driveway or access aisle except for:

(a) Stacked spaces within a residential driveway;

(b) Tandem parking (a double-depth parking space with one vehicle parking the other in) for residential or employee parking; or

(c) Compact car parking spaces as approved by the Development Review Board.

(2) **Access Aisles.** The applicant must design access aisles within a parking lot or structure to be not less than 20 feet wide except that:

(a) One-way aisles serving angled parking spaces may be not less than 16 feet wide.

(3) **Loading Areas.** The applicant must design any off-street loading areas:

(a) For single-unit trucks to have an overhead clearance of at least 10 feet and to be at least than 10 feet wide and 20 feet long, exclusive of access and maneuvering area.

(b) For trailer trucks to have an overhead clearance of at least 14 feet and to be at least than 12 feet wide and 50 feet long, exclusive of access and maneuvering area.

3202.H **Design, Construction and Maintenance Standards.** The applicant must design, construct and maintain off-street parking and loading areas as follows:

(1) **Pavement.** Off-street parking and loading areas must provide a firm, level surface appropriate for the anticipated level of use in all seasons as follows:

(a) The applicant must surface parking areas for more than 20 vehicles, drive-through lanes and large truck loading areas with asphalt or concrete.

(b) The Development Review Board may modify the surfacing requirement for infrequently used parking areas.

(c) The Town of Berlin strongly encourages the applicant to use pervious pavement for infrequently used parking areas.

(2) **Layout.** The Town of Berlin strongly encourages the applicant to use perpendicular (90 degree) parking and to avoid use of angled parking unless necessitated by site-specific conditions.

(3) **Erosion and Drainage.** The applicant must grade, surface and maintain off-street parking and loading areas to properly manage all surface water and minimize erosion in accordance with the provisions of *Section 3209 as follows:

(a) Run-off and/or eroded surface materials must not flow onto adjacent roads or properties.

(b) Run-off and/or eroded surface materials must not flow directly into surface waters or wetlands.

(c) The Town of Berlin strongly encourages the applicant to use green stormwater infrastructure practices to filter and infiltrate stormwater.

(4) **Snow Storage.** The applicant must store snow cleared from off-street parking and loading areas without obstructing vehicular or pedestrian visibility or circulation to the maximum extent feasible given the physical characteristics of the subject property as follows:

(a) The applicant may store snow within a parking area provided that at least 80% of the required parking spaces on the site remain available for use.

(b) If adequate space for snow storage is not available on site, the applicant must remove snow as necessary and dispose of it in accordance with state regulations.

(c) The applicant must not clear or store snow in a manner that damages required landscaping.

(d) The Town of Berlin strongly encourages the applicant to use green stormwater infrastructure practices to filter and infiltrate snowmelt.

(5) **Markings and Edging.** The applicant must demarcate parking spaces within any parking area with more than 20 spaces as follows:

(a) If the surface is paintable, the applicant must demarcate spaces with painted lines.

(b) If the surface is not paintable, the applicant must demarcate spaces however practical.

(c) The applicant must keep the markings clearly visible and distinct.

(d) The Town of Berlin strongly encourages the applicant to use wheel stops, curbing, bollards or similar structural barriers to delineate the end of a parking space and prevent vehicles from entering or extending over abutting yards, landscape islands, sidewalks or walkways.

(e) Any area subject to vehicle overhang will not be included in the calculated area of a required walkway, island, buffer or yard.

(6) **Landscaping.** The applicant must landscape any parking area with more than 10 spaces as required by *Subsection 3204.I.

(7) **Electric Vehicle Charging.** The applicant:

(a) May provide electric vehicle charging stations within parking areas as an allowed

accessory use in any zoning district.

(b) Will not have to provide additional parking when spaces are converted and/or reserved for charging vehicles.

(c) May count electric vehicle charging stations towards the minimum amount of parking required under this section.

(8) **Maintenance.** The applicant must maintain parking and loading areas in good condition free of weeds, dirt, trash and debris.

3202.I **Previously Developed Sites.** An applicant must retrofit a previously developed site with nonconforming parking or loading when applying for major site plan approval for land development that includes a change in the amount or location of parking, or to the site layout, access or circulation as follows:

(1) The Town of Berlin's priorities for retrofitting previously developed sites are to improve access management, stormwater management and aesthetics.

(2) The Development Review Board must find that the applicant is proposing a "best fix" that conforms with the provisions of this section to the maximum extent feasible given the physical characteristics of the lot and the existing development.

Figure 3-02. **Minimum Parking Ratios**

| USE | MINIMUM PARKNG SPACES |
|---|---|
| **Residential** | |
| Single-family, accessory or multi-family dwelling | 1.0 per DU |
| Retirement housing, assisted living or nursing homes | 0.5 per DU (household living) or 0.3 per bed (congregate living) |
| Other residential | 1.0 per DU (household living) or 0.5 per bed (congregate living) |
| **Lodging** | |
| Bed and breakfast, inn, rooming or boarding house | 2.0 + 1.0 per guest or rental room |
| Hotel or motel | 0.8 per guest room + 1.0 per 600 sf of public assembly space |
| **Commercial** | |
| Retail, dining or service uses with high customer turnover | 1.0 per 300 sf of GFA |
| Retail, office or service uses with regular customer traffic | 1.0 per 450 sf of GFA |
| Office or service uses with limited customer traffic | 1.0 per 600 sf of GFA |
| Office or service uses with no regular customer traffic | 1.0 per 900 sf of GFA |
| **Industrial** | |
| Manufacturing or storage uses with no customer traffic | 1.0 per 1,500 sf of GFA |
| Research or development, data processing or similar office-like uses | 1.0 per 900 sf of GFA |
| Wholesale trade, self-storage or industrial uses with customer traffic | 1.0 per 600 sf of GFA |
| **Public Assembly** | |
| Facilities for mass assembly | 1.0 per 6 seats or 1.0 per 60 sf of assembly area if no seats |
| Public places with high visitor turnover | 1.0 per 300 sf of GFA |
| Public places with regular visitor traffic | 1.0 per 450 sf of GFA |
| Public places with limited visitor traffic | 1.0 per 600 sf of GFA |
| **Institutional or Community Facility** | |
| Hospital | 1.0 per 600 sf of GFA |
| Medical clinic building | 1.0 per 300 sf of GFA |
| Grade school | 0.1 per student + 1.0 per 300 sf of office space |

| USE | MINIMUM PARKNG SPACES |
|---|---|
| College or university | 0.3 per student |
| Trade or specialty school | 1.0 per 300 sf of GFA |
| Library | 1.0 per 300 sf of GFA |
| Museum or exhibition hall | 1.0 per 1,200 sf of GFA |
| Public safety facility | 1.0 per employee + 1.0 per 300 sf of office space |
| Funeral home | 1.0 per 300 sf of GFA |
| Supervision or rehabilitative services | 1.0 per 600 sf of GFA |
| Social assistance, welfare or charitable services | 1.0 per 300 sf of GFA |
| **Mining, Agriculture and Forestry** | |
| Stable or equine facility or greenhouse | 1.0 per 600 sf of GFA |
| Kennel | 1.0 per 300 sf of GFA |
| Mining, extracting, quarrying and stone cutting | 1.0 per employee + 1.0 per facility vehicle |
| Support functions for animal production | 1.0 per 600 sf of GFA |

***Notes.*** *When calculation of minimum parking requirements based on these ratios results in a fractional number, the number of spaces must be rounded up to the nearest whole number.*

*If a proposed use is not listed, the Zoning Administrator will set a ratio based on the listed use most similar to the proposed use.*

*DU = Dwelling Unit. GFA = Gross Floor Area.*

*High turnover uses are characterized primarily by primarily drop-in customers or visitors staying for a short period of time (ex. convenience store, coffee shop, or fast-food restaurant).*

*Uses with regular traffic are characterized by primarily scheduled customers or visitors staying for moderate period of time (ex. sit-down restaurant, theater, hair salon, or medical office).*

*Uses with limited traffic are characterized by customers or visitors arriving infrequently and primarily by appointment (ex. attorney or accountant).*

Figure 3-03. **Shared Parking Percentages**

| Land Use | Weekday | | Weekend | | |
|---|---|---|---|---|---|
| | Daytime (9 AM – 4 PM) | Evening (6 PM – 11 PM) | Daytime (9 AM – 4 PM) | Evening (6 PM – 11 PM) | Nighttime (12 AM – 6 AM) |
| Office or Industrial | 100% | 10% | 10% | 5% | 5% |
| Retail | 60% | 70% | 100% | 70% | 5% |
| Lodging | 70% | 100% | 70% | 100% | 70% |
| Dining | 50% | 100% | 70% | 100% | 5% |
| Other Commercial | 40% | 100% | 80% | 100% | 5% |
| Residential | 50% | 90% | 80% | 90% | 100% |

***Notes****. If a proposed use is not listed, the Zoning Administrator will set the percentages.*

## Section 3203. Access and Circulation

3203.A **Purpose.** The purpose of this section is to promote safe and efficient access to and circulation within a property for vehicular, bicycle and pedestrian traffic.

3203.B **Vehicular Access.** The applicant must demonstrate that proposed land development will have vehicular access from the road in accordance with any duly-adopted town public works specifications, VTrans' B-71 Standards for Residential and Commercial Drives and the standards below. In the case of any conflict the town's public works specifications would take precedence over the B-71 standard or the standards of this section, and the standards of this section would take precedence over the B-71 standard:

(1) **State Highways.** If the development site fronts a state highway and:

(a) Is a corner lot, access must be from the secondary or lower-traffic road unless the applicant demonstrates that access from the state highway or higher-traffic road would improve traffic safety.

(b) Will be accessed from that state highway, the applicant must submit a letter of intent confirming that the Vermont Agency of Transportation is prepared to issue an access permit and setting out any proposed conditions on that permit.

(2) **Number.** A lot must only have one curb cut unless the Development Review Board approves the additional curb cut(s). The applicant must demonstrate that the additional access is necessary to:

(a) Accommodate unique physical conditions on the property;

(b) Provide adequate emergency access; or

(c) Provide adequate traffic circulation within the site.

(3) **Alignment.** The applicant must locate a new curb cut to directly align with any existing or approved curb cut on the opposite side of the road whenever physically feasible. If it cannot be directly aligned, the applicant must locate the curb cut so that it will be offset from any existing or approved curb cut on the opposite side of the road by at least 150 feet except that the Development Review Board may:

(a) Require greater offset given anticipated traffic, road speed and sight distance.

(b) Reduce the offset for curb cuts on low volume roads.

(c) Reduce the offset distance when it is not physically feasible to achieve and upon the applicant obtaining an access permit from the town or state, as applicable.

(4) **Spacing.** The applicant must locate a new curb cut so that it is separated from any existing or approved curb cut on the same side of the road by at least 150 feet and from any intersection by at least 200 feet except that the Development Review Board may:

(a) Require greater spacing given anticipated traffic, road speed and sight distance.

(b) Reduce the spacing for curb cuts on low volume roads.

(c) Reduce the spacing distance when it is not physically feasible to achieve and upon the applicant obtaining an access permit from the town or state, as applicable.

(5) **Shared Access.** The applicant must provide for shared access with adjacent properties whenever physically feasible. The Development Review Board may require a common access easement and/or construction of an access drive as a condition of approval. The Development Review Board may require the applicant to submit a legally binding maintenance agreement or equivalent for any shared infrastructure.

(6) **Cross Access.** The applicant must provide for cross access between adjacent properties whenever physically feasible. The Development Review Board may require a common access easement and/or construction of an access drive as a condition of approval. The Development Review Board may require the applicant to submit a legally binding maintenance agreement or equivalent for any shared infrastructure.

(7) **Length.** The applicant must design driveways with adequate length and internal circulation patterns to prevent vehicles entering and exiting the site from causing queuing on the road.

(8) **Emergency Vehicle Access.** The applicant must design all proposed land development to provide adequate access for emergency vehicles. The Development Review Board may require the applicant to provide fire lanes, pull-offs and/or turnarounds as necessary to accommodate emergency vehicles.

(9) **Off-Site Transportation Improvements.** The Development Review Board may require the applicant to pay for all or a portion of off-site transportation improvements deemed necessary to accommodate anticipated traffic resulting from the proposed development.

(10) **Access Permit.** Before the Zoning Administrator may issue a zoning permit for development accessed by a new or modified curb cut on a public road, the applicant must obtain a highway access permit from the town or state as applicable.

(11) **Previously Developed Sites.** An applicant must retrofit a previously developed site with nonconforming vehicular access when applying for major site plan approval for land development that includes commencement of a new principal use or changes to the site layout, access or circulation as follows:

(a) The Town of Berlin's goals (listed in order of descending priority) for retrofitting previously developed sites are to eliminate uncontrolled access along lot frontages, reduce the width of excessively wide curb cuts, reduce the number of curb cuts and create cross access.

(b) The Development Review Board must find that the applicant is proposing a "best fix" that conforms with the provisions of this section to the maximum extent feasible given the physical characteristics of the lot and the existing development.

3203.C **Public Transit.** If development will be located on an existing or proposed transit route, the Development Review Board may require the applicant to provide a designated bus stop and/or shelter on the site as deemed appropriate given the project location, proposed use and anticipated traffic.

3203.D **Bicycle Access.** The applicant must provide safe and convenient bicycle access as follows:

(1) If the site will provide parking for more than 20 vehicles, the number of bicycle parking spaces must be at least 5% of the number of vehicle parking spaces on the site. The Development Review Board may require additional bicycle parking as deemed appropriate given the project location, proposed use and anticipated traffic. Any required bicycle parking must meet the standards below:

(a) Bicycle racks must allow the bicycle frame and at least one wheel to be secured with a standard U-type bicycle lock.

(b) The applicant must locate any required bicycle racks within 200 feet of a building entrance.

(c) The Town of Berlin encourages applicants to locate bicycle racks under shelter whenever feasible.

(2) The Development Review Board may require applicants to incorporate designated bicycle lanes or paths that provide safe and convenient routes between the road and the bicycle parking area(s) on sites with high traffic volumes. Any required bicycles lanes or paths must meet the standards below:

(a) Bicycle lanes adjacent to vehicular travel lanes must be at least 4 feet wide.

(b) Separated bicycle or multi-use paths must be at least 8 feet wide.

3203.E **Pedestrian Access.** The applicant must provide safe and convenient pedestrian access as follows:

(1) **Sidewalks.** Applicants with properties in the Town Center district or that front on Route 302 must provide a sidewalk along the frontage. In other locations, the Development Review Board may require sidewalks as deemed appropriate given the project location, proposed use and anticipated traffic. Any required sidewalk must meet the standards below:

(a) Sidewalks must be at least 5 feet wide (excluding any curb) and hard surfaced with concrete or an equivalent material.

(b) Sidewalks must be separated from the road by a planting strip at least 5 feet wide. The Development Review Board may waive or modify this requirement in response to site-specific physical conditions.

(c) Sidewalks must not have a running slope that is steeper than the roadway and running slopes 5% or less are preferred. Sidewalks must have a cross slope of 2% or less.

(d) Applicants must provide curb ramps and crosswalks at intersections and where driveways bisect sidewalks.

(e) The Town of Berlin may require the property owner to be responsible for maintenance of sidewalks irrespective of whether they are located within a public right-of-way.

(f) The Development Review Board may waive or modify the sidewalk requirement as recommended by VTrans (on state highways) or the Highway Superintendent (on town roads).

(2) **Internal Walkways.** Applicants must provide continuous internal pedestrian walkways as follows:

(a) Walkways must connect pedestrians to public sidewalks, transit stops, crosswalks, building entrances, parking areas, and community spaces on or abutting the site.

(b) Walkways must be at least 5 feet wide.

(c) Walkways must be hard surfaced.

(d) A landscaped buffer, change in elevation and/or change in surface material must separate or distinguish walkways from driving and parking surfaces.

(3) **Parking Areas.** Applicants must provide walkways between parking area(s) and building entrance(s). Parking lots with more than 40 spaces must have designated walkways that separate pedestrian and vehicular traffic.

(4) **Previously Developed Sites.** An applicant must retrofit a previously developed site with nonconforming pedestrian access when applying for major site plan approval. The Development Review Board must find that the applicant is proposing a "best fix" that conforms with the provisions of this section to the maximum extent feasible given the physical characteristics of the lot and the existing development.

### Section 3204. Landscaping and Screening

3204.A **Purpose.** The purpose of this section is to protect quality of life, community character and environmental quality by:

(1) Enhancing the appearance of the built environment as viewed from public vantage points;

(2) Screening land uses and development that create visual clutter and distraction;

(3) Creating shade along sidewalks and walkways, and within parking lots;

(4) Treating and controlling stormwater runoff;

(5) Providing a landscaped buffer between incompatible land uses;

(6) Maintaining rural character; and

(7) Providing wildlife habitat.

3204.B **Design Guidelines.** Landscaping should fit into and enhance the site's natural features and setting. Landscape plans should feature a mix of primarily native plant materials arranged in informally shaped and spaced groupings.

3204.C **Landscape Plans.** Except within the Rural or Upland Conservation districts, applicants for major site plan approval must submit a landscape plan prepared by a licensed landscape architect or certified horticulturalist. The Development Review Board may waive the requirement for a professionally-prepared plan if the proposed development will require minimal to no change to the existing landscaping on the property.

3204.D **Plant Materials.** Applicants must select non-invasive plant materials that meet the planting specifications in *Figure 3-04 and the Town of Berlin strongly encourages applicants to:

(1) Retain existing mature vegetation on development sites to meet landscaping and screening requirements; and

(2) Use native plant materials.

3204.E **Maintenance.** Property owners must:

(1) Maintain landscaping required under this section or as a condition of approval in a healthy condition.

(2) Replace any dead or dying plants within 1 growing season with a comparable plant (in terms of type, form, size at maturity, etc.) of at least the minimum size requirements specified in *Figure 3-04.

3204.F **Street Trees.** Within the Town Center district, applicants for major site plan approval must preserve or plant street trees along existing and new roads as follows:

(1) Applicants must preserve or plant at least 1 large or medium tree within 10 feet of the edge of the road right-of-way for each 50 feet of road frontage.

(2) The Development Review Board may waive the street tree requirement if the applicant can demonstrate that providing an adequate planting area at least 10 feet wide within or immediately adjacent to the road right-of-way is not feasible due to site-specific conditions.

(3) The Town of Berlin strongly encourages applicants to refer to the *Vermont Tree Selection Guide* and online tree selection tool available from the Vermont Urban and Community Forestry Program for guidance on choosing appropriate street tree species.

(4) The Town of Berlin strongly encourages applicants to plant a diversity of tree species.

3204.G **Front Yard Landscaping.** Except within the Rural and Upland Conservation districts, applicants for major site plan approval must landscape the area within the minimum front setback as follows:

(1) Applicants must preserve or plant at least 1 shrub for each 10 feet of road frontage and 1 medium or small tree for each 50 feet of road frontage.

(2) The Town of Berlin strongly encourages applicants to integrate required landscaping into green stormwater infrastructure practices.

3204.H **Building Landscaping.** Except within the Rural and Upland Conservation districts, applicants must landscape around any new principal building that will be located more than 20 feet beyond the minimum front setback as follows:

(1) Applicants must preserve or plant at least 1 shrub for each 5 feet of building perimeter and 1 small or medium tree for each 30 feet of building perimeter.

(2) Applicants may substitute perennial ornamental plants for not more than 50% of the total number of required shrubs.

(3) Applicants are strongly encouraged to use landscaping to:

(a) Provide direction to and enhance building entrances;

(b) Enhance and shade walkways;

(c) Provide visual breaks along blank building facades; and/or

(d) Intercept and filter stormwater runoff (ex. rain garden).

3204.I **Parking Lot Landscaping.** Applicants in the Town Center, Commercial, Mixed Use, Light Industrial and Residential districts must landscape parking areas with more than 20 new spaces (this will not include converting existing impervious surfaces to parking) as follows:

(1) Applicants must plant at least 1 tree within or abutting the parking area for every 5 new parking spaces, and at least 1 shrub for every 10 new parking spaces.

(2) Planting islands and strips must measure at least 160 square feet in area and must not be less than 8 feet in any dimension. These measurements must not include any area subject to vehicle overhang.

(3) The Town of Berlin strongly encourages applicants to integrate required landscaping into green stormwater infrastructure practices.

3204.J **Screening.** Applicants for major site plan approval must minimize the impacts of proposed development (this will not include any pre-existing development on the site that will not be modified) on adjacent properties and public views as follows:

(1) **Intent.** The purpose of screening is to reduce the visibility of incompatible, disruptive or unappealing aspects of proposed development. This does not mean that applicants should fully obscure all views of the subject area or element. Rather, applicants should use screening to soften and break up views and to create visual interest elsewhere on the site so that the subject area or element no longer dominates the view.

(2) **Yards.** The Development Review Board may require an applicant to retain or establish a landscaped buffer, berm and/or fencing along lot lines, particularly when an applicant proposes to locate a more intensive use adjacent to a less intensive use or district. The Town of Berlin strongly encourages applicants to:

(a) Retain existing mature vegetation to the maximum extent feasible.

(b) Design landscaped buffers to feature a mix of primarily native evergreen and deciduous plant materials arranged in informally shaped and spaced groupings.

(3) **Parking Lots.** Applicants must screen parking areas from view from the road and adjoining properties with landscaping, ornamental walls or fences, berms and/or change in grade.

(4) **Utilities.** Applicants must locate utilities underground whenever feasible given site-specific conditions. Applicants must screen aboveground utilities from view from the road and adjoining properties.

(5) **Service Areas.** Applicants must screen off-street loading areas and similar utilitarian site features from view from the road and adjoining properties.

(6) **Refuse Collection Areas.** Applicants must design and locate trash dumpsters and other refuse collection areas to prevent odor or other adverse impacts from affecting adjoining property and minimize their visibility from the road and adjoining property as follows:

(a) Storing all refuse within sealed containers.

(b) Locating trash dumpsters and other refuse collection areas at least 50 feet from adjoining residential properties or districts.

(c) Locating trash dumpsters and other refuse collection areas within a gated enclosure at least 6 feet high that will be compatible with the design and materials of the associated building.

(d) Keeping the gate closed and secured with a latch except when someone is depositing or picking-up refuse.

(e) Locating trash dumpsters and other refuse collection areas on an adequately drained, paved surface.

(7) **Ground- or Building-Mounted Equipment.** Applicants must design and locate mechanical equipment and utilities to minimize their visibility from the road and adjoining property as follows:

(a) Painting or otherwise coloring equipment or utilities to match building materials to the maximum extent feasible.

(b) Enclosing or screening building-mounted equipment or utilities with walls or parapets that will be compatible with the form, design and materials of the building.

(c) Screening ground-mounted equipment or utilities with landscaping, ornamental walls or fences, berms and/or change in grade.

Figure 3-04. **Planting Specifications**

| Plant Material | Minimum Caliper at Planting | Minimum Height at Planting | Mature or Maintained Height |
|---|---|---|---|
| Large Tree | 2½ inches for single-trunk trees (measured at 6 in above grade) | 6 ft for multi-trunk trees | ≥50 ft |
| Medium Tree | | | 30 to <50 ft |
| Small Tree | | | <30 ft |
| Large Shrub | – | 30 inches | ≥6 ft |
| Medium Shrub | – | 18 inches | 3 to <6 ft |
| Small Shrub | – | 12 inches | <3 ft |

## Section 3205. Outdoor Lighting

3205.A **Purpose.** The purpose of this section to maintain a dark night sky and reduce light trespass, glare and energy use by:

(1) Encouraging lighting designs that direct appropriate amounts of light where and when it is needed;

(2) Increasing the use of energy efficient lamps; and

(3) Discouraging the use of poorly shielded or directed light fixtures.

3205.B **Lighting Plans.** Except within the Rural and Upland Conservation districts, applicants for major site plan approval must submit a lighting plan prepared by a qualified professional lighting designer or engineer.

3205.C **Lighting Zones.** This section regulates outdoor lighting based on the following zones:

(1) **Lighting Zone 1** encompasses the Residential, Hamlet, Rural, Shoreland Conservation and Upland Conservation zoning districts.

(2) **Lighting Zone 2** encompasses all other zoning districts.

3205.D **Lighting Classes.** This section regulates outdoor lighting based on the following classes:

(1) **Class 1 Lighting** includes all outdoor lighting used for outdoor dining or food service areas, outdoor maintenance facilities where regularly scheduled work activities occur after dark, display areas, outdoor assembly areas like amphitheaters, recreational facilities, signs or similar applications where color rendition is essential to the illuminated activity or purpose of the lighting.

(2) **Class 2 Lighting** includes all outdoor lighting used for illumination of walkways, roadways, equipment yards, parking lots, outdoor security or similar applications where general illumination for visibility, safety or security of the grounds is the primary concern.

(3) **Class 3 Lighting** includes all outdoor lighting used for decorative effects such as architectural illumination, flag and monument lighting, landscape lighting and similar applications.

3205.E **General Standards.** Applicants must propose the minimum amount of outdoor lighting required for safety, security, and the intended use as follows:

(1) **Shielding.** Applicants must use shielded outdoor light fixtures as specified in *Figure 3-05. Applicants must install and maintain outdoor light fixtures so that the shielding is effective.

(2) **Total Output.** Total output from all outdoor light fixtures on a site must not exceed the limits specified in *Figure 3-06.

(3) **Contrast.** Applicants must design outdoor lighting to avoid harsh contrasts in light level.

(4) **Allowed Lamp Types.** All lamps must conform to the types specified in *Figure 3-05 and must be Energy Star certified.

(5) **Spot Light Aiming.** Light fixtures containing spot or flood lamps:

(a) Must be aimed no higher than 45° above straight down.

(b) Will be considered fully shielded when aimed straight down.

(c) Will be considered partially shielded when aimed above straight down.

(6) **House Side Shielding.** Any outdoor light fixture containing a lamp with an initial output of more than 10,000 lumens that will be located within 50 feet of residential property or a public right-of-way must use an internal or external "house side" shield. The light fixture and shield must be oriented to minimize light trespass over the adjacent property or right-of-way.

(7) **Freestanding Lights.** Freestanding light fixtures:

(a) Must not exceed 25 feet in height.

(b) Should not be more than 12 feet in height when used to light walkways and other pedestrian-oriented spaces.

(c) May be located within front setbacks.

(d) Must not be located within side or rear setbacks except if located within a shared parking or loading area.

(8) **Internally Illuminated Architecture.** The initial lamp output of any architectural element (ex. wall, fascia or canopy edge) that is internally illuminated and that is not a sign will count as partially shielded, Class 3 lighting for the purposes of calculating total outdoor light output for the site.

(9) **Luminous Tube Lighting.** Luminous tube lighting does not require shielding but it will count as partially shielded lighting for the purposes of calculating total outdoor light output for the site.

(10) **Sign Lighting.** See Subsection 3206.J.

(11) **Time Limits.** The Development Review Board may limit when property owners may use outdoor lighting as deemed necessary to achieve the purposes of this section and protect the character of the neighborhood. The Town of Berlin strongly encourages applicants to use timers, dimmers and sensors to control outdoor lighting.

3205.F **Special Use Lighting.** There are special standards for the following uses:

(1) **Recreation Facilities.** Lighting for outdoor recreation facilities:

(a) Is exempt from the lumens per acre limit specified in *Figure 3-06 and the height limitation specified in *Paragraph 3205.E(7).

(b) Must be designed to achieve no greater than the minimal levels for the activity as recommended by the Illuminating Engineering Society of North America (IESNA).

(c) Must use fixtures that are fully-shielded or use internal and/or external louvers or shields to minimize off-site glare and light trespass.

(d) Must use fixtures that are installed and maintained with aiming angles that permit no greater than 5% of the light emitted by each fixture to project above the horizontal.

(2) **Frontage Row of Sales Lot Display Areas.** Lighting for the frontage row of sales lot display areas will be considered Class 1 Lighting and must conform to the following:

(a) All lighting for the frontage row of sales lot display areas must use properly installed and maintained fully-shielded light fixtures.

(b) The total outdoor light output for the frontage row of sales lot display areas will be exempt from the lumens per acre limit specified in *Figure 3-06, but must not exceed 60 lumens per square foot.

(c) Any lighting for the frontage row of sales lot display areas that exceeds the lumens per acre limit specified in *Figure 3-06 must be turned off after 9 p.m., or 30 minutes after the close of business if later.

(d) Any lighting for the frontage row of sales lot display areas that remains on after the time limit will be considered Class 2 Lighting and must conform to the standards of *Subsection 3205.E.

(3) **Fueling Station Canopies.** Lighting for fueling station canopies will be considered Class 1 Lighting and must conform to the following:

(a) All light fixtures mounted on or recessed into the lower surface of fueling station canopies must be fully shielded and use flat lenses.

(b) The total light output used for illuminating fueling station canopies must not exceed 60 lumens per square foot of canopy.

(c) The total light output used for illuminating fueling station canopies will be counted towards the site's lumens per acre limit as specified in *Figure 3-06.

3205.G **Security Lighting.** The Development Review Board may approve security lighting as follows:

(1) The Development Review Board may waive or modify lighting standards to allow applicants to install and use security lighting to the extent required to meet state or federal code. Such security lighting will not be subject to the requirements for extinguishing outdoor lighting established in Figure 3-05.

(2) The Development Review Board may waive or modify lighting standards for security lighting used in association with on-site electronic or video surveillance systems or when the premises will be occupied or staffed at night.

(3) The Town of Berlin strongly encourages applicants to use timers and sensors to automatically activate and deactivate security lighting, and/or to dim lights to the minimum intensity necessary to meet security requirements.

3205.H **Previously Developed Sites.** An applicant must retrofit a previously developed site with nonconforming outdoor lighting when applying for major site plan approval. The Development Review Board must find that the applicant is proposing a "best fix" that conforms with the provisions of this section to the maximum extent feasible given the physical characteristics of the lot and the existing development.

Figure 3-05. **Light Fixture Shielding, Lamp Type and Time Limits**

| | ZONE 1 | ZONE 2 | LAMP TYPE | LIGHTING EXTINGUISHED |
|---|---|---|---|---|
| **CLASS 1 LIGHTING** | | | | |
| Initial output <2,000 lumens | Fully shielded | Partially shielded | All types with a Color Rendering Index value of 90 or higher. | – |
| Initial output 2,000 lumens or more | Fully shielded | Fully shielded | | – |
| **CLASS 2 LIGHTING** | | | | |
| Initial output <2,000 lumens | Fully shielded | Partially shielded | All types | After 11 p.m. (or 30 min after close of business if later) if the light is located more than 50 ft from the nearest building, display area or storage area. |
| Initial output 2,000 lumens or more | Fully shielded | Fully shielded | "warm white" LED (preferred)<br>High-pressure sodium<br>Low-pressure sodium | |
| **CLASS 3 LIGHTING** | | | | |
| Initial output <2,000 lumens | Partially shielded | Partially shielded | All types | After 11 p.m. (or close of business if later) |
| Initial output 2,000 lumens or more | Prohibited | Prohibited | – | |

Figure 3-06. **Total Outdoor Light Outputs**

| | ZONE 1 | ZONE 2 |
|---|---|---|
| **Commercial, Industrial or Mixed Use** | | |
| All light fixtures (fully + partially shielded) | 50,000 lumens/acre | 100,000 lumens/acre |
| Partially shielded light fixtures only | 5,000 lumens/acre | 10,000 lumens/acre |
| **Multi-Family Residential** | | |
| All light fixtures (fully + partially shielded) | 10,000 lumens/dwelling | 10,000 lumens/dwelling |
| Partially shielded light fixtures only | 3,000 lumens/dwelling | 3,000 lumens/dwelling |

## Section 3206. Signs

3206.A **Purpose.** The purpose of this section is to encourage the orderly and appropriate design, scale and placement of signs in order to:

(1) Protect public safety;

(2) Promote effective identification, communication and wayfinding; and

(3) Maintain and enhance an attractive visual environment that fosters a healthy economy.

3206.B **Applicability.** A property owner or tenant must obtain a zoning permit before he/she erects, enlarges, replaces, rewords, redesigns or alters a sign in any way except as specifically exempted in *Subsection 3206.D.

3206.C **Prohibited Signs.** The Town of Berlin prohibits the following signs:

(1) Off-premise signs, except for signs on a common scheme premises in accordance with *Paragraph 3206.H(7) and agricultural signs in accordance with 10 V.S.A. § 494(12).

(2) Signs located and sized to be primarily readable from a limited access highway.

(3) On-premise signs more than 1,500 feet from the main building entrance of the advertised business or use, except for signs on a common scheme premises in accordance with *Paragraph 3206.H(7).

(4) Abandoned signs.

(5) Signs attached to trees, utility poles, public benches, or streetlights.

(6) Signs placed on any public property or public right-of-way, except for a portable sign in accordance with *Paragraph 3206.H(11).

(7) Signs that obstruct pedestrian traffic or visibility.

(8) Signs that:

(a) Limit drivers' sight distance;

(b) Could be confused with official highway signs or signals;

(c) Unduly distract drivers' attention; or

(d) Otherwise impair public safety.

(9) Signs illuminated by, composed of, or containing flashing, intermittent, rotating or moving lights except for electronic message signs in accordance with *Paragraph 3206.H(8).

(10) Permanent signs that move or that incorporate any pennant, ribbon, streamer, spinner, balloon, inflatable or other similar moving, fluttering or revolving device (such attention grabbing devices may be allowed as temporary signs in accordance with *Paragraph 3206.H(11)).

(11) Signs that use obscene, lewd, vulgar or indecent words or images.

(12) Signs more than 150 square feet in area.

(13) Signs, flags or banners mounted or extending more than 35 feet above the ground except:

(a) If building mounted, extending above the building's roofline.

(14) Signs placed on vehicles or trailers that the owner has parked or located primarily for the purpose of displaying the sign.

3206.D **Exempt Signs.** The following signs do not require a zoning permit:

(1) Public signs or notices erected or required by the town, state or other public entity for a non-commercial purpose.

(2) Tourist information signs in conformance with 10 V.S.A. Chapter 21.

(3) Flags or insignia of a government as follows:

(a) Flags must not exceed 60 square feet in area.

(b) Property owners must display flags in accordance with applicable federal and state codes.

(c) Flagpoles must not exceed 35 feet in height.

(4) Political or campaign signs as follows:

(a) Signs must not exceed 4 square feet in area.

(b) Property owners or candidates must not display campaign signs more than 60 days before the earliest date that voters may submit ballots.

(c) Property owners or candidates must remove campaign signs within 7 days after the election except they do not have to remove signs between the primary and general election.

(5) Signs for a special event open to the public and sponsored by a public or nonprofit organization that the organization displays for not more than 14 days.

(6) Signs for a garage sale, yard sale or similar sale of personal property that are not more than 4 square feet in area that the property owner displays for not more than 7 consecutive days or more than 28 days in any calendar year.

(7) Real estate signs as follows:

(a) The property owner or realtor may display one sign per road the lot has frontage on.

(b) Signs must not exceed 6 square feet in area.

(c) The property owner or realtor must remove the sign(s) within 7 days following the sale or lease of the property.

(8) One construction site identification sign not more than 32 square feet in area per lot as follows:

(a) Signs must not be erected prior to work commencing on the project; and

(b) Signs must be removed not more than 7 days after the Zoning Administrator issues a certificate of compliance for the project or upon completion of the work if no certificate of compliance is required.

(9) One open flag not more than 15 square feet or open/closed sign not more than 2 square feet in area per business as follows:

(a) The business owner may only display the flag when the business is open.

(b) The business owner may only illuminate an open sign when the business is open.

(10) Posted, trespassing, hunting or similar signs not more than 4 square feet in area.

(11) Non-illuminated name, address or similar identification signs not more than 4 square feet in area.

(12) Non-advertising, ornamental signs or banners not more than 4 square feet in area located on single-family or two-family residential property.

(13) Directional signs sized, designed and located solely to safely direct the flow of traffic.

(14) Identification, information or similar signs not legible from off-site.

3206.E **Sign Zones.** This section regulates signs based on the following zones:

(1) **Sign Zone 1** encompasses the Mixed Use and Hamlet zoning districts.

(2) **Sign Zone 2** encompasses the Town Center, Commercial and Light Industrial zoning districts.

(3) **Sign Zone 3** encompasses all other zoning districts.

3206.F **Dimensional Standards.** *Figure 3-08 establishes the maximum sign area and height by zone, which applicants must calculate or measure as follows:

(1) **Sign Area.** The applicant must calculate sign area by drawing one or more rectangles around all the components (ex. text, logos, symbols, graphics) that serve to communicate the sign's message as follows:

(a) The applicant may exclude support components (ex. frames, bases, poles, posts, roofs, etc.) unless they are integral to communicating the sign's message.

(b) Sign area only includes one side of a multi-sided sign as long as the message is the same on all sides (if it is not, the applicant must count each unique message component once in the calculation).

(c) The applicant may adjust the area of a nonrectangular sign to compensate for the amount of negative space within the sign area rectangle(s) as specified in *Figure 3-09.

(d) See *Figure 3-09 for further guidance on calculating sign area.

(2) **Sign Height.** The applicant must measure the height of a ground-mounted sign from the lowest point on the ground at the base of the sign to the highest point of the sign, including any support component (ex. post, roof, etc.). See *Figure 3-08 for further guidance on measuring sign height.

3206.G **General Standards.** The applicant must design, install and maintain signs as follows:

(1) Signs must be structurally sound and located so that they do not pose a threat to pedestrian or vehicular traffic.

(2) Permanent ground-mounted signs must be self-supporting structures built on and attached to concrete foundations.

(3) Signs must be constructed of durable, weatherproof materials.

(4) Signs must be able to withstand a wind pressure of at least 30 pounds per square foot.

(5) Signs must not obscure architectural features such as cornices, arches, columns, etc.

(6) Signs must not obstruct access to any fire escape, required exit, window or door.

3206.H **Specific Standards.** Signs must conform to the following:

(1) **Wall Signs.** Wall signs are allowed as specified in *Figure 3-07 and in accordance with the following:

(a) A building or tenant may have multiple wall signs.

(b) The applicant may mount signs on any wall facing a road (excluding interstate and limited access highways), public right-of-way or parking lot.

(c) The applicant must count the total area of all wall signs towards the maximum amount of building-mounted signs specified in *Figure 3-08.

(d) The combined width of all ground floor wall signs must not exceed 80% of the building frontage. On each upper floor, the combined width wall signs must not exceed 30% of the building frontage.

(e) The applicant may illuminate the sign in accordance with *Subsection 3206.J.

(f) Wall signs that project more than 6 inches from the wall must have a minimum

clearance of 8 feet from the bottom of the sign to the grade below.

(g) Wall signs may encroach over setbacks or sidewalks.

(h) The Town of Berlin will consider any sign that projects more than 18 inches from the wall to be a projecting sign.

(2) **Projecting Signs.** Projecting signs are allowed as specified in *Figure 3-07 and in accordance with the following:

(a) There must not be more than one projecting sign per customer entrance.

(b) The sign must not exceed 12 square feet in area.

(c) The applicant must count the area of a projecting sign towards the maximum amount of building-mounted signs specified in *Figure 3-08.

(d) The applicant may illuminate the sign in accordance with *Subsection 3206.J.

(e) The sign and its support structure must have a minimum clearance of 8 feet from the bottom of the sign to the grade below.

(f) The sign and its support structure must not project more than 6 feet from the wall of the building on which it is mounted.

(g) The sign and its support structure may encroach into required setbacks and over sidewalks to within 1 foot of the curb.

(h) The applicant must not mount a projecting sign above the second floor, except that the applicant may mount a blade sign at ground or second floor level that extends more than one story in height.

(i) The applicant must not locate a projecting sign within 24 feet of another projecting sign.

(j) If there will be multiple projecting signs mounted on a building, they must be compatible in type, scale and placement.

(3) **Window Signs.** Permanent window signs:

(a) Will be considered wall signs for the purposes of determining the total number and area of signs allowed on a site.

(b) Must not obscure more than 25% of any ground-level window on the interior or exterior of the window, or physically mounted on the window or otherwise mounted so as to be primarily viewed through the window.

(4) **Directory Signs.** Building-mounted directory signs are allowed as specified in *Figure 3-07 to identify uses that must be accessed from inside the building and in accordance with the following:

(a) There must not be more than one directory sign per shared building entrance.

(b) The sign must not exceed 12 square feet in area.

(c) The sign must be located at or adjacent to a building entrance.

(d) The sign must not be internally illuminated, but may be externally illuminated in accordance with *Subsection 3206.J.

(e) The applicant must count the area of a directory sign towards the maximum amount of building-mounted signs specified in *Figure 3-08.

(5) **Signs for Upper Floor Uses.** Building-mounted signs identifying upper floor uses are allowed as specified in *Figure 3-07 and in accordance with the following:

(a) There must not be more than one sign per upper floor use.

(b) The applicant must mount the sign above the ground floor level, if possible at the height and location of the advertised use.

(c) The sign must not be internally illuminated, but may be externally illuminated in accordance with *Subsection 3206.J.

(d) The applicant must count the area of upper floor use signs towards the maximum amount of building-mounted signs specified in *Figure 3-08.

(e) If there will be multiple upper floor use signs mounted on a building, they must be compatible in type, scale and placement.

(6) **Ground-mounted signs.** Ground-mounted signs are allowed as specified in *Figure 3-07 and in accordance with the following:

(a) There must not be more than one ground-mounted sign per site, except that sites with vehicle entrances on more than one road may have one ground-mounted sign alongside and oriented to each road.

(b) The maximum size and height of a ground-mounted sign is specified in *Figure 3-08.

(c) The sign may be located within required setbacks, but must be set back at least 3 feet from the property line. Signs more than 6 feet in height must be set back from the property line at least a distance equal to 50% of their height.

(d) The applicant may illuminate a sign in accordance with *Subsection 3206.J.

(e) The applicant must not locate a ground-mounted sign within 50 feet of another ground-mounted sign.

(f) Multi-use ground-mounted signs must not include any information other than the name of the site, its address and/or the name of tenants.

(g) Ground-mounted entrance signs must not include any information other than the name of the site or subdivision and its address. Monument signs are the preferred type of entrance sign.

(7) **Common Scheme Premises Signs.** A single development site that consists of multiple lots, buildings or tenants sharing a common entrance from the road:

(a) Must have an approved common scheme for all signs that ensures sign size, placement, type, design and materials will be coordinated and compatible within the development.

(b) May obtain administrative approval of any changes to existing signs or new signs that are in conformance with the approved common scheme.

(c) May have a multi-use ground-mounted sign, irrespective of whether the advertised

uses are located on the same lot as the sign.

(8) **Electronic Message Signs.** Electronic message signs are allowed as specified in Figure 3-07 and in accordance with the following:

(a) There must not be more than one electronic message sign per use except as specifically authorized in *Subsection 3206.I.

(b) Single-color, changeable-copy electronic message signs must not exceed 12 square feet in area.

(c) Multi-color changeable-copy electronic message signs are prohibited, except for theater marquees in accordance with *Paragraph 3206.I(1).

(d) Changeable-copy electronic message signs must not flash, scroll, fade, brighten, dim or otherwise be animated or create the effect of movement.

(e) The sign must not change its message more than once each hour except that time-temperature signs may switch messages once every 4 seconds.

(f) The brightness of the sign must not be of such an intensity as to cause unsafe conditions. Electronic message signs illuminated after dark must have their brightness automatically adjust in response to ambient light levels.

(9) **Awnings and Similar Accessory Structures.** Signs on awnings or similar accessory structures attached to a building will be considered wall signs for the purposes of determining the total number and area of signs allowed on a site.

(10) **Instructional and Wayfinding Signs.** Instructional and wayfinding signs not designed to be legible from off the premises are allowed without limitation and will not be counted when determining the total number and area of signs allowed on a site.

(11) **Temporary Signs.** Temporary signs are allowed to advertise openings, sales or similar special events in accordance with the following:

(a) Property or business owners may purchase annual licenses to display temporary signs in accordance with *Figure 3-10.

(b) The license for a sandwich board or A-frame sign authorizes the holder to display one such sign and the Zoning Administrator may only issue one license per business. The sign must not be more than 8 square feet in area and 4 feet in height. The sign may be placed on the public sidewalk not more than 12 feet from the associated customer entrance provided that the sign does not restrict the sidewalk to a clear width of less than 3 feet. The license holder must only place the sign out when the associated business is open.

(c) The license for attention grabbing devices authorizes the holder to display pennants, ribbons, streamers, spinners, balloons, inflatables, flags, feather banners or other similar moving, fluttering or revolving devices. There may be multiple devices displayed on the property provided that all ground-mounted devices are separated from each other by a minimum distance of 50 feet.

(d) The license for other temporary signs authorizes the holder to display one or more other types of signs (ex. banners, window signs, etc.) provided that the total sign area does not exceed the maximum amount allowed. The Zoning Administrator

may only issue one license per business.

(e) The license holder must securely attach a temporary sign to a building or a permanent ground-mounted sign. A license holder must not install permanent footings, posts or similar structure to support a temporary sign.

(f) Temporary signs will not count towards the total amount of signs allowed under Figure 3-08.

(g) An applicant must not illuminate a temporary sign.

(h) The Town of Berlin will consider temporary signs that are not readily movable to be permanent signs subject to all applicable provisions of this section.

3206.I **Special Use Signs.** There are special standards for the following uses:

(1) **Theaters.** In addition to the signs otherwise allowed under this section, a theater may have either:

(a) A marquee, which may advertise current or upcoming movies, shows or performances. The marquee may project not more than 6 feet from the building and may be not more than 4 feet high and 12 feet wide. The applicant may use three faces of the marquee as signs. The marquee will not count towards the total amount of signs allowed under Figure 3-08. In Sign Zones 1 and 2, the marque may use a multi-color, changeable-copy electronic message sign and will not be subject to the size limitation of *Paragraph 3206.H(8) (the Town of Berlin will consider the multiple faces of the marquee as one electronic message sign).

(b) Temporary wall or window signs, which may advertise current or upcoming movies, shows or performances. An applicant may mount these signs in permanently installed frames. These signs will not count towards the total amount of signs allowed under Figure 3-08 or be subject to the limitations of *Paragraph 3206.H(3) or Paragraph 3206.H(11). The total area of these signs must not exceed 36 square feet except that multiplexes may have another 12 square feet of signage per additional theater.

(2) **Fueling Stations.** In addition to the signs otherwise allowed under this section, a fueling station may have either:

(a) One pricing sign affixed to each pump or not more than one pricing sign affixed to each side of the canopy. Such pricing signs will not count towards the total amount of signs allowed under Figure 3-08. Each sign must not be more than 4 square feet in area. Pricing signs may be single-color changeable-copy electronic message signs provided that the standards of *Paragraph 3206.H(8) are met (the Town of Berlin will consider multiple pricing signs as one electronic message sign).

(b) One free-standing pricing sign per road frontage. The pricing sign will count towards the total amount of signs allowed under Figure 3-08. The pricing sign may be a single-color changeable-copy electronic message sign provided that the standards of *Paragraph 3206.H(8) are met.

3206.J **Sign Lighting.** All sign lighting must conform to the following:

(1) **Externally Illuminated Signs.** External illumination for signs will not count towards the site's

total outdoor lighting output, but it must conform to the standards of *Subsection 3205.E. All upward directed sign lighting is prohibited.

(2) **Internally Illuminated Signs.** Internally illuminated signs will not count towards the site's total outdoor lighting output. Internally illuminated signs must be constructed with either:

(a) An opaque background and translucent text and symbols; or

(b) A colored background that is darker than the text and symbols.

(3) **Luminous Tube and Fixed-Copy Electronic Message Signs.** Luminous tube and fixed-copy electronic message signs will not count towards the site's total outdoor lighting output provided the lighting is located within the sign message area (see *Section 3206). The Town of Berlin will consider any lighting extending beyond the sign message area to be Class 3 lighting and it will count towards the site's total outdoor lighting output. Also see *Paragraph 3206.H(8).

(4) **High Intensity Lights.** The Town of Berlin prohibits the use of laser source lights, searchlights or other high intensity lights for advertising purposes.

(5) **Time Limits.** Property owners or tenants must turn off sign lighting by 11 p.m. within Lighting Zone 1 and 2 and 9 p.m. within Lighting Zone 3, or the close of business if later. The Development Review Board may further limit when property owners or tenants may illuminate signs as deemed necessary to achieve the purposes of this section and protect the character of the area.

3206.K **Sign Maintenance.** Property owners or tenants must maintain all signs in a safe, legible, functional and well-kept condition that is substantially the same as when the signs were constructed or installed.

3206.L **Sign Removal.** Property owners must remove all signs within 90 days of their associated use being changed or terminated as follows:

(1) For lawful, conforming signs, the owner must remove or cover only the message components of the sign associated with the changed or terminated use, and the support components may remain.

(2) If the owner is not going to reuse the support components, he/she must removed them before the Zoning Administrator may issue a zoning permit for any new signs on the property.

(3) If the sign is nonconforming, see *Subsection 3206.M.

3206.M **Nonconforming Signs.** The following apply to lawfully existing, nonconforming signs:

(1) A nonconforming sign must not be altered, modified or reconstructed except if:

(a) The alteration, modification, reconstruction or relocation will bring the sign into conformance with these regulations.

(b) The alteration, modification or reconstruction of the sign will be limited to normal repair and maintenance with no change in the sign's location, area or primary content (ex. business name or logo).

(2) Otherwise a nonconforming sign must be brought into conformance with these regulations when:

(a) There is a change in the primary content of the sign (ex. business name or logo).

(b) There is a major renovation of the building housing the use advertised on the sign.

(c) The sign has been damaged to the extent that the cost of repair or restoration will exceed 30% of the replacement value of the sign immediately before the damage.

(3) A property owner must remove a nonconforming sign, including both the message and support elements, within 7 days of its associated use being changed or terminated.

3206.N **Violations.** In addition to the enforcement procedures of *Chapter 470, the Town of Berlin may remove any sign found to be in violation of this section or to be posing a hazard at the owner's expense.

Figure 3-07. **Sign Types Allowed**

| | ZONE 1 | ZONE 2 | ZONE 3 |
|---|---|---|---|
| **Wall Sign** | Y | Y | Y |
| **Projecting Sign** | Y | Y | – |
| **Directory Sign** | Y | Y | Y |
| **Signs for Upper Floor Uses** | Y | Y | – |
| **Ground-Mounted Sign, Multiple Uses** | Y | Y | – |
| **Ground-Mounted Sign, Single Use** | Y | Y | Y |
| **Electronic Message Sign** | – | Y | – |

Figure 3-08. **Maximum Sign Area and Height**

| | ZONE 1 | ZONE 2 | ZONE 3 |
|---|---|---|---|
| **Building-Mounted Sign Area** (per foot of building frontage) | 2.0 sf | 1.5 sf | 0.5 sf |
| **Building-Mounted Sign Area** (building set back more than 200 ft from road) | – | 2.5 sf | 1.0 sf |
| **Ground-Mounted Sign Area** | 16 sf | 32 sf | 12 sf |
| **Ground-Mounted Sign Area** (multiple uses) | 16 sf plus 4 sf per use | 32 sf plus 8 sf per use | – |
| **Ground-Mounted Sign Height** | 12 ft | 24 ft | 8 ft |

Figure 3-09. **Sign Area Adjustment for Nonrectangular Signs**

| IF NEGATIVE SPACE COMPRISES: | THEN REDUCE THE CALCULATED SIGN AREA BY: |
|---|---|
| **30% to <50% of the Sign Area Rectangle** | 15% |
| **50% to <70% of the Sign Area Rectangle** | 30% |
| **70% or more of the Sign Area Rectangle** | 45% |

Figure 3-10. **Temporary Sign Fee Schedule**

| DURATION OF DISPLAY | A-FRAME OR SANDWICH BOARD | ATTENTION GRABBING DEVICES | OTHER TEMPORARY SIGNS | | |
|---|---|---|---|---|---|
| | 8 sf area / 4 ft high max | | 8 sf max | 24 sf max | 40 sf max |
| **Not to exceed 14 days in the 12-month period** | N/A | $50 | $50 | $150 | $250 |
| **Not to exceed 14 days in any 6-month period** | N/A | $100 | $100 | $300 | $500 |
| **Not to exceed 14 days in any 3-month period** | N/A | $150 | $150 | $450 | $750 |
| **Seasonal use not to exceed 120 days** | $100 | $425 | $425 | $1,275 | N/A |
| **Daily use** | $300 | $1,300 | $1,300 | N/A | N/A |

### Section 3207. Outdoor Use Areas

3207.A **Applicability.** The standards of this section apply to any use or component of a use that will occur outside an enclosed structure.

3207.B **General.** Outdoor use areas may be allowed as an accessory use as follows:

(1) The site plan must show the location and boundaries of proposed outdoor use area(s).

(2) Outdoor use areas must not be located within required setbacks except as specifically allowed in this section.

(3) Outdoor use areas must not be located where they will interfere with pedestrian or vehicular access and circulation, building entrances, vehicular parking, loading areas, emergency access or egress, utilities or other service areas.

(4) At a minimum, activities conducted within outdoor use areas must meet the performance standards in *Section 3208.

(5) The Development Review Board may further limit the hours of operation or any off-site impacts associated with activities conducted outside an enclosed structure as necessary to protect the character of the area.

(6) Outdoor use areas must be included when calculating total lot coverage unless the area will be specifically designed and maintained to function as a pervious surface.

3207.C **Outdoor Dining.** Outdoor dining areas for patrons may be allowed as an accessory use in accordance with the following:

(1) Outdoor dining areas may be located within the minimum front setback except within the Rural, Shoreland Conservation and Upland Conservation districts.

(2) Outdoor dining areas must be level and surfaced with a suitable firm, all-weather material.

3207.D **Outdoor Sales or Display.** Outdoor display of retail goods, wares and merchandise may be allowed as an accessory use as follows:

(1) Within the Town Center district, applicant must locate outdoor sales or display areas behind the frontline of the principal building on the lot except that:

(a) Applicants may display small retail goods on or adjoining the sidewalk in accordance with any applicable town ordinances.

(2) Merchandise not designed to be stored out-of-doors must be located outside only when the weather is suitable and the business is open.

(3) Merchandise must be located on a firm, level and stationary surface.

(4) Applicants must landscape the perimeter any new outdoor sales or display areas that exceed 10% of the total enclosed floor area for the associated use in accordance with an approved landscape plan prepared by a licensed landscape architect or certified horticulturalist.

(5) The Development Review Board may require applicants to screen outdoor sales or display areas as viewed from adjoining properties.

3207.E **Outdoor Storage.** The keeping any junk, materials, goods, equipment, unregistered vehicles, or other items not for sale in an unroofed area for more than 24 hours may be allowed as an accessory use in accordance with the following:

(1) Applicants must not locate outdoor storage areas between the principal building and the road unless otherwise approved by the Development Review Board upon its determination that the storage area cannot reasonably be located elsewhere on the site and will not detract from the character of the neighborhood.

(2) Applicants must enclose outdoor storage areas with a fence and screen them as viewed from the road and adjoining properties.

(3) Applicants must landscape the perimeter any new outdoor sales or display areas that exceed 10% of the total enclosed floor area for the associated use in accordance with an approved landscape plan prepared by a licensed landscape architect or certified horticulturalist. The Development Review Board may waive or modify this requirement for expansions of existing outdoor sales and display areas as necessary to accommodate site-specific conditions.

### Section 3208. Performance Standards

3208.A **Purpose.** The purpose of this section is to protect the character of the area and quality of life by preventing land use and development from creating or contributing to adverse off-site impacts.

3208.B **Noise.** Noise emanating off site must be muffled, must not be distinct from the background sound level beyond the property line, and must not interfere with the reasonable use and enjoyment of other properties.

3208.C **Glare.** Lighting must not be used or directed in such a manner that it produces glare on roads, on nearby property, or in the windows of nearby buildings. Arc welding, acetylene torch cutting or similar processes must be performed so as not be visible from any point beyond the property line.

3208.D **Odors.** Emission of odors that are readily detectable without special instruments at any point beyond the property line and that interfere with the reasonable use and enjoyment of other properties is prohibited.

3208.E **Vibration.** Vibration that is easily discernible without special instruments at any point beyond the property line is prohibited except that:

(1) This will not apply to vibration caused by motor vehicle, train or aircraft traffic or during construction.

(2) The Development Review Board may approve greater vibration levels for a specified period, frequency and purpose.

3208.F **Electrical or Radio Interference.** Creating interference with electrical or radio apparatus beyond the property line is prohibited.

3208.G **Waste Storage.** Storage of wastes that attract insects or rodents, or otherwise create a health hazard is prohibited. All waste must be stored in tightly sealed storage containers or within

a fully enclosed building unless specifically approved otherwise by the Development Review Board.

3208.H **Particulate Matter and Airborne Solids.** Generation of dust, dirt, fly ash, smoke, particulate matter or other airborne solids that accumulate at any point beyond the property line or that interfere with the reasonable use and enjoyment of other properties is prohibited except when related to approved construction activities.

3208.I **Flammable, Toxic or Hazardous Substances and Wastes.** Flammable, combustible or explosive materials must be stored and handled in conformance with state and federal regulations. Toxic or hazardous substances or wastes must not be released into the environment or cause contamination of any potable water supply, sanitary sewer or septic system, watercourse or water body, soil or air except as specifically permitted by the Vermont Agency of Natural Resources. Such materials must be securely stored within a fully enclosed building or tank.

### Section 3209. Erosion Control

3209.A **Purpose.** The purpose of this section is to promote construction practices that limit soil disturbance and compaction, and minimize erosion and sedimentation of downstream water bodies.

3209.B **Applicability.** The standards of this section apply to any proposed land development that will disturb soil.

3209.C **State Permit.** If an applicant must obtain a state construction general or individual permit for the proposed development, the Town of Berlin will consider obtaining that permit to be evidence that the applicant has also met the requirements of this section provided that the applicant submits a copy of the state permit to the Zoning Administrator prior to the start of construction.

3209.D **General Standards.** All construction activities that will disturb soil must implement appropriate measures to prevent erosion and sedimentation from adversely impacting nearby properties, public infrastructure or downstream water bodies (for further guidance see the most recent version of the Vermont Agency of Natural Resource's *Low Risk Site Handbook for Erosion Prevention and Sediment Control)*.

3209.E **Erosion Control Practices.** Construction activities must be undertaken in accordance with the following practices:

(1) Limit the size of the construction area to the minimum necessary to accommodate the proposed development in order to reduce the potential for erosion, runoff, flooding and water quality impairment. Significant existing trees within the construction area should be preserved where possible.

(2) Mark site boundaries to identify the limits of construction with flags or fencing. The site boundaries should include storage and access areas. No soil compaction should occur outside the delineated construction area. Trees to be preserved within the construction area should be protected by fencing that at a minimum encloses the area around their drip line.

(3) Limit the amount of soil exposed at one time to reduce the potential for erosion by phasing construction.

(4) Stabilize and maintain the construction entrance to prevent mud from being tracked onto roads.

(5) Install silt fences to intercept runoff and allow suspended sediment to settle out on the downslope side of construction activities and between disturbed soil and any drainage feature, stormwater inlet or water body.

(6) Divert any stormwater from upslope areas around the disturbed area with appropriately stabilized berms and/or ditches to prevent the runoff from picking up sediment. Untreated stormwater and sediment must not be diverted to neighboring properties, public rights-of-way or water bodies.

(7) Treat and filter any water pumped out of the construction area before allowing it to flow off the site or to be discharged to a storm drain or water body.

(8) Slow down any concentrated flows of runoff by installing stone check dams in drainage channels.

(9) Stabilize exposed soil with seed and mulch or erosion control matting promptly when work in an area is complete. All areas of disturbance should have permanent stabilization within 48 hours of reaching final grade with recognition that this may not be possible in every case, particularly for construction occurring between mid-October and mid-April.

(10) Monitor the site to ensure that all sediment and erosion control measures are functioning properly. It is particularly important to check erosion control measures just before and after any significant rainfall.

(11) Periodically clean, replace and maintain all sediment and erosion control measures until vegetation is permanently established on all disturbed areas.

(12) In order to promote water infiltration and plant health:

(a) Any compacted soil should be tilled prior to the final seeding and mulching; and

(b) Topsoil removed during construction must be stockpiled and spread back onto disturbed areas prior to the final seeding and mulching. If the quality of the site's topsoil is inadequate to support appropriate vegetative cover, it does not need to be stockpiled and it may be replaced with better quality soil or, if it is retained, it should be amended as needed

### Section 3210. Stormwater Management

3210.A **Purpose.** This section is intended to promote use of low impact development (LID) practices and green stormwater infrastructure (GSI) on development or redevelopment sites that preserve or restore the natural hydrology of the land in order to minimize stormwater-related water quality impairments and flooding.

3210.B **Applicability.** The standards of this section apply to any proposed land development that will increase the amount of impervious surface on a lot.

3210.C **State Permit.** If an applicant must obtain a state stormwater discharge permit for the proposed development, the Town of Berlin will consider obtaining that permit to be

evidence that the applicant has also met the requirements of this section provided that the applicant submits a copy of the state permit to the Zoning Administrator prior to the start of construction.

3210.D **Stormwater Management Plan.** Applicants for proposed land development that will result in the total amount of impervious surface (existing and proposed) on the lot exceeding 50% of the lot area must submit a stormwater management plan prepared by a professional engineer or licensed landscape architect demonstrating that green stormwater infrastructure practices designed in accordance with the current *Vermont Stormwater Manual* will be used to manage at least 1 inch of rainfall from new impervious surfaces on the lot so that the post-development rate of run-off flowing off the site does not exceed the pre-development rate.

3210.E **Small Projects.** Applicants for proposed land development that will result in the total amount of impervious surface (existing and proposed) on the lot not exceeding 50% of the lot area must meet one of the options below:

(1) **LID Option.** Lots that meet all of the following criteria will be assumed to provide adequate stormwater management:

(a) The amount of pervious surface on the lot must be at least 15% of the total lot area; and

(b) A vegetated, pervious surface that is at least 50 feet wide must be maintained downslope of all new impervious surfaces on the lot.

(2) **GSI Option.** All new impervious surfaces on the lot must drain to a green stormwater infrastructure practice designed in accordance with the current *Vermont Stormwater Manual*, the area of which must be at least 10% of the area of the impervious surface draining to it. Applicants are encouraged to use the *Vermont Green Stormwater Infrastructure Simplified Sizing Tool for Small Projects* to select and size GSI practices appropriate to the site and proposed development.

(3) **Stormwater Plan Option.** The applicant may submit a stormwater plan prepared by a professional engineer or licensed landscape architect demonstrating that green stormwater infrastructure practices designed in accordance with the current *Vermont Stormwater Manual* will be provided to manage at least 1 inch of rainfall from all new impervious surfaces on the lot so that the post-development rate of run-off flowing off the site does not exceed the pre-development rate.

3210.F **Standards for Post Construction Soil Depth and Quality.** On all areas on the site disturbed during construction and not covered by impervious surface, a structural stormwater treatment practice, or structural fill or slope, the applicant must:

(1) Stockpile and re-apply the duff layer and topsoil, and supplement and/or amend them as necessary, so that topsoil covers the disturbed areas.

(2) Scarify the subsoils below the topsoil layer to a minimum depth of 4 inches to allow for some incorporation of the topsoil layer except where tree roots limit scarification.

(3) Ensure that the resulting soil will be capable of supporting healthy vegetation and allow for infiltration of stormwater (i.e., it is not compacted, it contains adequate organic matter, and it is adequately deep).

3210.G **Waivers.** An applicant may request that the Development Review Board modify the standards of this section and allow all or a portion of the site's stormwater run-off to be managed through conventional, structural means in accordance the current *Vermont Stormwater Manual* rather than through low impact development and green stormwater infrastructure practices by demonstrating:

(1) Site-specific conditions such as soils, slopes, natural resource buffers or pre-existing development limit the suitability of the site for low impact development and green stormwater infrastructure practices;

(2) That the proposed design represents the minimum amount of impervious surface required to accommodate the proposed use; and

(3) That reasonable efforts have been made to maximize on-site collection and reuse, dispersion, filtration, infiltration, and evaporation of run-off given site-specific conditions.

### Section 3211. Conformance with these Regulations

3211.A Proposed development must conform to all other applicable provisions of these regulations, including but not limited to the standards of the applicable zoning district.

# Chapter 330. Conditional Use Standards

### Section 3301. Applicability

3301.A All land development listed as a conditional use in *Part 2 of these regulations must conform to the standards of this chapter.

### Section 3302. Capacity of Community Facilities and Utilities

3302.A **Standards.** The applicant must demonstrate that the proposed development will not cause a disproportionate or unreasonable burden on the town's ability to provide community facilities and utilities including:

(1) Local schools.

(2) Police, fire protection and ambulance services.

(3) Transportation infrastructure and maintenance.

(4) Parks and recreation facilities.

(5) Water supply, sewage disposal and stormwater systems and infrastructure.

### Section 3303. Traffic

3303.A **Standards.** The applicant must demonstrate:

(1) That the volume, type and timing of traffic generated by the proposed development will not be substantially greater than what would normally occur at surrounding uses or at other uses permitted in the area.

(2) That the traffic generated by the proposed development will not unreasonably and disproportionately contribute to a reduced level of service for all modes of travel for affected roads and intersections.

(3) That reasonable measures have been taken to minimize the amount of vehicular traffic generated by the proposed development.

3303.B **Traffic Impact Study.** A professionally-prepared traffic impact study:

(1) Must be included in any application for proposed development that is expected to generate 75 or more new trips during the a.m. or p.m. peak hour.

(2) May be required by the Development Review Board as deemed necessary to determine compliance with this section, particularly if traffic is anticipated to impact an intersection with a level of service of E or F.

3303.C **Mitigation.** The Development Review Board may require the applicant to fully or partially fund or to construct a turn lane, traffic signal, intersection redesign or other transportation improvements if necessary to accommodate anticipated traffic and minimize congestion as warranted by a traffic impact study.

### Section 3304. Character of the Area

3304.A **Standards.** The applicant must demonstrate that the proposed development will:

(1) Be compatible with and enhance the character of the area.

(2) Not substantially impair or diminish the use, value and enjoyment of other property in the area for the purposes already established.

(3) Not impair or impede the lawful development of property within the area for the uses permitted in the applicable district(s).

### Section 3305. Natural Resource Protection

3305.A **Standards.** The applicant must demonstrate that proposed development will be designed and located to avoid, minimize and/or mitigate adverse impacts to significant natural resources including, but not limited to:

(1) Surface waters, floodplains, wetlands and their buffers.

(2) Steep slopes (25% slope or greater).

(3) Primary agricultural soils and productive forest soils.

(4) Necessary wildlife habitat and endangered species.

3305.B **Natural Resources Atlas.** The Town of Berlin encourages applicants to refer to the Vermont Agency of Natural Resource's Natural Resource Atlas to determine the location and type of natural resources on the property.

### Section 3306. Energy Conservation

3306.A **Standards.** The applicant must demonstrate that the proposed development will:

(1) Not reduce solar access on adjacent properties to an extent that would make the use of solar energy on those properties economically or technically unfeasible.

(2) Facilitate use of energy-efficient modes of transportation such as walking, biking and transit and electric vehicles as feasible and appropriate given the location and use.

(3) Meet the applicable stretch code for residential or commercial buildings, if the proposed development will be subject to the Vermont Residential Building Energy Standards or Commercial Building Energy Standards.

### Section 3307. Conformance with these Regulations

3307.A **Standards.** The applicant must demonstrate that the proposed development will conform to all other applicable provisions of these regulations, including but not limited to the standards of the applicable zoning district and the site plan standards.

### Section 3308. Conditions of Approval

3308.A The Development Review Board may place conditions on any approval as deemed necessary to further the purposes of these regulations and ensure conformance with all applicable provisions of these regulations.

3308.B The Development Review Board may require the applicant to mitigate any impacts of proposed development as a condition of approval through measures that may include, but are not limited to:

(1) Paying for all or a portion of off-site improvements to community facilities and utilities deemed necessary to accommodate the proposed development.

(2) Phasing proposed development so that the rate of growth will not exceed the town's ability to provide community facilities and utilities.

(3) Paying for all or a portion of off-site transportation improvements deemed necessary to accommodate anticipated traffic resulting from the proposed development.

(4) Setting aside land for recreation purposes such as playgrounds, parks, trails and/or multi-use paths.

(5) Setting aside land for conservation purposes and protecting it from future development.

# Chapter 340. Planned Unit Development (PUD) Standards

### Section 3401. Applicability

3401.A Applicants may propose land development that deviates from the standards of the base zoning district(s) in accordance with the provisions of this chapter. In addition, planned unit developments (PUDs) must conform to the standards for subdivisions in *Chapter 350.

### Section 3402. Neighborhood Development

3402.A **Purpose.** The purpose of this section is to encourage land development in a manner consistent with traditional neighborhood development principles and patterns, which:

(1) Combine a variety of housing types in a compact, walkable neighborhood setting;

(2) Locate new neighborhoods in areas served by major transportation corridors, transit and public infrastructure, and in areas where residents will have convenient access to commercial, civic and employment centers;

(3) Feature a highly interconnected and walkable road network; and

(4) Locate and design buildings to create a public realm built on a human scale.

3402.B **Applicability.** Neighborhood developments are allowed in the Town Center, Mixed Use and Residential districts on sites that are 2 acres or more in size.

3402.C **Density.** The Development Review Board may approve a density bonus of up to 25% if each additional dwelling unit will meet at least two of the following criteria or 50% if each additional dwelling unit will meet at least three of the following criteria:

(1) The unit will be affordable, as defined in these regulations.

(2) The unit will qualify as senior housing, as defined in these regulations.

(3) The unit will be visitable or accessible, as defined in these regulations.

(4) The unit will have a total habitable floor area of 1,200 square feet or less.

(5) The unit will qualify as a Vermont High-Performance Home or will achieve a HERS index score of 50 or less.

(6) The unit will have direct access to at least 120 square feet of private or semi-private outdoor space such as a porch, deck, balcony, yard, patio, courtyard or atrium.

(7) The parking for the unit will be within or below the building.

3402.D **Dimensional Standards.** The Development Review Board may:

(1) Modify lot size, frontage and setback requirements within the proposed development, but the development must meet all applicable dimensional standards around its perimeter.

(2) Increase the maximum building height by up to 10 feet above the district standard.

(3) Modify coverage standards on individual lots, but the lot coverage for the proposed development as a whole must not exceed the district standard.

(4) Increase the maximum building footprint by up to 25% for senior housing facilities.

3402.E **Allowed Uses.** The uses allowed within a neighborhood development will be as established in the base zoning district.

3402.F **Housing Types.** The development must include a mix of housing types including both single-family and multi-family units as follows:

(1) Single-family detached homes must comprise at least 20% and not more than 80% of the total number of dwelling units within the development.

(2) No more than 75% of the dwelling units other than single-family detached homes may be the same type (ex. duplex, townhouse, apartment, etc.).

3402.G **Site Design.** A licensed landscape architect must design and lay out the proposed development as follows:

(1) Blocks must generally be rectilinear in shape except where topographic or other physical site conditions necessitate a curvilinear or irregular shape.

(2) Blocks must generally not exceed 1,000 feet in length.

(3) Lot size and width must vary at random within each block in order to eliminate the appearance of a standardized subdivision as follows:

(a) No more than 2 lots in a row may be the same width.

(b) Lot width must vary by a minimum of 5-foot increments.

(4) Buildings must define the streetscape through use of uniform setbacks along each block.

(5) Buildings must be located to the front of lots and relate to the road both functionally and visually except:

(a) Multiple principal buildings may be grouped and organized around features such as courtyards or greens that encourage walking and incidental social interaction.

(6) Buildings must be considered in terms of their relationship to the height and massing of adjacent buildings, as well as in relation to the human scale.

3402.H **Road Design.** Roads within the proposed development must be designed:

(1) With a modified grid pattern adapted to the topography and other physical site conditions.

(2) With cul-de-sacs and other dead-end roads only as necessary to accommodate topographic or other physical site conditions, or where future road connections are planned.

(3) To accommodate future road connections to adjacent neighborhoods or developable land to the maximum extent feasible given topographic or other physical site conditions and pre-existing development patterns.

(4) With narrow travel lanes to calm traffic and minimize pavement width.

(5) To discourage through and high speed traffic to the maximum extent feasible.

3402.I **Building Design.** Buildings within a traditional neighborhood development must be designed in accordance with the following:

(1) All principal buildings must front on and have an entrance oriented to a road or common open space.

(2) At least 50% of single-family dwellings must have an open front porch at least 60 square feet in size with a minimum dimension of 6 feet on any side.

(3) Garage doors must not be oriented to the road unless that are located at least 8 feet behind the front line behind the principal building.

(4) Loading areas must not be oriented to a road and must adjoin alleys or parking areas to the rear of the principal building.

(5) Multi-family, mixed use and non-residential buildings must conform to the architectural standards of the base zoning district.

3402.J **Parks and Open Space.** Within a traditional neighborhood development, a minimum of ¼ acre or 400 square feet per dwelling unit, whichever is greater, must be reserved as parks and/or open space. Parks and open space must be appropriately protected from future development through legally enforceable means.

### Section 3403. Cottage Cluster Development

3403.A **Purpose.** The purpose of this section is to address the need for smaller, more diverse and more affordable housing choices in response to changing household demographics and living preferences.

3403.B **Applicability.** Cottage cluster developments are allowed in any district where single-family dwellings are allowed.

3403.C **Density.** The maximum density for a cottage cluster development will be 150% the residential density allowed in the base zoning district.

3403.D **Dimensional Standards.** The dimensional standards for lots, setbacks (excluding riparian setbacks) and buildings in the base zoning district will not apply within a cottage cluster development. The lot coverage for the development as a whole must not exceed 60%. The development must meet all applicable dimensional standards around its perimeter.

3403.E **Allowed Uses.** Nonresidential principal uses are prohibited within a cottage cluster development.

3403.F **Cluster Size.** The development must be designed as one or more clusters composed of 4 to 12 cottages arranged around a common open space.

3403.G **Cottage Design.** A cottage as allowed under this section must be a single-family detached dwelling that:

(1) Is not more than 2 stories high. All portions of the building more than 18 feet above ground must be within the roof pitch. No portion of the building may exceed 25 feet in height.

(2) Has a footprint of not more than 1,600 square feet. Attached garages will be included in the footprint calculation and must not have a footprint of more than 576 square feet.

(3) Has a total floor area that does not exceed 180% of its footprint. Unheated storage or utility space and space under the slope of the roof with a ceiling height of less than 7 feet will not be included in the floor area calculation.

(4) Has a pitched roof with a minimum slope of 6:12. Secondary roofs (porches, sheds, dormers, etc.) may have a lower slope.

(5) Has a roofed, open porch at least 80 square feet in size with a minimum dimension of 8 feet on any side that offers a view of a common open space.

(6) Has at least 300 square feet of private, contiguous, usable yard area abutting the building with no dimension less than 10 feet.

3403.H **Common Open Space.** The development must include one or more common open spaces in accordance with the following:

(1) A minimum of 400 square feet of common open space is required per cottage.

(2) Each cottage must have a principal entryway that faces a common open space and that is not separated from the open space by a road or driveway. Garage doors must not face the common open space.

(3) Each cottage must be connected to a common open space by a walkway not more than 60 feet long.

(4) A common open space must have cottages abutting on at least two sides.

3403.I **Accessory Buildings.** Private garages, carports, sheds or similar accessory structures must have a footprint of not more than 576 square feet and a height of not more than 18 feet. A private, detached carriage house that includes an accessory dwelling unit may have a footprint of not more than 60% of the associated cottage and a height of not more than 18 feet. Shared or common accessory buildings must have a footprint of not more than 1,200 square feet and a height of not more than 18 feet.

3403.J **Community Buildings.** The development may include one or more community buildings that are clearly incidental to the cottages and that would serve residents by providing amenities such as multi-purpose recreation or entertainment, food preparation and dining, library, daycare, guest quarters or storage. A community building must be commonly-owned by the residents. A community building must be compatible in scale, design and height to the cottages.

3403.K **Vehicular Access and Parking.** The development must provide vehicular access and parking in accordance with the following:

(1) Vehicular access and on-site parking will not be required to/on each lot or cottage. The development may provide one or more common off-street parking areas or structures with pedestrian walkways connecting the parking and the cottages.

(2) Vehicular access and parking must not be located within the front yard or the common open space, or between the cottages and the common open space.

(3) Vehicular access and parking should be located primarily around the periphery of the development or each cottage cluster and should be designed to have minimal visibility from the common open space and from public vantage points beyond the development. Shared driveways and narrow lanes should be used to the maximum extent feasible.

(4) Unless otherwise approved by the Development Review Board, vehicular access and parking must meet all applicable site design, engineering, setback, buffering and landscaping requirements of these regulations.

### Section 3404. Manufactured Home Parks

3404.A **Applicability.** The provisions of this subsection apply to all new and expanded manufactured home parks.

3404.B **General Standards.** The following standards apply to manufactured home parks:

(1) Manufactured home parks will be allowed in any district where detached single-family dwellings are a permitted use.

(2) A manufactured home park must be approved as a planned unit development in accordance with the provisions of ***Error! Reference source not found.**.

(3) The maximum residential density within a manufactured home park will be 200% of the density allowed in the base zoning district.

(4) The dimensional standards for lots, setbacks (excluding riparian setbacks) and buildings in the base zoning district will not apply within a manufactured home park, but the park must meet all applicable dimensional standards around its perimeter.

(5) The lot coverage for the park as a whole must not exceed the maximum amount for the applicable district.

(6) Each manufactured home must be located on a delineated site not less than 4,000 square feet in area.

(7) A manufactured home must not be located closer than 20 feet to any other dwelling within the park.

(8) All the homes within a manufactured home park must be accessed from a single curb cut unless otherwise approved by the Development Review Board to provide adequate emergency access or improve traffic safety.

(9) A manufactured home park may include one or more community buildings or facilities to serve residents.

3404.C **Replacement Standards.** An applicant proposing to replace a manufactured home within a manufactured home park must not locate the new home closer than 20 feet to any other dwelling within the park except:

(1) If the original home is located the new home closer than 20 feet from another dwelling, the replacement home may match the existing setbacks.

3404.D **Expansion Standards.** An applicant proposing to expand a pre-existing manufactured home park must:

(1) Bring the entire park into conformance with the requirements of this section to the maximum extent feasible without necessitating the relocation of any existing homes;

(2) Relocate any existing homes within the flood hazard overlay district out of the floodplain into the proposed expansion area; and

(3) Design the expanded portion of the park to fully conform to all applicable requirements of these regulations.

### Section 3405. Conservation Subdivision

3405.A **Purpose.** The purpose of this section is to provide flexibility in site design for residential subdivisions in order to preserve natural resources, open space and rural character.

3405.B **Applicability.** Conservation subdivisions are allowed in any district where single-family homes are allowed and are required for subdivisions in the Rural, Shoreland Conservation and Upland Conservation districts that would create 5 or more additional lots from a parent parcel in any 5-year period.

3405.C **Density.** The density of a conservation subdivision must not exceed the maximum density for a conventional subdivision based on the applicable zoning district standards.

3405.D **Dimensional Standards.** The dimensional standards for lots, setbacks (excluding riparian setbacks) and buildings in the base zoning district will not apply within a conservation subdivision, but the subdivision must meet all applicable dimensional standards around its perimeter.

3405.E **Conservation Areas.** A minimum of 60% of the total area of the conservation subdivision must be set aside as conservation areas in accordance with the following:

(1) The following will be considered primary conservation resources and must be included in the conservation area:

(a) Wetlands and their buffers;

(b) Flood hazard and riparian setbacks; and

(c) Steep slopes (25% or greater).

(2) The following will be considered secondary conservation resources and must be included in the conservation area to the maximum extent feasible:

(a) Primary agricultural soils;

(b) Wildlife habitat;

(c) Moderate slopes (15% to <25%);

(d) Woodlands that are part of a contiguous forest block at least 50 acres in size; and

(e) Scenic views into the property from public vantage points.

(3) Conservation areas must abut existing conservation areas, open space, forest or farm land on adjacent parcels to the maximum extent feasible.

(4) Conservation areas must be designated as permanent open space, not to be further subdivided, and protected through a conservation easement. The conservation easement must prohibit further development in the conservation areas and may establish other standards to safeguard or maintain the conservation resources.

(5) Conservation areas must not be cleared, graded, filled or subject to construction except:

(a) The Development Review Board may allow roads and above ground utilities to cross conservation areas when reasonable access cannot otherwise be provided to the portions of the conservation subdivision to be developed. Disturbance of the conservation area must be the minimum necessary to provide adequate access.

(b) Underground utilities, including absorption areas for shared septic systems, may be located within conservation areas if such development will not result in undue adverse impacts on the conservation resources intended to be protected by inclusion in a conservation area.

(c) Trails and related passive recreation amenities may be developed within conservation areas in accordance with the approved subdivision plan.

(d) Farming and forestry, including construction of farm structures, may be allowed within conservation areas intended to remain as working lands in accordance with the terms of the easement.

3405.F **Development Areas.** A maximum of 40% of the total area of the conservation subdivision may be developed for residential use in accordance with the following:

(1) The development must be designed as one or more clusters composed of 3 to 12 lots or dwelling units surrounded by open space.

(2) Access to the conservation subdivision must be from a single curb cut unless otherwise approved by the Development Review Board to provide adequate emergency access or to minimize disturbance of conservation resources.

(3) All reasonable measures must be taken to minimize the amount of impervious surface associated with vehicular access and parking (such as shared driveways, narrow lanes, and locating development near existing roads).

3405.G **Community Buildings.** A conservation subdivision may include one or more community buildings that would serve residents by providing amenities such as multi-purpose recreation or entertainment, food preparation and dining, library, daycare, guest quarters or storage. The subdivision residents must commonly own any community building.

3405.H **Application Requirements.** In addition to all other applicable requirements, the applicant must submit:

(1) An existing site conditions map of the subject property showing the location of all primary and secondary conservation resources (see *Subsection 3405.E) and delineating the boundary of the proposed conservation areas over an aerial photo base map; and

(2) A context map of the subject property and surrounding land within 1,500 feet of the property boundary showing the location of all primary and secondary conservation resources (see *Subsection 3405.E) and any public or conserved lands over an aerial photo base map.

### Section 3406. Rural Business Development

3406.A **Purpose.** The purpose of this section is to provide an opportunity for business development on suitable sites in the rural areas of town.

3406.B **Applicability.** Rural business development is allowed on sites at least 5 acres in size in the Rural district or 2 acres in the Hamlet district that will be accessed from a state highway or paved Class 2 town road.

3406.C **Dimensional Standards.** The proposed development must meet all applicable dimensional standards for the base zoning district and must be set back at least:

(1) 100 feet from adjacent dwellings in the Rural district.

(2) 50 feet from adjacent dwellings in the Hamlet district.

3406.D **Allowed Uses.** In addition to the uses allowed in the applicable district, commercial and light industrial uses will be allowed within a rural business development as follows:

(1) Shop or store with not more than 6,000 square feet of floor area

(2) Open market

(3) Repair and service

(4) Rental and leasing of goods other than passenger vehicles

(5) Office or service business

(6) Light industry

(7) Indoor recreation

3406.E **Development Standards.** Applicants must design a rural business development in accordance with the following:

(1) Proposed development must incorporate context sensitive siting and design techniques to fit structures into the rural landscape in a manner that maintains scenic views and incorporates existing site elements such as agricultural buildings, open meadows, tree lines, landmark trees and hedgerows.

(2) Applicants must maintain open space within and around the site by designing and locating structures to maintain views from the road to open fields and/or wooded hillsides beyond the development proposed development to the greatest extent feasible.

(3) The Town of Berlin strongly encourages applicants to:

(a) Adapt and re-use existing historic and/or agricultural buildings, or to design new buildings that reference the form and materials of traditional barns or agricultural outbuildings.

(b) Use high-quality natural materials such as wood clapboards, board and batten, barn board or composite materials that resemble traditional materials for exterior cladding.

(c) Use architectural grade asphalt shingles, slate, standing seam or composite materials that resemble these traditional materials for roofing.

(d) Use traditional agricultural (dark green, red, brown or gray), neutral or earth-tone colors on building exteriors.

(4) Applicants must design new buildings and additions with sloped roofs. The pitch of the primary roof must not be less than 6:12. The pitch of secondary roofs (sheds, dormers, porches, etc.) may be less than 6:12. The pitch of compound roofs (gambrel, etc.) will be measured as the average of roof components to determine compliance with this requirement.

(5) Applicants must incorporate at least one of the following into the facade of new principal buildings:

(a) An open porch at least 6 feet deep that extends along no less than 40% of the facade;

(b) One or more dormers or cupolas, which must be proportional in size to the building, relate to the size and placement of windows bellows, and break up the mass of a large roof expanse;

(c) A change in the roofline and/or wall plane that highlights the principal entrance; or

(d) A cross gable or ell, which must not be narrower than 24 feet or 30% of the facade, whichever is less, and which must project from or be recessed behind the wall plane at least 4 feet.

(6) Applicants must not locate more than two rows of parking between the building frontline and the road.

(7) Applicants must screen any front parking with a combination of naturalistic landscaping and wooden fencing appropriate to a rural setting.

# Chapter 350. Subdivision Standards

### Section 3501. Applicability

3501.A All subdivision of land must conform to the standards of this chapter.

### Section 3502. Capacity of Community Facilities and Utilities

3502.A The applicant must demonstrate that the proposed subdivision will not cause a disproportionate or unreasonable burden on the town's ability to provide community facilities and utilities including:

(1) Local schools.

(2) Police, fire protection and ambulance services.

(3) Road infrastructure and maintenance.

(4) Parks and recreation facilities.

(5) Water supply, sewage disposal and stormwater systems and infrastructure.

(6) Solid waste disposal services and facilities

### Section 3503. Suitability of the Land

3503.A The land to be subdivided must be suitable for use without endangering public health or safety, and adversely impacting the environment, neighboring properties or the character of the area.

3503.B Land subject to periodic flooding, poor drainage, inadequate capability to support development or other hazardous conditions must not be subdivided unless the applicant can demonstrate that appropriate measures will be taken to overcome the physical limitations.

### Section 3504. Design and Configuration of Parcel Boundaries

3504.A **Lot Arrangement.** The applicant must design the subdivision:

(1) To follow and extend the planned settlement pattern (including lot size, lot configuration, road layout and building location) as defined by the purpose and standards of the applicable zoning district to the maximum extent feasible given the site's topography and natural features.

(2) To connect to and extend existing road, sidewalk, path, trail, utility, greenway, and open space corridors to the maximum extent feasible given the site's topography and natural features.

(3) So that there will be no foreseeable difficulties in obtaining zoning permits to build on all lots not intended for conservation purposes in accordance with the standards of these regulations.

(4) So that there will be no foreseeable difficulties in providing access to buildings on lots not intended for conservation purposes from an existing or planned road.

(5) To avoid direct access from arterial streets or state highways. The Development Review Board may required shared access or other means to minimize new curb cuts along arterial streets or state highways.

(6) To allow further subdivision on any remaining undivided land, lots with further subdivision potential and/or adjoining undeveloped parcels in a manner that would result in a logical and coordinated development pattern.

(7) So that there will be positive drainage away from building sites and a coordinated stormwater drainage pattern for the subdivision that does not concentrate stormwater drainage from each lot to adjacent lots.

3504.B **Lot Dimensions.** The applicant must design the subdivision:

(1) So that all lots front on a road.

(2) So that lot dimensions meet the minimum standards for the zoning district.

(3) So that generally side lot lines are at right angles to straight roads or radial to curved roads with recognition that some variability may be desirable to respond to the site's topography and natural features.

(4) So that generally rear lot lines are parallel to front lot lines with recognition that some variability may be desirable to respond to the site's topography and natural features.

(5) To avoid flag and other irregularly shaped lots except when desirable to respond to the site's topography and natural features.

(6) To minimize the number of lots with frontage on more than one road.

(7) To minimize the number of lots with a rear lot line that abuts the side lot line of an adjacent lot.

3504.C **Building Envelopes.** The applicant must designate one or more building envelopes on each lot not intended for conservation purposes in accordance with the following:

(1) Building envelopes identify and limit the area(s) of a lot where structures, parking and associated site development may be located. Access and utilities may be located outside a building envelope.

(2) A building envelope must not include any land within zoning district setbacks.

(3) A building envelope generally must not include any unbuildable land.

(4) For lots 2 acres or less in size, the zoning district setback requirements may define the building envelope.

(5) For lots more than 2 acres in size, a building envelope generally must be limited to not more than 1 acre if one principal building will be located on an individual lot or not more than 2 acres if multiple principal buildings will be located on a common lot. The Development Review Board may adjust these standards as deemed appropriate given the specific characteristics of the subject property and the proposed subdivision.

(6) The Development Review Board may approve more than one building envelope per lot given the specific characteristics of the subject property and the proposed subdivision.

### Section 3505. Design and Layout of Necessary Improvements

3505.A **Roads.** Applicants must design and construct all new roads within a subdivision in accordance with this subsection. A vehicular way that provides access to more than 3 lots or 6 dwelling units will be considered a road.

(1) **General.** Applicants must design and construct all new roads within a subdivision to:

(a) Safely accommodate all users (including vehicular, bicycle and pedestrian traffic).

(b) Provide efficient access to property and avoid congestion on existing roads.

(c) Logically extend and improve the connectivity of the town's existing road network.

(d) Fit into the landscape and follow the natural terrain to the greatest extent feasible.

(e) Provide for livable neighborhoods and attractive streetscapes.

(f) Not be excessively wide in order to calm traffic and minimize impervious surface.

(2) **Topography and Arrangement.** New roads must be:

(a) Designed to relate appropriately to the pre-existing topography and provide adequate drainage.

(b) Graded and laid out to conform as closely as possible to the pre-existing topography.

(c) Located and designed to maximize the number of lots with building sites at or above street grade.

(d) Integrated into the town's existing road network to the maximum extent feasible.

(e) Designed with right-of-ways that extend to the boundary lines of the parcel(s) being subdivided to facilitate the coordinated development of adjacent undeveloped land and creation of an interconnected road network unless prevented by topography or other physical conditions.

(f) Designed to discourage high-speed traffic and to avoid creating short-cuts through neighborhoods that will generate substantial through traffic.

(g) Designed to minimize the amount of impervious surface necessary to provide convenient and safe access to property.

(3) **Connectivity.** Discontinuous road systems are inefficient and cause undue congestion, while a well-connected road system disperses traffic efficiently and improves walkability. Accordingly, cul-de-sac or dead-end roads are prohibited except that the Development Review Board may approve cul-de-sacs or dead-end roads:

(a) As stubs to permit future expansion. The Development Review Board may require construction of street stubs or condition approval on a future agreement to extend roads when adjacent property is developed.

(b) Where topography or other physical conditions make construction of through roads impossible or undesirable.

(c) Where the development site abuts a limited access highway or a previously developed site where a through connection is not possible.

(d) To serve not more than 6 lots or 12 dwelling units.

(4) **Access Points.** A subdivision with more than 20 lots must have at least two access points. The Development Review Board may allow the secondary access to be limited to emergency access. The Development Review Board may require a secondary or emergency access for smaller subdivisions or developments when deemed necessary to protect public safety.

(5) **Design and Construction Standards.** Applicants must design and construct new roads to the *VTrans A-76 Standards for Town and Development Roads* except as otherwise specified in this section.

(6) **Design Speed.** Applicants must design new roads for a speed of 30 miles per hour or less.

(7) **Width.** Applicants must design new roads in accordance with the following unless otherwise approved by the Development Review Board to respond to site-specific physical conditions or anticipated traffic flows:

(a) For roads with a traffic volume of less than 100 trips per day on average, lane widths must be at least 7 feet and not more than 9 feet.

(b) For roads with a traffic volume of 100 trips per day or more on average, lane widths must be at least 9 feet and not more than 10 feet with 2-foot shoulders on both sides.

(c) For roads intended to accommodate on-street parking, a parking lane at least 7 feet and not more than 9 feet wide may be located on one or both sides of the road.

(8) **Drainage.** New roads must be designed:

(a) With drainage facilities to divert run-off to vegetated areas.

(b) To maintain or establish a buffer of natural woody vegetation between roads and surface waters at least 50 feet wide. The Development Review Board may waive or modify the buffer requirement to respond to site specific physical conditions.

(c) Not to block the flow of drainage in existing ditches, swales or gutters.

(d) Not to unreasonably contribute to an accumulation of stormwater that would exceed the capacity of downstream facilities or infrastructure.

(e) With culverts where needed that are sized to convey anticipated peaks stormwater flows and that are not less than 18 inches in diameter.

(f) With culverts that extend at least 2 feet beyond the edge of the road and that are installed to minimize erosion damage at the inlet and outlet.

(9) **Grade.** New roads must generally conform to the topography and must not exceed a maximum grade of 7% for gravel roads and 10% for paved roads as measured over any 100-foot section. The Development Review Board may allow short segments to exceed the maximum grade to respond to the site's topography and natural features.

(10) **Cross-Slope.** All roads must have a cross-slope of at least 1% and not more than 3%.

(11) **Street Trees.** The applicant must plant trees along new roads in accordance with *Subsection 3204.F of these regulations.

(12) **Street Lights.** The applicant:

(a) Should provide streetlights only as necessary for safety and security.

(b) Should consider locating streetlights at intersections, crosswalks and high-traffic areas.

(c) Must install LED lamps or fixtures of comparable/greater efficiency that do not exceed 25 feet in height.

3505.B **Pedestrian and Bicycle Facilities.** The applicant must integrate pedestrian and bicycle access into the design of the subdivision in accordance with the following:

(1) **Sidewalks.** Applicants must install sidewalks along new roads in the Town Center district in accordance with Subsection 3203.E. The Development Review Board may require an applicant to install sidewalks and/or multi-use paths within any proposed subdivision with more than 20 dwelling units or residential lots.

(2) **Walkways.** Applicants must install pedestrian walkways and/or multi-use paths as necessary to provide access within the subdivision to common lands or facilities, parking areas or similar amenities, as well as between buildings.

3505.C **Water and Wastewater Facilities.** The applicant must design the subdivision to provide potable water and wastewater facilities in accordance with the following:

(1) Any subdivision within a public water service area must be connected to the public system. The applicant must provide water service to each lot not intended for conservation purposes in accordance with any applicable public works specifications.

(2) Any subdivision with access to sewer service must be connected to the public system. The applicant must provide sewer service to each lot not intended for conservation purposes in accordance with any applicable public works specifications.

(3) Any subdivision not served by public water and/or sewer must demonstrate compliance with the state's wastewater system and potable water supply rules.

3505.D **Firefighting Facilities.** The applicant must design the subdivision to provide water for fire protection in accordance with the following:

(1) Within any subdivision that will be connected to the town's water system, the applicant must install fire hydrants in accordance with the town's public works specifications.

(2) Within any subdivision that will not be connected to the town's water system, the Development Review Board may require the applicant to install a fire pond or make other appropriate provisions to facilitate firefighting.

3505.E **Public and Private Utilities.** The applicant must design the subdivision to provide utility service to each lot not intended for conservation purposes. Utilities must be located within road rights-of-way to the maximum extent feasible. The applicant must provide the town with a maintenance and access easement for any utilities not located within a road right-of-way.

3505.F **Landscaping.** The applicant must design the subdivision to maximize the preservation of existing mature vegetation and provide additional landscaping when necessary to:

(1) Maintain and enhance the character of the neighborhood.

(2) Maintain and provide privacy for adjoining property owners.

(3) Maintain or establish vegetated buffers along waterways and other natural areas (see Section 3004).

(4) Utilize green stormwater infrastructure practices (see Section 3210).

3505.G **Erosion Control.** The applicant must design and undertake construction within the subdivision in accordance with the standards of *Section 3209.

3505.H **Stormwater Management.** The applicant must design the subdivision with adequate drainage and stormwater infrastructure in accordance with Section 3210 and the following:

(1) The use of low impact development and green stormwater infrastructure techniques is strongly encouraged.

(2) The stormwater management system must be designed so that post-development peak discharge rates do not exceed pre-development peak discharge rates.

(3) The stormwater drainage system must be separate and independent of any sanitary sewer system.

3505.I **Monuments and Lot Corner Markers.** The applicant must install:

(1) Permanent right-of-way monuments at all road intersections and other critical points in street lines in accordance with all applicable state and town specifications, including Rules of the Board of Land Surveyors.

(2) Lot corner markers at corners and angle points of all lots in accordance with all applicable state and town specifications, including the Rules of the Board of Land Surveyors.

3505.J **Construction and Maintenance of Necessary Improvements.** The applicant must:

(1) Construct the necessary improvements in accordance with all conditions of approval and specifications before the Zoning Administrator may issue any zoning permits for further land development within the subdivision.

(2) Maintain necessary improvements while lots within the subdivision are being sold and/or developed in accordance with all conditions of approval.

(3) Demonstrate how the necessary improvements required under this section will be maintained once lots have been sold and/or developed.

(4) Establish an owners' association or similar legally enforceable mechanism to ensure continuing maintenance of private roads, shared infrastructure, or other common land or facilities within the subdivision. The Development Review Board may require the applicant to provide drafts of covenants, articles of incorporation, bylaws, maintenance agreements or other legal documents for review prior to final approval of the subdivision and to record such documents with the town along with the final plat.

### Section 3506. Character of the Area and Settlement Pattern

3506.A **Standards.** The applicant must demonstrate that the proposed subdivision will:

(1) Be compatible with and enhance the character of the area.

(2) Not contribute to a pattern of strip development.

(3) Not substantially impair or diminish the use, value and enjoyment of other property in the area for the purposes already established.

(4) Not impair or impede the lawful development of property within the area for the uses permitted in the applicable zoning district.

### Section 3507. Soil Preservation

3507.A The applicant must:

(1) Stockpile any topsoil removed during the course of construction on-site.

(2) Redistribute stockpiled topsoil to provide even cover on all disturbed areas to be seeded or planted.

(3) Make reasonable efforts to repair any soil compaction prior to seeding or planting such as tilling, subsoiling, plug aeration and/or organic amendments.

(4) Not remove any sand, gravel or other earth resources from the site for any purpose other than the minimum necessary and authorized to meet the construction needs of the subdivision.

### Section 3508. Conformance with these Regulations

3508.A Proposed subdivisions must conform to all other applicable provisions of these regulations.

# PART 4. ADMINISTRATIVE PROCEDURES

## Chapter 400. Roles and Responsibilities

ⓘ *The purpose of this chapter is to identify the various town employees, officials and committee members involved in reviewing development applications and administering these regulations.*

### Section 4001. Zoning Administrator

4001.A The Planning Commission will nominate and the Selectboard will appoint a Zoning Administrator in accordance with state statute.

(1) The Selectboard may appoint an Acting Zoning Administrator to serve in the Zoning Administrator's absence or if the Zoning Administrator has a conflict of interest.

4001.B The Zoning Administrator will:

(1) Assist applicants in determining whether and which town permits or approvals will be needed for a project;

(2) Provide applicants with application forms;

(3) Inspect projects during construction as necessary;

(4) Maintain records;

(5) Respond to complaints and violations; and

(6) Perform all other tasks necessary to administer these regulations.

4001.C The Zoning Administrator must enforce the provisions of these regulations literally and may only issue zoning permits for land development that conforms to these regulations.

4001.D The Zoning Administrator will refer applications to the Development Review Board as required under these regulations.

### Section 4002. Planning Commission

4002.A The Planning Commission may prepare amendments to these regulations and make recommendations to the Selectboard on the amendment of these regulations.

4002.B The Planning Commission does not perform any development review functions under these regulations, but may make recommendations on planning and land development issues in Berlin generally.

4002.C The Selectboard appoints members to the Planning Commission in accordance with state statute.

### Section 4003. Development Review Board

4003.A The Development Review Board performs development review functions as specified in these regulations and in accordance with their adopted rules of procedure.

4003.B The Selectboard appoints members to the Development Review Board in accordance with state statute.

# Chapter 410. Fees and Filing Requirements

ⓘ *The purpose of this chapter is to authorize administrative actions such as charging fees to cover the cost of administering these regulations and requiring performance bonds to ensure compliance with these regulations.*

### Section 4101. Permit Fees

4101.A The Selectboard will establish fees for the Zoning Administrator or other town employees to charge for administering these regulations. These fees may include the cost of posting and publishing notices, holding public hearings, recording documents, and conducting periodic inspections during construction.

4101.B An applicant must pay the applicable fee(s) when submitting an application. The Zoning Administrator must not deem an application complete until the applicable fee(s) are paid.

### Section 4102. Impact Fees

4102.A Applicants may be required to pay impact fees in accordance with any duly adopted impact fee ordinance.

### Section 4103. Technical Review Costs

4103.A The Zoning Administrator or Development Review Board may hire qualified professionals to provide an independent technical review of an application when deemed necessary to ensure compliance with these regulations, the cost of which will be paid by the applicant.

### Section 4104. Legal Costs

4104.A The Zoning Administrator or Development Review Board may hire an attorney to provide an independent legal review of an application when deemed necessary to ensure compliance with these regulations, the cost of which will be paid by the applicant.

4104.B The Town of Berlin may participate in legal proceedings in support of an applicant who received a permit or approval under these regulations if an interested person appeals that permit or approval to the Environmental Division of the Vermont Superior Court, the cost of which may be fully or partially paid by the applicant.

### Section 4105. Cost of Monitoring or Inspection

4105.A The Zoning Administrator or Development Review Board may condition approval upon monitoring and inspection during construction or once the use has commenced when deemed necessary to ensure compliance with these regulations, the cost of which will be paid by the applicant.

### Section 4106. Performance Bonds

4106.A The Zoning Administrator or Development Review Board may require an applicant to provide a performance bond or similar surety as a condition of approval to insure the completion of required improvements.

4106.B The bond or surety will only be released after certification by the applicant and determination by the Zoning Administrator that the required improvements have been satisfactorily completed.

### Section 4107. As-Built Drawings

4107.A The Zoning Administrator or Development Review Board may require an applicant to file as-built drawings as a condition of approval. As-built drawings will be required for any infrastructure to be built within public rights-of-way or to be turned over to the town.

# Chapter 420. Zoning Permit Procedures

ⓘ *The purpose of this chapter is to establish the process that applicants will follow to apply for zoning permits and the process the Zoning Administrator will follow to review and act on zoning permit applications, and issue and administer zoning permits and related development approvals.*

### Section 4201. Applying for a Zoning Permit

4201.A A prospective applicant is encouraged to meet with the Zoning Administrator for a preliminary review of his/her proposal and a discussion of the applicable provisions of these regulations, permitting requirements, application materials, fees, and review procedures prior to applying for a zoning permit or related development approval.

4201.B The Zoning Administrator will:

(1) Determine whether proposed land development will require a zoning permit or any other type of development approval and will provide applicants with the necessary form(s) to apply for the applicable permit(s) and approval(s).

(2) Notify the prospective applicant of any fees or other charges that the town may charge in relation to the application or proposed development.

(3) Provide the applicant with a copy of the state energy standards for residential or commercial buildings as applicable.

4201.C The applicant must submit the completed form(s), supporting materials and fees to the Zoning Administrator to apply for a zoning permit or other approval under these regulations.

4201.D The Zoning Administrator:

(1) May waive an application requirement upon determining the information is not necessary to determine compliance with these regulations.

(2) May require an applicant to provide additional information as necessary to determine compliance with these regulations.

(3) Must keep written documentation of any application requirement waived or additional material requested as part of his/her office records.

4201.E The Zoning Administrator must:

(1) Determine whether an application is complete promptly after the applicant submits it.

(2) Inform the applicant in writing of his/her determination. If the application is incomplete, the Zoning Administrator must inform the applicant of what additional information is required.

4201.F The applicant or other interested person may appeal any of the Zoning Administrator's actions or decisions under this section to the Development Review Board as specified in *Section 4501.

### Section 4202. Reviewing and Referring a Zoning Permit Application

4202.A Once the Zoning Administrator determines that an application is complete, he/she must act within 30 days to approve, deny or refer it to the Development Review Board for a development approval except that for the purposes of *Subsection 4202.B:

(1) The time period within which the Zoning Administrator must act on a zoning permit application that requires development approval before he/she may issue the permit will not commence until the applicant has obtained all required development approvals.

(2) The time period within which the Zoning Administrator must act on a zoning permit application that requires notification of a state agency before he/she may issue the permit will not commence until the agency comments or the comment period elapses, whichever occurs first.

4202.B If the Zoning Administrator does not act on a complete application within 30 days, the applicant may file an appeal directly with the Environmental Division of the Vermont Superior Court to recognize that the Zoning Administrator's failure to act within the 30-day period resulted in a "deemed approval" of the application.

4202.C The Zoning Administrator must not approve an application and issue a zoning permit:

(1) That does not meet all the applicable standards and requirements of these regulations.

(2) If the land use or development requires the approval of the Development Review Board and the applicant has not received such approval.

### Section 4203. Approving or Denying a Zoning Permit Application

4203.A The Zoning Administrator must approve or deny applications in writing and specifically provide the following information:

(1) When approving an application, the Zoning Administrator must inform the applicant that he/she must:

(a) Post a notice of the zoning permit (to be provided by the Zoning Administrator) in a visible location on the subject property throughout the 15-day appeal period; and

(b) Not commence the land use or development until the appeal period has ended.

(2) When denying an application, the Zoning Administrator must:

(a) Inform the applicant that he/she may appeal the denial to the Development Review Board within 15 days of the date of the decision; and

(b) Include a copy of *Section 4501, which explains the appeal process.

4203.B The Zoning Administrator:

(1) May issue a zoning permit with conditions as necessary to ensure compliance with these regulations.

(2) Must condition any zoning permit to construct a new dwelling unit or to add bedrooms to a dwelling unit on the applicant obtaining a state wastewater permit or town wastewater allocation, as applicable, prior to the start of construction.

4203.C The Zoning Administrator must post a copy of the zoning permit in at least one public place and on the town website within 3 days after issuing it. The copy must remain posted throughout the 15-day appeal period. A failure or defect in the online posting will not invalidate any Zoning Administrator action or decision and cannot be appealed under *Section 4501.

4203.D The Zoning Administrator must:

(1) Deliver an original, signed copy of the zoning permit or the notice of zoning permit to the Town Clerk for recording within 30 days after it becomes effective;

(2) File a copy of the permit as part of his/her office records; and

(3) Provide a copy of the permit to the Listers.

### Section 4204. Zoning Permit Effect, Expiration and Extension

4204.A A zoning permit takes effect on the 16th day after the Zoning Administrator issues it provided that no appeal is lawfully filed during the previous 15 days. If an appeal is filed, the zoning permit will not take effect until the appeal is decided.

4204.B The applicant may request that a zoning permit and any associated Development Review Board approvals not take effect until he/she has obtained all permits and approvals necessary to commence the land development. It will be the applicant's responsibility to notify the Zoning Administrator when he/she is ready to commence the land development and request that the zoning permit and any associated approvals take effect.

4204.C A zoning permit and any associated Development Review Board approval expires two years from the date the permit takes effect unless:

(1) The Development Review Board specifies otherwise as a condition of approval;

(2) The applicant commences any use and/or substantially completes any construction authorized by the permit prior to its expiration; or

(3) Prior to the zoning permit's expiration, the applicant receives from the Zoning Administrator an extension of not more than 12 months. The Zoning Administrator may only grant one such extension upon determining that any improvements completed to date conform to the permit requirements and these regulations.

4204.D If a zoning permit expires before the applicant substantially completes the construction or commences the use authorized by the permit, the applicant must apply for a new zoning permit and any other associated development approvals under these regulations.

### Section 4205. Amending a Zoning Permit or Site Plan

4205.A Upon written request from the applicant, the Zoning Administrator may amend a zoning permit or approved site plan upon determining that the proposed change:

(1) Is a minor modification that conforms to all applicable provisions of these regulations, including the special flood hazard area provisions in *Section 2203 if applicable;

(2) Is not a material change; and

(3) Does not affect the type, character or intensity of the approved development or use to the extent specified below:

(a) Any proposed change must not result in an increased requirement for parking or loading spaces.

(b) Any proposed change in building footprint must not exceed 10% or 500 square feet, whichever is less.

(c) Any proposed substitution of planting materials must not change the overall landscape design concept.

ⓘ *A material change means a change in the planned use or development of land or a structure that may have affected the decision made or any conditions placed on the permit if it had been included in the plans as approved.*

4205.B The Zoning Administrator may decline to amend an approved site plan and refer the request to the Development Review Board (see *Section 4305).

4205.C The Zoning Administrator may require the applicant to submit an application for a new zoning permit.

### Section 4206. Revoking a Zoning Permit

4206.A The Zoning Administrator may commence a proceeding to revoke a zoning permit in accordance with state statute if an applicant omitted or misrepresented a material fact on an application or at a hearing.

### Section 4207. Inspections During Construction

4207.A The Zoning Administrator may inspect any land development under construction authorized by a zoning permit as necessary to ensure compliance with these regulations and any permit conditions.

### Section 4208. Certificate of Compliance

4208.A The applicant must receive a certificate of compliance from the Zoning Administrator before any land development approved by the Development Review Board may be occupied or used and prior to the expiration of a zoning permit except for:

(1) Modifications to existing one- or two-family dwellings not located within the Flood Hazard Overlay District, or accessory structures or uses to such dwellings, which do not involve an increase in the total number of dwelling units on the property.

4208.B The Zoning Administrator will provide applicants with the necessary form to apply for a certificate of compliance.

4208.C The Zoning Administrator must act on a complete application for a certificate of compliance promptly and in all cases within 30 days. The Zoning Administrator may:

(1) Require the applicant to submit documentation from a professional engineer certifying that the land development as constructed conforms to the plans approved by the Development Review Board and any conditions of approval; and/or

(2) Inspect the subject property and consult with other town or state personnel as necessary to determine compliance.

4208.D If the Zoning Administrator does not act on a complete application for a certificate of compliance within 30 days, the applicant may file an appeal directly with the Environmental Division of the Vermont Superior Court to recognize that the Zoning Administrator's failure to act within the 30-day period resulted in a "deemed approval" of the application.

4208.E The Zoning Administrator may only issue a final certificate of compliance upon determining that:

(1) The fully completed land development conforms to the requirements of the zoning permit and filed plans, any associated approvals and development conditions, and the applicable provisions of these regulations.

(2) All infrastructure connections are fully complete and conform to any applicable town specifications, permit requirements and filed plans, associated approvals and development conditions, and provisions of these regulations.

(3) The applicant has recorded any required documents with the town including, but not limited to, as-built drawings, floodplain elevation certificate, floodproofing certificate, energy certificate, wastewater permit or allocation, access permit, or stormwater permit.

(4) The applicant has paid all required fees.

4208.F The Zoning Administrator may issue a temporary certificate of compliance that conditions use or occupancy on full completion of all required improvements within not more than 180 days. The Zoning Administrator may require the applicant to submit a performance bond in accordance with *Section 4106 to insure full completion of the outstanding required improvements. The applicant must apply for a final certificate of compliance prior to the expiration of any temporary certificate.

4208.G The Zoning Administrator must approve or deny applications for a certificate of compliance in writing. When denying an application, the Zoning Administrator must:

(1) State the reasons for the denial;

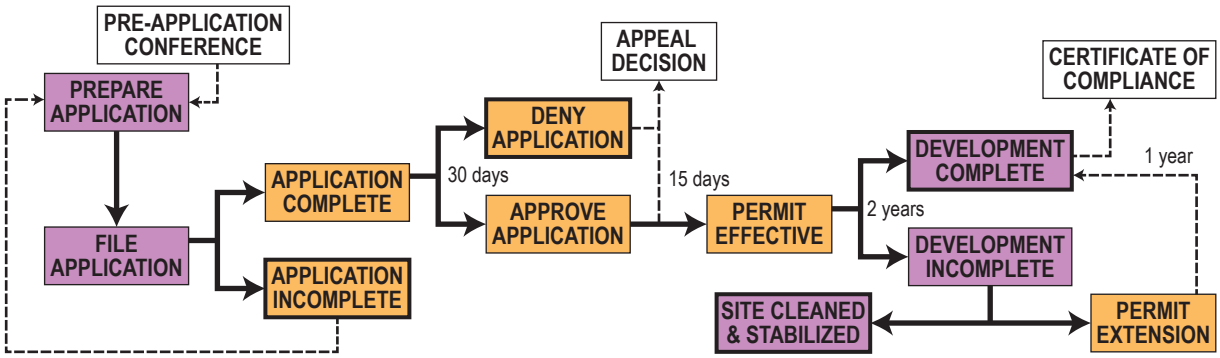
(2) Inform the applicant that he/she may appeal the denial to the Development Review Board within 15 days of the date of the decision; and

(3) Include a copy of *Section 4501, which explain the appeal process.

4208.H If the Zoning Administrator denies the application for a certificate of compliance, the applicant may re-apply after remedying any conditions identified as the reason for the denial.

4208.I If the Zoning Administrator denies the application for a certificate of compliance and finds a violation of these regulations, he/she must commence appropriate enforcement action under *Chapter 470.

Figure 4-01. **Zoning Permit Flow Chart**



# Chapter 430. Development Review Procedures

ⓘ *The purpose of this chapter is to establish what is required of applicants applying for various types of development approvals from the Development Review Board, and the review process and criteria to be used for each type of application.*

### Section 4301. Pre-Application Conference

4301.A A prospective applicant may request a pre-application conference with the Zoning Administrator prior to submitting a complete application.

4301.B A pre-application conference is an informal meeting that provides the prospective applicant with an opportunity to consult with and receive advice in order to save time and expense in the preparation of the site plan and application.

4301.C Any comments or recommendations made are intended to provide general direction to the prospective applicant, but will not be deemed binding on either the prospective applicant or Development Review Board in the preparation or review of any subsequent application for development approval.

### Section 4302. Site Plan Review

4302.A All land development other than a single-family or two-family dwelling (including customary accessory uses and structures) requires site plan approval.

4302.B Prior to submitting a complete application for site plan review, the prospective applicant may request a pre-application conference as per *Section 4301.

4302.C The applicant must file a complete zoning permit application and site plan with the Zoning Administrator.

4302.D **Classification.** The Zoning Administrator will classify:

(1) A site plan review application for proposed land development that involves any of the following as a major project:

(a) Commencement of a new conditional use.

(b) Construction of a new principal building.

(c) Major renovation of an existing principal building.

(d) Construction of a new curb cut.

(e) Construction of more than 10 parking spaces or 2,000 square feet of impervious surface.

(f) Construction of an accessory structure with a footprint of more than 2,000 square feet or a height of more than 24 feet.

(2) Any other site plan review application as a minor project.

4302.E **Major Projects.** The Development Review Board will review site plan applications for major projects as follows:

(1) The Development Review Board must hold a public hearing and issue a decision on a site plan application in accordance with *Section 4601 and *Section 4605.

(2) To approve a site plan application, the Development Review Board must find that the applicant has demonstrated that the proposed land development meet all of the applicable criteria specified in *Figure 4-04.

4302.F **Minor Projects.** The Zoning Administrator will review site plan applications for minor projects as follows:

(1) The Zoning Administrator must act on a complete site plan application within 60 days.

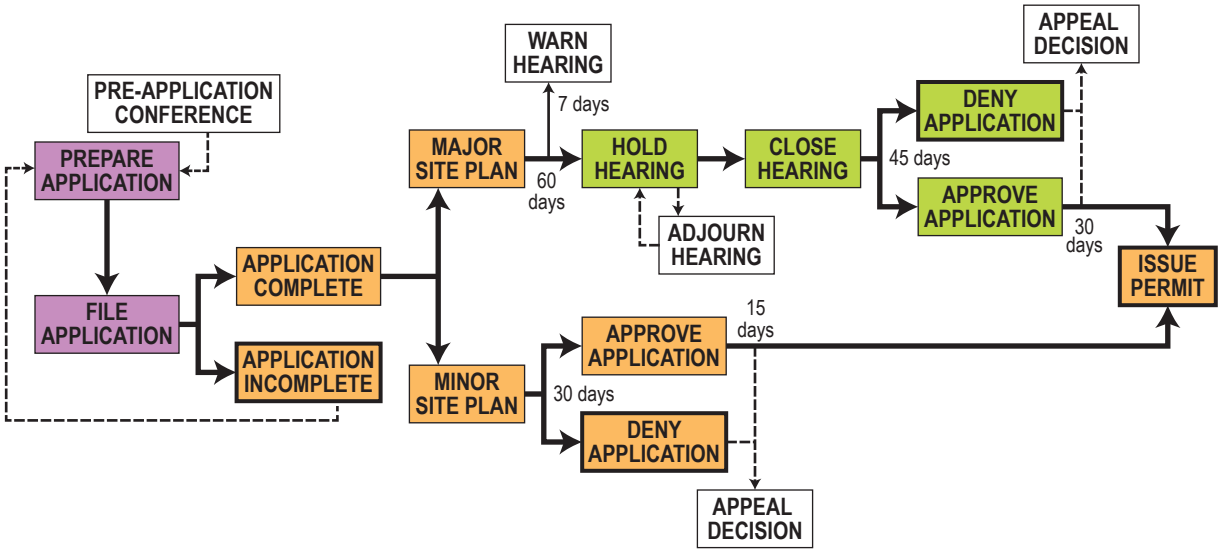
(2) The Zoning Administrator may approve, deny or refer site plan applications to the Development Review Board.

(3) The Zoning Administrator must determine that the proposed land development conforms to all applicable standards of these regulations including but not limited to the site plan standards in *Chapter 320 before approving a site plan application.

(4) The Zoning Administrator may approve a site plan application with conditions as necessary to ensure compliance with these regulations.

(5) The applicant or other interested person may appeal any of the Zoning Administrator's actions or decisions under this section to the Development Review Board as specified in *Section 4501.

Figure 4-02. **Site Plan Review Flow Chart**




## Section 4303. Conditional Use Review

4303.A The specific land uses that require Development Review Board approval as a conditional use are listed in *Part 2 for each zoning district.

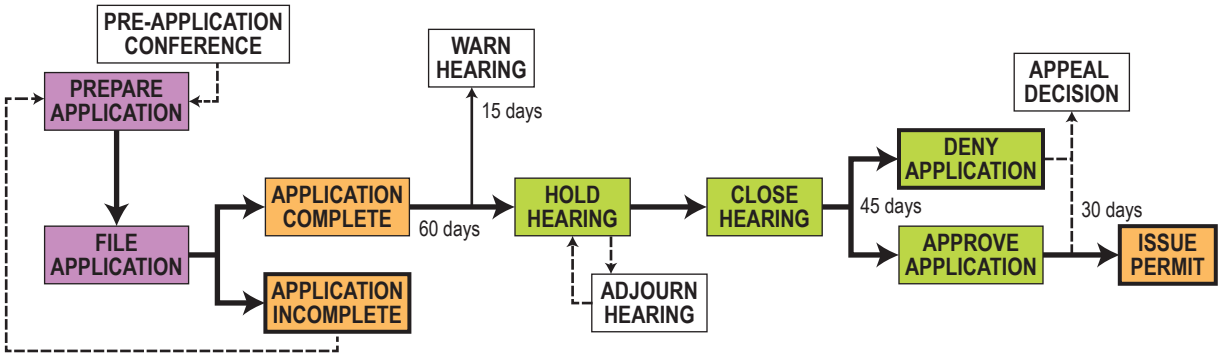
4303.B The prospective applicant may request a pre-application conference as per *Section 4301 prior to submitting a complete application.

4303.C The applicant must file a complete conditional use application and site plan with the Zoning Administrator.

4303.D The Development Review Board must hold a public hearing and issue a decision on a conditional use application in accordance with *Section 4601 and *Section 4605.

4303.E To approve a conditional use application, the Development Review Board must find that the applicant has demonstrated that the proposed land development meets all of the applicable criteria specified in *Figure 4-04.

Figure 4-03. **Conditional Use Review Flow Chart**




### Section 4304. Combined Review

4304.A When proposed land development requires more than one approval, the Development Review Board may warn and hold a single hearing for the purpose of reviewing and acting on the application.

(1) The Zoning Administrator will identify applications appropriate for combined review and assist applicants in preparing and submitting coordinated applications to facilitate combined review.

4304.B The hearing for a combined review must be warned as per *Section 4601 and the notice must:

(1) Include a statement that the hearing will be a combined review of the proposed land development; and

(2) List each type of review the Development Review Board will conduct.

4304.C All hearing and decision requirements and deadlines applicable to each review process will apply.

4304.D The Development Review Board may issue separate written decisions for each review conducted as part of the combined hearing, but decisions should be coordinated where appropriate.

### Section 4305. Modification of Approved Plans

4305.A The Development Review Board must review any request to amend an approved plan that the Zoning Administrator cannot approve under *Section 4205.

4305.B The process for applying for an amendment will be the same as for the original approval.

4305.C The process for reviewing and issuing a decision on an amendment will be the same as for the original approval except that the scope of the review will be limited to those aspects of the plan affected by the proposed amendment.

Figure 4-04. **Development Review Criteria**

| CRITERIA | | SITE PLAN | COND. USE |
|---|---|---|---|
| 1 | **Parking and Loading.** The proposed land development will have an adequate, but not excessive amount of parking. Required parking will be designed and located to minimize its aesthetic and environmental impacts. Adequate space will be provided for service vehicles and functions. See *Section 3202 for specific requirements. | ✓ | ✓ |
| 2 | **Vehicular Access and Circulation.** The vehicular circulation within the development will not create unsafe conditions for drivers, bicyclists or pedestrians, will allow adequate access for service and emergency vehicles, and will allow for adequate snow removal and storage. See *Section 3203 for specific requirements. | ✓ | ✓ |
| 3 | **Pedestrian and Bicycle Access and Circulation.** Pedestrian and bicycle access will be provided within and through the development to adjacent properties and along roads as appropriate given the location of the subject property. Adequate access will be provided for people with disabilities and impaired mobility in accordance with applicable state and federal laws | ✓ | ✓ |
| 4 | **Landscaping and Screening.** Landscaping and screening will be provided to: enhance the appearance of the property and streetscape; screen service areas, equipment and utilities from public view; and create a buffer as needed to mitigate impacts on neighboring properties. See *3204.J for specific requirements. | ✓ | ✓ |
| 5 | **Erosion Control, Stormwater Management and Snow Storage.** The proposed development will prevent erosion and appropriately manage stormwater and snow storage. Low-impact development (LID) techniques that minimize the amount of runoff generated and allow infiltration will be used to the extent that is physically and economically feasible. See *Section 3209 for specific requirements. | ✓ | ✓ |
| 6 | **Outdoor Lighting.** Lighting will be designed, located and used to: provide the minimum amount of lighting needed to create a safe environment for human activity; avoid increasing pre-existing light levels beyond the development site; prevent glare and shield light sources; and minimize energy use. See *Section 3205 for specific requirements. | ✓ | ✓ |
| 7 | **Signs.** Signs will be designed, sized and located to: minimize undue adverse impact on historic and scenic character; not be the dominant feature of the development; clearly and simply communicate their message; and enhance the appearance of the property and streetscape. See *Section 3206 for specific requirements. | ✓ | ✓ |
| 8 | **Outdoor Seating, Storage and Display.** Outdoor areas used in conjunction with the proposed development will be designed and located to: enhance the appearance of the property and streetscape, and to minimize adverse impacts on neighboring property such as glare, noise, trash and clutter. See *Section 3207 for specific requirements. | ✓ | ✓ |
| 9 | **Access to Renewable Energy.** The proposed development will not interfere with the use of, or access to, renewable energy resources either within the development or on neighboring properties. | ✓ | ✓ |
| 10 | **Performance Standards.** Any impacts of the proposed development that are perceptible beyond the property line will not exceed approved levels. See *Section 3208 for specific requirements. | ✓ | ✓ |
| 11 | **Conformance with Regulations.** The proposed development is in conformance with all applicable provisions of these regulations, including the special flood hazard area provisions in *Section 2203 if applicable. | ✓ | ✓ |
| 12 | **Utilities, Facilities and Services.** Utilities will be designed and located to minimize undue adverse impact on historic and scenic character and not be a dominant feature of the development. Available public facilities and services will be adequate to accommodate the proposed development. The proposed development will not contribute excessively or unreasonably to cumulative impacts within the neighborhood that would limit, impair or preclude the future use of property for its permitted uses. | – | ✓ |
| 13 | **Traffic.** Traffic generated by the proposed land development will not have an undue adverse impact on the condition, capacity, safety and function of the town's transportation infrastructure. | – | ✓ |
| 14 | **Character of the Area.** The siting and design of the proposed development will be compatible with its setting and | – | ✓ |

| | CRITERIA | SITE PLAN | COND. USE |
|---|---|---|---|
| | context. The proposed development will not alter the existing or planned character of the neighborhood in a manner that would limit, impair or preclude the future use of nearby property for its permitted uses. | | |
| 15 | **Capability and Suitability of the Site.** The site's size, shape, location, topography, natural features are capable of accommodating and suitable for the proposed development. The proposed development will not require excessive or unreasonable modification of the site's natural topography, drainage patterns and landscape features. | – | ✓ |
| 16 | **Natural Resource Protection.** The proposed development will be designed and located to avoid and minimize adverse impacts on natural resources. | – | ✓ |
| 17 | **Energy Conservation.** The proposed development will be designed and located to minimize its energy use to the extent that is economically and physically feasible. Energy-saving approaches to development may include: high-efficiency buildings, light fixtures and infrastructure; buildings oriented to maximize solar gain; landscaping to provide wind breaks, and reduce heat loss or gain as appropriate; buildings sited to minimize the length of road and utility corridors; and generating renewable energy on-site. | – | ✓ |

# Chapter 440. Subdivision and PUD Review Procedures

ⓘ *The purpose of this chapter is to establish the requirements for applicants seeking approval to subdivide land and the procedures the town will use review subdivision applications.*

### Section 4401. Applicability

4401.A Without first recording a subdivision plat in the town's land records in full conformance with these regulations, a landowner must not:

(1) Subdivide land; or

(2) Sell or transfer ownership of any lot by reference to a subdivision plat.

4401.B The Zoning Administrator must not issue a zoning permit for land development on a lot created by subdivision until the landowner has recorded a subdivision plat in the town's land records in full conformance with these regulations.

4401.C A planned unit development (PUD) will require subdivision approval under these regulations. If a planned unit development will also require site plan and/or conditional use approval, the Development Review Board will conduct those reviews concurrently with subdivision review as authorized in *Section 4304.

### Section 4402. Lot Line Adjustment and Lot Merger

4402.A The Zoning Administrator may approve the realignment, relocation or elimination of a boundary line between adjoining lots provided that the proposed change:

(1) Will not result in an increase in the number of lots;

(2) Will not result in a nonconformity (see *Section 1203), but it may involve an existing nonconformity provided that the degree of nonconformity is not increased; and

(3) Will not violate any conditions of a prior permit or approval.

4402.B The applicant must submit a complete application and plan for the lot line adjustment or merger to the Zoning Administrator.

4402.C Once the Zoning Administrator determines that an application is complete, he/she must act within 30 days to approve it, deny it or refer it to the Development Review Board.

4402.D The applicant must file a final subdivision plat that meets all statutory requirements for recording in the town's land records within 180 days of the Zoning Administrator approving the lot line adjustment or merger application.

4402.E The Zoning Administrator must sign the final subdivision plat before it is recorded.

### Section 4403. Applying for a Subdivision Approval

4403.A A prospective applicant is encouraged to meet with the Zoning Administrator for a preliminary review of his/her proposal and a discussion of the applicable provisions of these regulations, permitting requirements, application materials, fees, and review procedures prior to applying for a subdivision approval.

4403.B The Zoning Administrator will:

(1) Provide applicants with the necessary form(s) to apply for the applicable permit(s) and approval(s).

(2) Notify the prospective applicant of any fees or other charges that the town may charge in relation to the application or proposed subdivision.

4403.C The applicant must submit the completed form(s), supporting materials and fees to the Zoning Administrator to apply for a subdivision approval under these regulations.

4403.D The Zoning Administrator:

(1) May waive an application requirement upon determining the information is not necessary to determine compliance with these regulations.

(2) May require an applicant to provide additional information as necessary to determine compliance with these regulations.

(3) Must keep written documentation of any application requirement waived or additional material requested as part of his/her office records.

### Section 4404. Sketch Plan Review

4404.A The applicant must file a complete application and sketch plan for review by the Zoning Administrator. The sketch plan must indicate the planned allocation or transfer of development rights on any land within the Rural, Shoreland Conservation or Upland Conservation districts.

4404.B The purpose of sketch plan review is to provide the applicant with an opportunity to consult with and receive feedback from the Zoning Administrator prior to spending time and money preparing detailed plans.

4404.C The Zoning Administrator may forward the sketch plan to other town departments and/or advisory committees for review and comment as appropriate.

4404.D The Zoning Administrator must notify the owners of all properties adjoining the subject property (including those across the road) in writing of the applicant's intent to subdivide the subject property. The notification must include a description of the proposed subdivision and must clearly explain to the recipient where to obtain additional information.

4404.E The Zoning Administrator must send the applicant a written response to a complete sketch plan application within 60 days of its filing that:

(1) Indicates whether the subdivision as proposed generally conforms to the standards of these regulations.

(2) Makes recommendations to guide the applicant in preparation of more detailed plans.

(3) Requests any additional application materials deemed necessary to determine compliance with these regulations.

(4) Determines whether the applicant will be required to file a preliminary plan or may file a final plan for review by the Development Review Board in accordance with *Section 4405.

4404.F After the Zoning Administrator determines that the applicant is ready to move forward, the applicant will have 1 year to file the materials required for the next step of the subdivision review process.

4404.G The Zoning Administrator's actions under this section will not constitute a formal decision on the subdivision plan.

4404.H The applicant or other interested person may appeal any of the Zoning Administrator's actions or decisions under this section to the Development Review Board as specified in *Section 4501.

### Section 4405. Classification

4405.A **Major Subdivision.** The Zoning Administrator will classify a proposed subdivision that includes any of the following as a major subdivision:

(1) A subdivision or planned unit development (PUD) that will create 5 or more lots from a parent parcel in any 5-year period (inclusive of the parcel parcel).

(2) A subdivision or PUD that will require construction of a new, extended or upgraded road.

(3) A PUD containing 5 or more dwelling units or principal nonresidential uses.

4405.B **Minor Subdivision.** The Zoning Administrator will classify any other proposed subdivision as a minor subdivision.

4405.C **Effect of Classification.** An applicant for a major subdivision approval must submit a preliminary and final plan for review and approval by the Development Review Board in accordance with the provisions of this chapter. An applicant for a minor subdivision approval may skip the preliminary approval process and submit a final plan for review and approval by the Development Review Board in accordance with the provisions of this chapter.

### Section 4406. Preliminary Plan Review

4406.A When required by the Development Review Board, the applicant must file a complete application and preliminary subdivision plan for consideration by the Development Review Board.

4406.B The purpose of preliminary review is to:

(1) Examine the proposed subdivision in detail;

(2) Take public comment on the plan;

(3) Evaluate the plan's conformance with the purposes and specific standards of these regulations; and

(4) Determine whether modifications or conditions will be necessary to ensure that conformance.

4406.C The Development Review Board must hold a public hearing and act on a preliminary subdivision plan in accordance with *Section 4601 and *Section 4605.

4406.D The Development Review Board must issue a written decision that includes:

(1) Findings of fact that address each of the applicable criteria in *Figure 4-05;

(2) Any conditions of approval;

(3) Any specific changes required in the final subdivision plan;

(4) The issues to be analyzed and addressed in the final subdivision application;

(5) Any modification or waiver of application requirements for final plan review. The Development Review Board may:

(a) Request any additional application materials deemed necessary to determine compliance with these regulations; and

(b) Modify or waive application requirements deemed unnecessary to determine compliance with these regulations.

4406.E If the Development Review Board approves the preliminary plan, the applicant will have 6 months to file the final subdivision plan.

### Section 4407. Final Plan Review

4407.A The applicant must file a complete application and final subdivision plan for consideration by the Development Review Board.

4407.B The purpose of final review is to evaluate the plan's conformance with the purposes and specific standards of these regulations and assure that the applicant has met all conditions the Development Review Board imposed on the preliminary plan.

4407.C The Development Review Board must hold a public hearing and act on a final subdivision in accordance with *Section 4601 and *Section 4605.

(1) If a proposed subdivision will be located within 500 feet of the town boundary, a copy of the hearing notice must be sent to the clerk of the adjoining municipality.

4407.D The Development Review Board's approval of a final plan will not constitute the town's acceptance of any road, easement, open space or other feature shown on the plan. Action by the Selectboard is required to accept any road, easement, open space or other feature (see *Section 3203).

### Section 4408. Filing Requirements

4408.A If the Development Review Board approves the final plan, the applicant will have 180 days to submit a final subdivision plat for recording in the town's land records.

(1) If the subdivision will be phased, the applicant must file a plat for the first phase within 180 days and for subsequent phases in accordance with any schedule or time period established in the conditions of approval.

4408.B The Zoning Administrator may grant a 90-day extension to the filing deadline upon written request by the applicant if other local or state permits are still pending.

4408.C The final subdivision plat must meet all state requirements (see 27 VSA § 1403).

4408.D The Chair of the Development Review Board must sign the final subdivision plat before it is recorded in the town land records.

4408.E No one must make any changes, erasures, modifications or revisions to a final plat after it has been signed except in accordance with *Section 4409.

4408.F Once properly filed, a final subdivision plat will not expire.

### Section 4409. Modification of Approved Subdivisions

4409.A The Development Review Board must review any request to amend an approved subdivision plat.

4409.B The process for applying for an amendment will be the same as for the original approval.

4409.C The process for reviewing and issuing a decision on an amendment will be the same as for the original approval except that the scope of the review will be limited to those aspects of the plat affected by the proposed amendment.

Figure 4-05. **Subdivision and PUD Review Criteria**

| CRITERIA | |
|---|---|
| 1 | **Siting and Design.** The siting and design of the proposed subdivision will be compatible with its setting and context. |
| 2 | **Capability and Suitability of the Site.** The site's size, shape, location, topography, natural features are capable of accommodating and suitable for the proposed subdivision. The proposed subdivision will not require excessive or unreasonable modification of the site's natural topography, drainage patterns and landscape features. |
| 3 | **Neighborhood Character.** The proposed subdivision will not alter the existing or planned character of the neighborhood in a manner that would limit, impair or preclude the future use of nearby property for its permitted uses. |
| 4 | **Compatibility, Safety and Privacy.** The proposed subdivision will be compatible with existing and planned uses in the neighborhood. It will not reduce the safety or privacy of adjacent landowners below levels typical of the neighborhood. It will create or retain appropriate transitions from public to private spaces. It will create or retain buffers within the subdivision and between the subdivision and adjoining properties. |
| 5 | **Vehicular Traffic, Access and Circulation.** Traffic generated by the proposed subdivision will not have an undue adverse impact on the condition, capacity, safety and function of the town's transportation infrastructure. The vehicular circulation within the subdivision will not create unsafe conditions for drivers, bicyclists or pedestrians, will allow adequate access for service and emergency vehicles, and will allow for adequate snow removal and storage. See *Section 3203 for specific requirements. |
| 6 | **Pedestrian Traffic, Access and Circulation.** Pedestrian access will be provided within and through the subdivision to adjacent properties and along roads as appropriate given the location of the subject property. |
| 7 | **Stormwater and Snow Storage.** The proposed subdivision will appropriately manage stormwater and snow storage. Low-impact development (LID) techniques that minimize the amount of runoff generated and allow infiltration will be used to the extent that is physically and economically feasible. See *Section 3210 for specific requirements. |
| 8 | **Landscaping.** Landscaping will be preserved or established to enhance the aesthetic character of the proposed subdivision and streetscapes within and adjoining the subdivision, and to create a buffer as needed to mitigate impacts on neighboring properties. See *3204.J for specific requirements. |
| 9 | **Energy Conservation.** The proposed subdivision will be designed and located to minimize its energy use to the extent that is economically and physically feasible, including orienting roads and lots to maximize solar gain, retaining or establishing landscaping to provide wind breaks and reduce heat loss or gain as appropriate, and minimizing the length of road and utility corridors. |
| 10 | **Access to Open Space and Recreation.** The proposed subdivision will not interfere with access to and enjoyment of existing public open space or recreational areas in the neighborhood. The proposed subdivision will provide suitable private and/or common outdoor spaces to be used for passive and active recreation. |
| 11 | **Utilities, Facilities and Services.** Utilities will be designed and located to minimize undue adverse impact on historic and scenic character and not be a dominant feature of the subdivision. Available public facilities and services will be adequate to accommodate the proposed subdivision. |
| 12 | **Cumulative Impact.** The proposed subdivision will not contribute excessively or unreasonably to cumulative impacts within the neighborhood that would limit, impair or preclude the future use of property for its permitted uses. |
| 13 | **Conformance with Regulations.** The proposed subdivision is in conformance with all applicable provisions of these regulations. |

# Chapter 450. Appeal Procedures

ⓘ *The purpose of this chapter is to establish what is required of appellants challenging an action or decision of the Zoning Administrator or Development Review Board, or seeking relief from a provision of these regulations.*

### Section 4501. Appeal of the Zoning Administrator's Action or Decision

4501.A An interested person may appeal any action or decision of the Zoning Administrator to the Development Review Board by:

(1) Filing two copies of a notice of appeal and any applicable fees with the Development Review Board Secretary or the Town Clerk within 15 days of the date the Zoning Administrator's action or decision.

ⓘ *An interested person includes the applicant, a person owning property in the immediate neighborhood who can demonstrate a physical or environmental impact on his/her property, or a group of 10 people voting or owning property in the town. The full definition is found in Paragraph 5301.I(1).*

4501.B The Development Review Board Secretary or Town Clerk will forward one copy of the notice of appeal to the Development Review Board and the other to the Zoning Administrator.

4501.C A notice of appeal must be in writing and must include all of the following information:

(1) The name and address of the appellant (the person filing the appeal);

(2) A copy of the Zoning Administrator's decision or description of the action (if appealing a zoning permit, also include a copy of the permit application);

(3) A brief description of the subject property;

(4) A reference to the section(s) of these regulations that the appellant alleges the Zoning Administrator has not properly followed or applied; and

(5) A statement of the relief the appellant is requesting and why the appellant believes the requested relief to be appropriate under the circumstances.

4501.D The appellant may request a stay of enforcement as part of the notice of appeal by:

(1) Including a sworn statement that irremediable damage will directly result if the Development Review Board does not grant the stay.

4501.E The Development Review Board must either:

(1) Hold a public hearing and act on the appeal in accordance with *Section 4601 and *Section 4605.

(2) Reject the appeal without a hearing and render a decision within 10 days of the notice being filed, if the Development Review Board determines that it decided the issues in an earlier appeal.

4501.F An appeal to the Development Review Board is the exclusive remedy for an interested person with respect to an action taken or decision made by the Zoning Administrator.

4501.G If no interested person appeals the Zoning Administrator's action or decision to the Development Review Board within 15 days, the action or decision will not be able to be contested at a later time.

### Section 4502. Waivers

4502.A The Development Review Board:

(1) May approve waivers that authorize adjustments to the dimensional standards of these regulations as specified in *Figure 4-06.

(2) Must not approve a waiver to allow the subdivision of a lot that does not conform to the applicable provisions of these regulations.

Figure 4-06. **Waiver Limitations**

| STANDARD | MAXIMUM WAIVER |
|---|---|
| **Lot** | |
| Coverage | 5% more than district standard |
| **Setback** | |
| Front (minimum) | 50% of the district standard, but not to less than 15 ft |
| Side | 50% of the district standard, but not to less than 5 ft |
| Rear | 50% of the district standard, but not to less than 10 ft |
| **Building** | |
| Footprint | 10% more than district standard or<br>25% more than the footprint that existed on [*DATE] for additions to pre-existing buildings |
| Height (maximum) | 5 ft more than district standard |

4502.B The applicant must file a complete zoning permit application and a written request for a waiver with the Zoning Administrator that includes all of the following:

(1) A brief description of the subject property and project.

(2) A reference to specific dimensional standard(s) of these regulations that the applicant is requesting a waiver from.

(3) The specific modification(s) that the applicant is requesting.

(4) A response to each of the criteria that the Development Review Board will use to decide whether to approve the waiver.

4502.C To approve a waiver, the Development Review Board must find that all of the applicable criteria specified in *Figure 4-07 for waivers have been met.

4502.D The Development Review Board must hold a public hearing and act on the waiver request in accordance with *Section 4601 and *Section 4605.

(1) If the applicant is requesting a waiver from the required setback from a state highway, notice must also be sent to the Vermont Secretary of Transportation.

### Section 4503. Variances

4503.A The Development Review Board:

(1) May approve variances that authorize more substantial adjustments to the standards of these regulations under the specific circumstances described in this section.

(2) Must not approve a variance to allow a prohibited use or the subdivision of a lot that does not conform to the applicable provisions of these regulations.

4503.B The applicant must file a complete zoning permit application and a written request for a variance with the Zoning Administrator that includes all of the following:

(1) A brief description of the subject property and project.

(2) A reference to specific provision(s) of these regulations that the applicant is requesting a variance from.

(3) The specific modification(s) that the applicant is requesting.

(4) A response to each of the criteria that the Development Review Board will use to decide whether to approve the variance.

4503.C The Development Review Board must hold a public hearing and act on the variance request in accordance with *Section 4601 and *Section 4605.

(1) If the applicant is requesting a variance from the required setback from a state highway, notice must also be sent to the Vermont Secretary of Transportation.

4503.D To approve a variance, the Development Review Board must find that all of the applicable criteria specified in *Figure 4-07 have been met.

(1) If the variance is for a renewable energy structure, only the criteria specific to a renewable energy variance specified in *Figure 4-07 apply.

(2) If the variance is for development within the Flood Hazard Overlay District, only the criteria specific to a flood hazard variance specified in *Figure 4-07 apply.

(3) For all other variances, the general variance criteria specified in *Figure 4-07 apply.

4503.E If the Development Review Board approves a variance for development within the Flood Hazard Overlay District, the written decision must state that "*Building a structure below the base flood elevation increases risk to life and property and will result in increased flood insurance premiums.*"

Figure 4-07. **Waiver and Variance Review Criteria**

| CRITERIA | WAIVER | GENERAL VARIANCE | RENEWABLE ENERGY VARIANCE | FLOOD HAZARD VARIANCE |
|---|---|---|---|---|
| **1** The proposed land development will not alter the essential character of the area or district in which the property is located. | ✓ | ✓ | ✓ | ✓ |
| **2** The proposed land development will not substantially or permanently impair the lawful use or development of adjacent property. | ✓ | ✓ | ✓ | ✓ |
| **3** The proposed land development will not be detrimental to public health, safety or welfare. | ✓ | ✓ | ✓ | ✓ |
| **4** The proposed land development is beneficial or necessary for the continued reasonable use of the property. | ✓ | – | – | – |
| **5** The applicant has not created the unnecessary hardship. | – | ✓ | ✓ | ✓ |
| **6** The applicant is proposing the least deviation possible from these regulations that will afford relief. | – | ✓ | ✓ | ✓ |
| **7** There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property. These conditions, and not the circumstances or conditions generally created by the provisions of these regulations in the district in which the property is located, have created an unnecessary hardship for the applicant. These physical circumstances or conditions prevent the property from possibly being developed in strict conformity with these regulations and a variance is necessary to enable reasonable use of the property. | – | ✓ | – | ✓ |
| **8** The proposed land development meets all applicable federal and state rules for compliance with the National Flood Insurance Program. | – | – | – | ✓ |
| **9** It would be unusually difficult or unduly expensive for the applicant to build a renewable energy structure in conformance with these regulations. | – | – | ✓ | – |
| **10** The proposed land development will not reduce access to renewable energy resources on adjacent property. | – | – | ✓ | – |
| **KEY** ✓ Applicable – Not Applicable | | | | |

### Section 4504. Appeal of the Development Review Board's Action or Decision

4504.A Any interested person who participated in a hearing on a matter before the Development Review Board may appeal the board's action or decision to the Environmental Division of the Vermont Superior Court within 30 days.

4504.B The appellant must send a notice of appeal to every interested person who participated in the hearing.

(1) The Zoning Administrator must provide a prospective appellant with the interested person list.

4504.C If the Zoning Administrator has issued a zoning permit based on a Development Review Board approval, the appeal of that approval will be considered an appeal of the zoning permit as well and the applicant must not commence any use or development authorized by the zoning permit until the appeal is resolved.

4504.D An interested person cannot use the procedures of *Section 4501 to appeal the Zoning Administrator's issuance of a zoning permit implementing a Development Review Board approval.

4504.E An appeal to the Environmental Division of the Vermont Superior Court is the exclusive remedy for an interested person with respect to an action taken or decision made by the Development Review Board except as otherwise provided by state statute.

4504.F If no interested person appeals a Development Review Board action or decision to the Environmental Division of the Vermont Superior Court within 30 days, all interested persons will be bound by that action or decision and will not be able to contest it at a later time.

# Chapter 460. Notice, Hearing & Decision Procedures

### Section 4601. Notifying the Public about a Hearing

4601.A The Zoning Administrator must notify the public at least 15 days before a hearing for all conditional use, variance, appeal, and final subdivision or planned unit development applications by all of the following:

(1) Publishing the date, place and purpose of the hearing in a newspaper of general circulation in Berlin.

(2) Posting the date, place and purpose of the hearing at the town office and at least one other public place within Berlin.

(3) Providing the applicant with a sign with the date, place and purpose of the hearing to be posted on the subject property within public view.

(a) It will be the applicant's responsibility to ensure that the notice remains posted for the entire warning period and to remove the sign within two days of the close of public hearing.

(4) Notifying the owners of all properties adjoining the subject property subject (including those across the road) in writing. The notification must:

(a) Include a description of the proposed project;

(b) Identify where the recipient can obtain additional information; and

(c) Explain that the recipient must participate in the hearing in order to have the right to any subsequent appeal.

4601.B The Zoning Administrator must notify the public at least 7 days before a hearing for all other Development Review Board actions by all of the following:

(1) Posting the date, place and purpose of the hearing at the town office and at least two other public places within Berlin.

(2) Notifying the owners of all properties adjoining the subject property subject (including those across the road) in writing. The notification must:

(a) Include a description of the proposed project;

(b) Identify where the recipient can obtain additional information; and

(c) Explain that the recipient must participate in the hearing in order to have the right to any subsequent appeal.

4601.C A defect in the form or substance of the public notice requirements will not invalidate any Development Review Board action or decision when a reasonable effort has been made to provide adequate posting and notice.

### Section 4602. Site Visits

4602.A The Zoning Administrator or Development Review Board may require an applicant to grant them access to the subject property prior to making a decision on an application when deemed necessary to ensure compliance with these regulations.

4602.B A site visit must be warned as a public meeting in accordance with *Section 4601 and open to the public if a quorum of the Development Review Board will be present.

### Section 4603. Conducting a Hearing and Taking Evidence

4603.A The Development Review Board must hold a public hearing within 60 days of the Zoning Administrator determining that an application is complete unless otherwise specified in these regulations.

4603.B The Development Review Board must conduct public hearings, hear testimony and take evidence according to its adopted rules of procedures.

4603.C All hearings must be open to the public.

(1) Any individual or group may appear and participate in a public hearing in person (or by authorized representative or counsel) or may submit written testimony in advance of the hearing.

(2) The Development Review Board must give all those wishing to participate an opportunity to be heard as is relevant to the proceeding.

4603.D The applicant (or an authorized representative) is strongly encouraged to be present at any public hearing or meeting when the Development Review Board will be considering his/her application.

(1) The Development Review Board may continue its consideration of an application to its next regularly scheduled meeting if the applicant or an authorized representative is not present.

(2) In the case of such a continuation, the intervening days will not be counted as part of any time period within which the Development Review Board is required to act.

4603.E Development Review Board members must not communicate directly or indirectly with any applicant, interested person or their representative regarding a matter that is under consideration except during a properly noticed hearing.

### Section 4604. Recessing a Hearing

4604.A The Development Review Board may recess a hearing on any application pending submission of additional information necessary to determine compliance with these regulations or upon the applicant's request.

4604.B If the Development Review Board recesses a hearing to a specific date and time, the hearing will not have to be re-warned when resumed.

### Section 4605. Issuing a Decision

4605.A Within 45 days of closing a hearing, the Development Review Board must issue a written decision to approve, approve with conditions or deny the application.

4605.B The Development Review Board may discuss and make a decision on the application either in open public session or in a closed deliberative session.

4605.C If the Development Review Board does not issue a decision within 45 days, the applicant may file an appeal directly with the Environmental Division of the Vermont Superior Court to recognize that the board's failure to act resulted in a "deemed approval" of the application.

4605.D The written decision must include a statement of the facts upon which the Development Review Board is basing its decisions and a statement of conclusions relating to the applicable review criteria and standards of these regulations.

4605.E The Development Review Board may attach any conditions it deems necessary to an approval to achieve the purposes of these regulations.

(1) Any conditions or limitations must be specifically described in the Development Review Board's written decision.

4605.F If the Development Review Board attaches conditions on an approval that require amendments to a site or subdivision plan, the applicant must submit an amended site or subdivision plan that satisfies those conditions prior to Zoning Administrator issuing a zoning permit.

4605.G The Development Review Board must send a copy of the decision to:

(1) The applicant;

(2) All others who appeared and were heard at the hearing; and

(3) The Zoning Administrator.

4605.H Following Development Review Board approval of a waiver, variance, site plan or conditional use application, the Zoning Administrator will issue a zoning permit.

(1) Any conditions attached to the Development Review Board's approval will be considered part of that zoning permit.

4605.I If the approved development is not substantially completed or the use commenced before the zoning permit expires (see *Section 4204), the development approval will expire with the zoning permit.

4605.J If the approved development is substantially completed or the use commences before the zoning permit expires (see *Section 4204), the development approval will remain in effect unless the use or development is abandoned or discontinued (see *Section 1206).

4605.K Development Review Board approvals and any related conditions run with the land (they remain in effect irrespective of whether the property changes ownership).

# Chapter 470. Enforcement Procedures

### Section 4701. Investigation and Action by the Zoning Administrator

4701.A The Zoning Administrator must investigate alleged violations of these regulations. A violation includes, but is not limited to:

(1) Commencing any land development, including signs and changes in use, for which an approval or permit is required without first obtaining such an approval or permit.

(2) Failing to comply with all requirements, representations and conditions of any approved plan or permit.

(3) Commencing or continuing any land development if the permit authorizing the work has expired.

(4) Selling, transferring or offering to sell or transfer any land unless a final subdivision plat has been approved and filed in full compliance with these regulations.

4701.B The Zoning Administrator may enter onto any property as necessary to investigate an alleged violation of these regulations.

(1) If the owner or occupant refuses to allow the Zoning Administrator onto the property, the Zoning Administrator may seek a warrant as authorized by state law.

4701.C The Zoning Administrator must take appropriate action in an effort to remedy a violation of these regulations including, but not limited to any combination of the following:

(1) Issuing a new zoning permit.

(2) Referring the matter to the Development Review Board for review.

(3) Requiring the immediate removal of a violating structure or cessation of a violating use.

(4) Denying a certificate of compliance.

(5) Imposing fines and penalties to the maximum extent allowed under state law until the violation is remedied.

4701.D Upon determining that a violation of these regulations exists, the Zoning Administrator must either issue a municipal civil complaint ticket (see *Section 4703) or a notice of violation (see *Section 4704) as appropriate.

4701.E The Zoning Administrator must not enforce any violation of:

(1) These regulations that has existed for more than 15 years.

(2) A zoning permit that was not filed in the town's land records.

### Section 4702. Liability and Penalties for Violations

4702.A The owner, tenant or occupant of any building or property who creates, maintains, allows, directs, or otherwise contributes to a violation of these regulations may be held responsible for the violation and be subject to any penalties imposed under this chapter.

4702.B Any architect, engineer, builder, contractor, agent or other person who knowingly creates, maintains, allows, directs, or otherwise contributes to a violation of these regulations may be held responsible for the violation and be subject to any penalties imposed under this chapter.

4702.C A violation of these regulations is a civil offense. Each day that a violation exists constitutes a separate offense.

4702.D If any enforcement action results in the need for the Zoning Administrator to issue a new zoning permit for the subject property, the application fee will be:

(1) 2 times the standard application fee, if the applicant files a complete application within 7 days of receiving a notice of violation;

(2) 3 times the standard application fee, if the applicant files a complete application more than 7 but within 15 days of receiving a notice of violation; or

(3) 4 times the standard application fee, if the applicant files a complete application more than 15 days after receiving a notice of violation.

### Section 4703. Municipal Civil Complaint Ticket

4703.A The Zoning Administrator or other authorized municipal personnel may issue a municipal complaint ticket for any violation of these regulations in accordance with the Judicial Bureau's procedure for municipal complaint tickets.

4703.B A violation ticketed under this section will be punishable by a fine of:

(1) $100 for a first offense, with a waiver fee of $50.

(2) $250 for a second offense ticketed for the same violation within 1 year, with a waiver fee of $125.

(3) $500 for a third and any subsequent offense ticketed for the same violation within 1 year, with a waiver fee of $250.

4703.C Upon the fourth offense, the town may request that the case be transferred from the Judicial Bureau to the Environmental Division of Superior Court or another court of competent jurisdiction.

### Section 4704. Notice of Violation

4704.A The Zoning Administrator may issue a notice of violation for any violation of these regulations.

4704.B The Zoning Administrator must send a notice of violation to the property owner by certified mail that:

(1) Describes the violation;

(2) Identifies the specific provision(s) of these regulations being violated;

(3) States the specific action required to remedy the violation;

(4) States that if the owner does not remedy the violation within 7 days, the town may institute court proceedings to obtain a court order:

(a) Directing compliance with these regulations, and

(b) Awarding fines up to the maximum amount allowed under state statute for each day that the violation continues from the date of the notice;

(5) States that the town may enforce these regulations without issuing the owner another notice and an opportunity to remedy if the violation occurs again within the next 12 months; and

(6) States that the notice of violation may be appealed as per *Section 4501.

4704.C The Zoning Administrator must deliver a copy of a notice of violation to the Town Clerk for recording.

4704.D The Zoning Administrator may institute appropriate court action on behalf of the town if the property owner fails to remedy a violation of these regulations after receipt of a notice of violation.

# PART 5. DEFINITIONS

## Chapter 500. Interpretation

### Section 5001. General

5001.A The words used in these regulations have their normal dictionary meaning unless they are specifically defined in this chapter or elsewhere within these regulations.

5001.B The words defined in these regulations have the specific meaning stated unless the context clearly indicates that they have another meaning.

5001.C The definitions and other provisions of these regulations identified as citing state statute are intended to be consistent with that statute and to remain consistent if the statute is amended.

5001.D These regulations use "must" and "will" to express that something is required. They use "must not" and "will not" to express that something is prohibited. They use "may" and "may not" for discretionary actions. They use "should" and "should not" when something is encouraged or discouraged.

5001.E These regulations use "parcel" and "lot" interchangeably to refer to areas of land delineated in a recorded subdivision plat or deed.

5001.F These regulations use "site" or "property" to refer to an area of land subject to a development project, regardless of whether it is an entire parcel, a portion of a parcel, or multiple parcels.

5001.G These regulations use "landowner", "applicant", "subdivider" and "developer" to refer to the party responsible or authorized to act under these regulations. Those terms may include any individual designated to act on behalf of the landowner or applicant.

5001.H These regulations use "business" to refer generally to any nonresidential land use, regardless of whether it is a for-profit or non-profit enterprise.

5001.I These regulations use "home", "residence", "dwelling" to refer to a dwelling unit that is intended for occupancy by a single household regardless of structure type or tenure (owned or rented).

### Section 5002. Information Points

5002.A There are "information points" provided throughout these regulations, which are designated with the ⓘ symbol and italic print. These statements are intended to explain what topics are covered in a particular chapter or section, define a key terms or planning concepts mean, or provide similar guidance to readers. They are not to be interpreted as regulatory provisions.

### Section 5003. Illustrations

5003.A The illustrations provided in these regulations that are intended to provide guidance to readers. In the case of a conflict between an illustration (including any associated descriptive text) and a written provision of these regulations, the written provision will take precedence.

# Chapter 510. Calculations & Measurements

### Section 5101. Calculating Time

5101.A The calculation of time periods defined in these regulations as a specific number of days will be based on calendar days and will not include the first day (i.e., the day an action was taken) but will count the final day (i.e., the day a hearing was held).

### Section 5102. Dimensional Standards

5102.A Each zoning district establishes dimensional standards for lots, setbacks and buildings. Those standards will be measured or calculated as described in *Figure 5-01, Figure 5-02 and Figure 5-03.

### Section 5103. Density Standards

5103.A **General.** Each zoning district establishes the maximum density of development allowed on a lot. Those standards will be measured or calculated as described in this section.

5103.B **Nonresidential Development.** The density of nonresidential development will be measured as floor area ratio (FAR), which is the ratio of gross floor area to the total lot area as shown in *Figure 5-04.

5103.C **Residential Development.** The density of residential development will be measured in dwelling units per square foot or acre of lot area as shown in *Figure 5-05 . 1 acre = 43,560 square feet.

Figure 5-01. **Illustrated Lot Dimensional Standards**

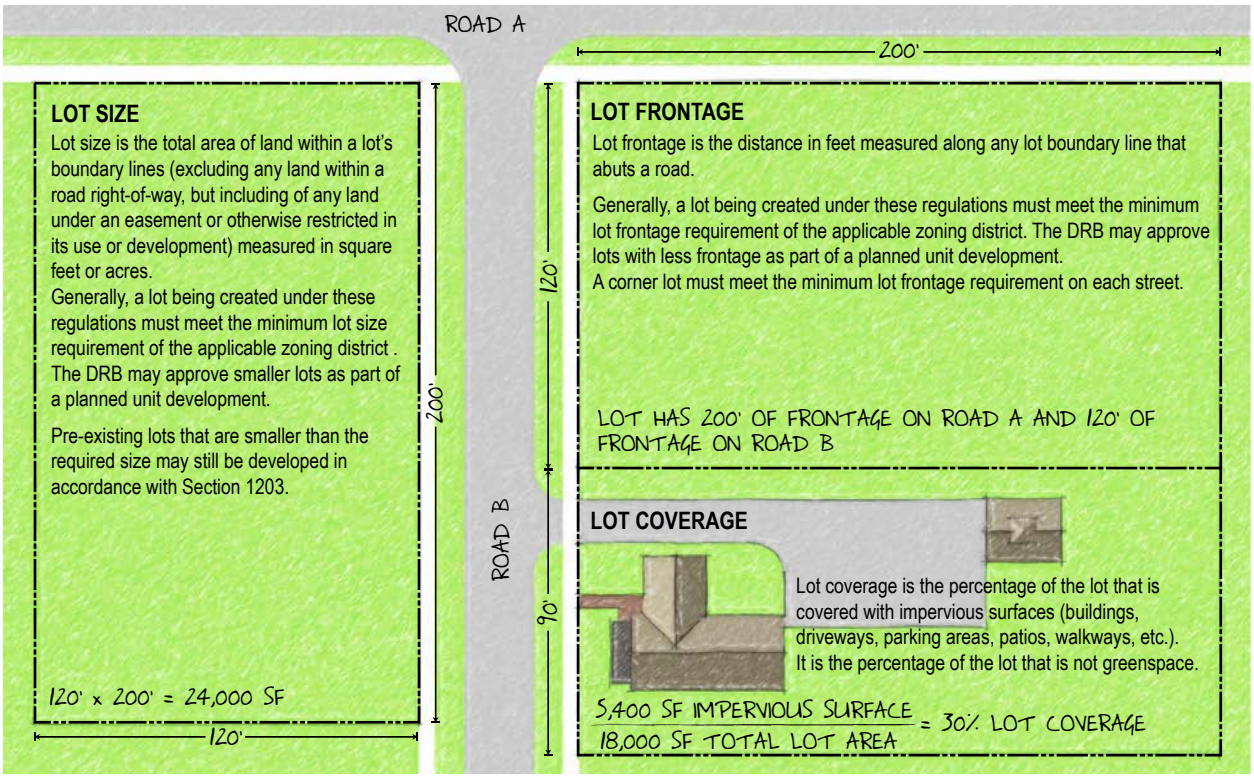


Figure 5-02. **Illustrated Setback Dimensional Standards**

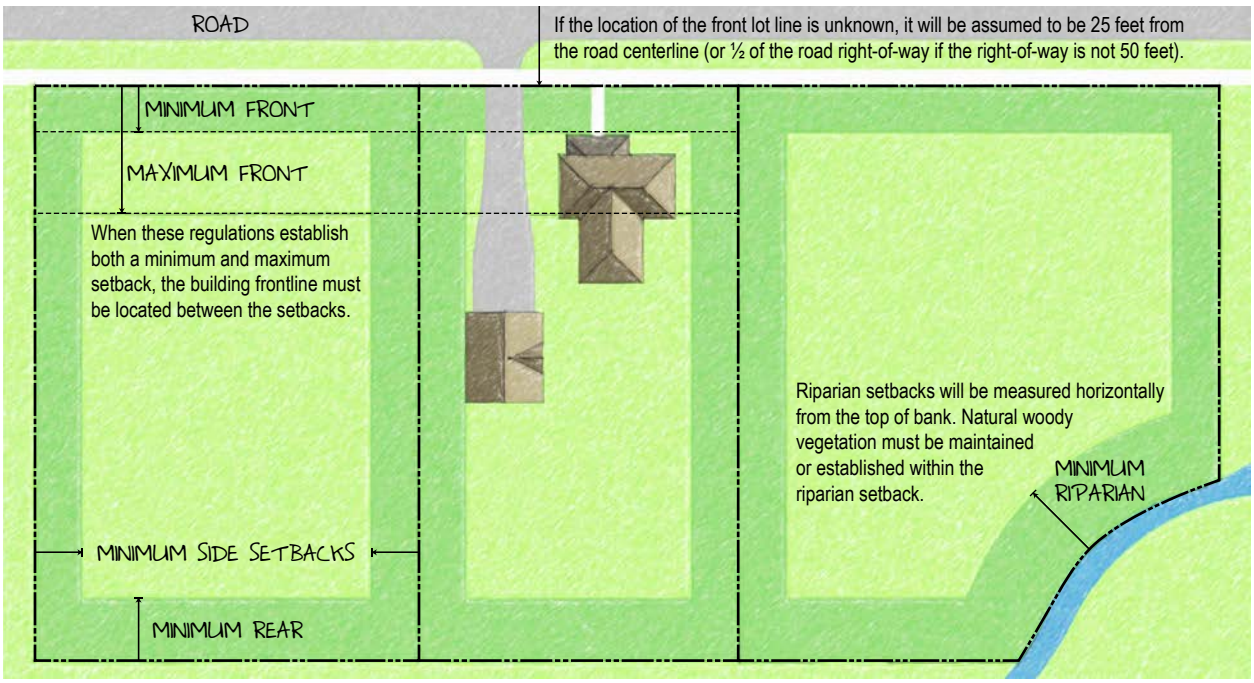
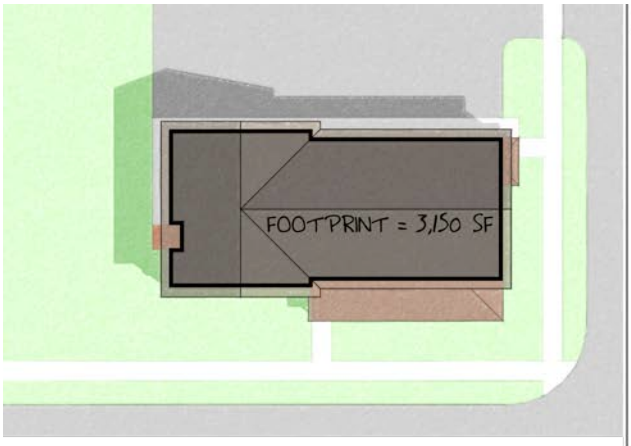



Figure 5-03. **Illustrated Building Dimensional Standards**




**BUILDING FOOTPRINT**

Building footprint is the area enclosed by the exterior walls at ground level. It does not include open porches,decks, stoops, roof overhangs, recessed entryways, balconies, or upper floor architectural projections.

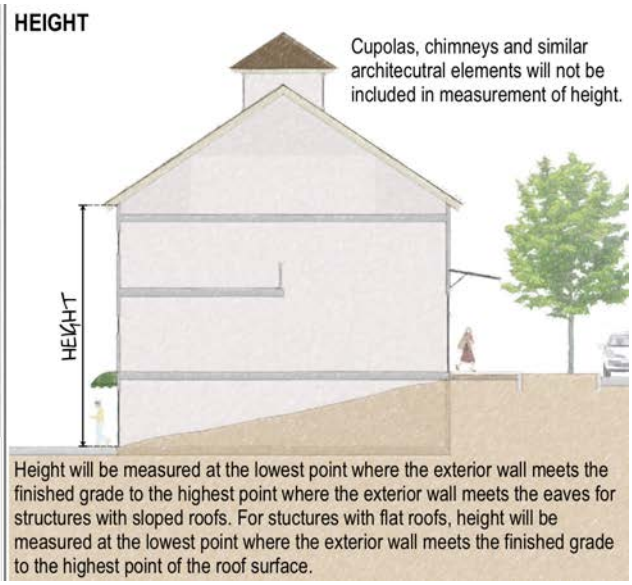
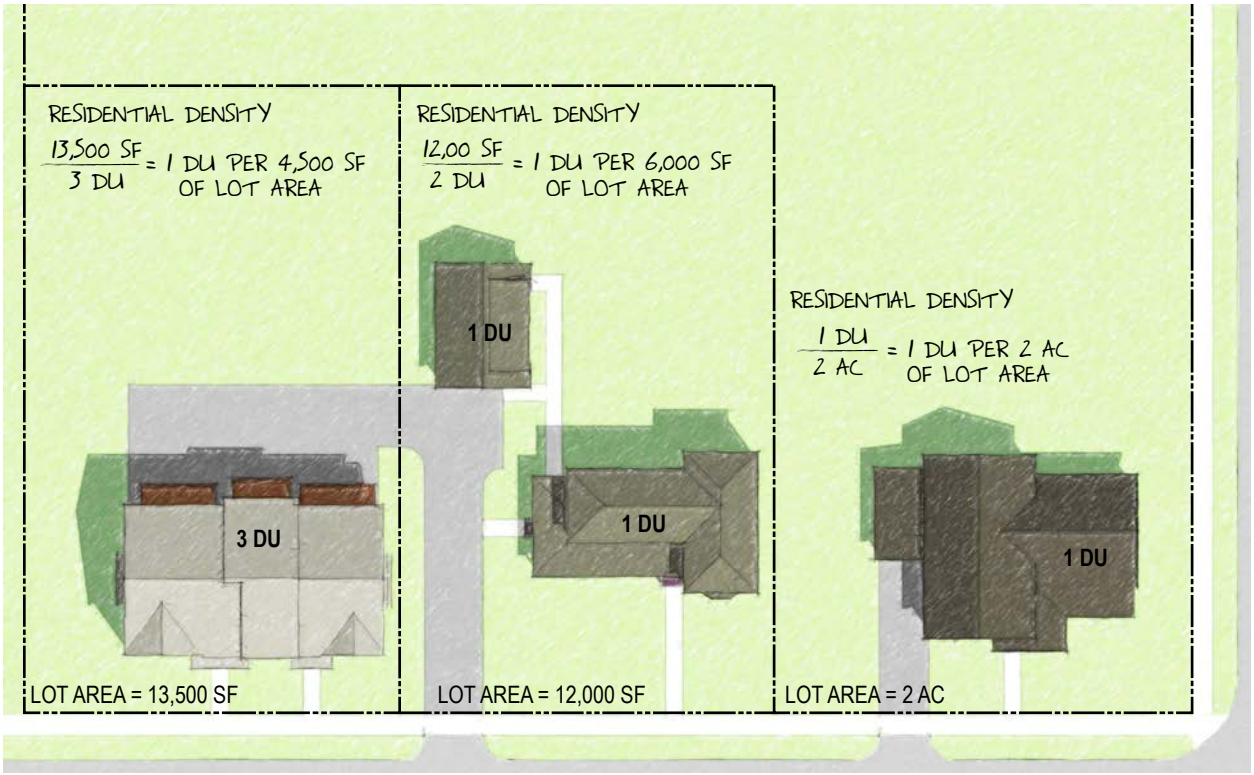


Figure 5-04. **Floor Area Ratio (FAR) Illustrated**

Figure 5-05. **Residential Density Illustrated**



# Chapter 520. Land Use Descriptions

ⓘ *The purpose of this chapter is to define the uses listed as permitted or conditional in each zoning district.*

### Section 5201. Residential

(1) **Single-Family Dwelling.** A single-unit structure intended for habitation by one household that provides complete independent living facilities including permanent provisions for living, sleeping, eating, cooking and sanitation.

(2) **Two-Family Dwelling.** A two-unit structure intended for habitation by two households each in a unit that provides complete independent living facilities including permanent provisions for living, sleeping, eating, cooking and sanitation, and with each unit having a separate entrance from the outside or through a common vestibule.

(3) **Multi-Family Dwelling.** A structure or part of a structure containing three or more dwelling units each intended for habitation by one household and providing complete independent living facilities including permanent provisions for living, sleeping, eating, cooking and sanitation.

(4) **Accessory Dwelling.** A second dwelling unit within a single-family dwelling or an accessory building that provides complete independent living facilities including permanent provisions for living, sleeping, eating, cooking and sanitation. See *Section 3101.

(5) **Home Occupation.** A small business located on the operator's residential property as an accessory use that does not alter the residential character of the property. See *Section 3102.

(6) **Home Business.** A small business located on the operator's residential property as an accessory use that may alter the residential character of the property. See *Section 3103.

(7) **Family Childcare Home.** A small daycare business located on the operator's residential property as an accessory use. See *Section 3104.

(8) **Congregate Living.** One or more structures intended to provide housing and services to residents such as meals, housekeeping, laundry, transportation, recreation or other convenience services.

(9) **Assisted Living.** One or more structures intended to provide housing, board and care to residents who need assistance with daily activities such as dressing, grooming, bathing, etc. and that operates under state license. Care providers may also live on-site or provide these services from their home.

(10) **Skilled-Nursing Services.** One or more structures intended to provide housing and 24-hour skilled nursing care to residents and that operates under state license. This includes nursing and convalescent homes.

### Section 5202. Lodging

(1) **Bed and Breakfast or Inn.** One or more structures intended to provide short-term accommodations for travelers operated primarily in private homes. See *Section 3107.

(2) **Rooming and Boarding House.** One or more structures intended to provide accommodations operated in private homes that will typically serve as the boarder's principal residence, and that commonly includes meals, housekeeping and/or laundry services. See *Section 3108.

(3) **Hotel or Motel.** One or more structures intended to provide short-term accommodations for travelers. They may also offer food services, recreational services, convention hosting, laundry services, etc. See *Section 3109.

### Section 5203. Commercial

(1) **Shop or Store.** A structure or part of a structure intended for the sale of products to consumers, primarily for off-site consumption or use, excluding any use specifically defined this section.

(2) **Fueling Station.** Sites and structures that are specialized for selling gasoline or other vehicle fuels. Commonly combined with other retail uses such as a carwash or convenience store, or with an auto repair and service garage. See *Section 3112.

(3) **Lawn, Garden and Farm Supply Sales.** A retail establishment that sells specialized products and services for lawn, garden or farm use. It may:

(a) Sell farm supplies such as feed and seed.

(b) Sell nursery and garden products, such as trees, shrubs, plants, seeds, bulbs, soil, compost, mulch, or sod. The live products are predominately grown elsewhere.

(c) Include accessory sales of outdoor power equipment and machinery, which may be accompanied with repair services and replacement parts.

(4) **Lumber Yard and Building Material Sales.** A retail establishment that sells lumber and heavy building materials, and that typically stores most of its stock outdoors or under open-air structures.

(5) **Office or Service Businesses.** An establishment that:

(a) Sells specialized skills or knowledge;

(b) Performs scientific, technical or professional services;

(c) Offers financial or investment services;

(d) Provides support services primarily to other businesses such as billing, collection, advertising, telemarketing, copying, mailing, etc.; or

(e) Offers personal services such as laundry or dry cleaning, hair or nail care, diet centers, spas, tailoring, shoe repair, etc.

(6) **Open Market.** Retail sales conducted primarily from outdoor areas, open air structures and/or buildings with stalls. Includes farmers' markets, flea markets and auctions.

(7) **Rental and Leasing.** An establishment that provides tangible goods such as vehicles, equipment or machinery to consumer or business customers in return for periodic rental or lease payments.

(8) **Repair and Service.** An establishment that maintains, services, repairs or paints vehicles, boats, equipment, machinery, appliances, electronic devices or similar goods. See *Section 3110.

(9) **Restaurant.** An establishment that prepares meals, snacks and beverages primarily for immediate consumption.

(10) **Sales Lot.** A retail establishment that sells large items such as vehicles, boats, equipment, machinery, manufactured homes, prefabricated buildings, etc. primarily from an open lot. It may also provide repair and maintenance services as an accessory use.

(11) **Tavern.** An establishment that primarily prepares and serves alcoholic beverages for immediate consumption. It may also offer limited food and live entertainment.

### Section 5204. Industrial

(1) **Light Industrial.** Industrial uses that generally:

(a) Do not rely on specialized power, water or waste disposal systems for operation;

(b) Occur entirely within an enclosed building, which is similar to an office building in its size, appearance and impacts; and

(c) Exclude any use specifically defined this section.

(2) **Heavy Industrial.** Industrial uses that generally:

(a) Require sites and/or structures with specialized power, water or waste disposal systems;

(b) Involve processing of raw materials, use of large machinery and/or other complex operations, some of which may occur outside an enclosed building; and

(c) Operate continuously.

(3) **Composting Facility.** A facility for composting animal and vegetable wastes.

(4) **Contractor's Yard.** Sites and structures that a construction contractor uses to store and maintain vehicles, equipment, machinery, tools and materials customarily required in the building trades.

(5) **Data Center or Information Services.** A structure or part of a structure used to:

(a) House computer systems and associated components such as telecommunications and storage systems. It generally includes redundant or back-up power supplies and communications connections, environmental controls and security devices.

(b) Provide electronic data processing services or that supply information including internet access or service providers, and electronic library or archive services.

(6) **Laboratory or Research Facility.** A structure or part of a structure used for scientific, medical, pharmaceutical, engineering, electronic or similar technical research, investigation, testing or experimentation.

(7) **Media Broadcast Facility or Studio.** A structure or part of a structure used for the production, recording, broadcast and/or distribution of radio, television, sound, movie and similar media products and programs.

(8) **Salvage Yard or Recycling Center**. A site, structure or part of a structure used for collecting, sorting, processing and selling used or discarded goods or materials for eventual reuse.

(9) **Warehouse or Storage.** A site, structure or part of a structure intended for storage and distribution uses.

(10) **Wholesale Trade.** An establishment that sells to or arranges the purchase of goods by other businesses, and that normally operates from a warehouse or office and has little to no display of merchandise.

### Section 5205. Public Assembly, Institutional or Community Facility

(1) **Cemetery.** A site or structure intended to inter or otherwise store the remains of deceased people or animals.

(2) **Cultural Facility.** A not-for-profit institution that houses, preserves, curates, displays or presents works of artistic, historic, cultural, educational or scientific value.

(3) **Day Care Facility.** An establishment that cares primarily for infants and preschool-age children, as well as older children when school is not in session.

(4) **Education Facility.** A not-for-profit institution that operates as a day or residential school for students in pre-kindergarten through grade 12 under a state license, or that offers accredited programs of higher learning.

(5) **Funeral Home or Cremation Facility.** A structure or part of a structure intended to prepare deceased people or animals for burial or cremation, to cremate the remains of deceased people or animals, and/or to hold funeral services.

(6) **Government Facility.** A structure designed for the assembly of public officials and employees to conduct public discourse and to administer government programs and activities.

(7) **Healthcare Facility.** A structure or part of a structure from which licensed practitioners provide people with healthcare services.

(8) **Recreation, Indoor.** An establishment or facility that offers physical fitness, sports, games, entertainment and other leisure-time activities primarily from within an enclosed structure.

(9) **Recreation, Outdoor.** An establishment or facility that offers physical fitness, sports, games, entertainment and other leisure-time activities primarily outside an enclosed structure.

(10) **Religious Facility.** A not-for-profit institution that brings people together for religious worship, services, rites, assembly, fellowship or instruction.

(11) **Supervision or Rehabilitative Services.** An establishment other than a licensed hospital that provides protective supervision, sheltered housing and/or counseling to people with mental illness, substance abuse problems, emotional problems, or physical or mental disabilities or impairments.

### Section 5206. Transportation and Utilities

(1) **Air Transportation Facility.** A site or structure intended to accommodate or support air transportation such as a runway, hangar, terminal, control tower or heliport.

(2) **Communication Antenna.** Devices used to transmit or receive radio, television or other wireless communications and related structures and equipment, but excludes support structures. See *Section 3116.

(3) **Communication Tower.** Structures used to support communication antennas and related structures and equipment. See *Section 3116.

(4) **Essential Services.** Includes electric lines and distribution facilities, phone lines, cable lines, gas lines and distribution facilities, water supply lines, steam and air conditioning lines, sewer and stormwater lines.

(5) **Parking.** A site or structure intended to store passenger vehicles as its primary function.

(6) **Rail Transportation Facility.** A site or structure intended to accommodate or support rail passenger or freight transportation such as a train station, depot, rail yard or siding.

(7) **Transit Facility.** A site or structure intended to accommodate or support public transportation within a region such as a bus stop, transit terminal or multi-modal center.

(8) **Truck Transportation Facility.** A site or structure intended to accommodate or support over-the-road transportation of cargo using motor vehicles such as trucks and tractor-trailers.

### Section 5207. Mining, Agriculture and Forestry

(1) **Agriculture and Forestry.** Establishments that grow crops, raise animals, harvest timber, or harvest plants or animals from their natural habitats.

(2) **Extracting, Quarrying and Stone Cutting.** Establishments that dredge, quarry, mine, or develop mine sites for crushed and broken stones, limestone, sand, gravel, clay, topsoil, or other stones and nonmetallic minerals. May include on-site processing such as crushing, grinding, washing or screening. See *Section 3118.

(3) **Game and Fishing Retreats and Reserves.** Establishments that engage in commercial hunting or trapping, or that operate commercial or recreational game or hunting preserves.

(4) **Kennel.** A site or structure where dogs, cats or other domestic animals are bred, raised and/or boarded.

(5) **Rural Enterprise.** Establishments that engage in agri-tourism, agri-education, direct marketing of locally-produced farm or forest products, or that add value to locally-produced farm or forest products. See *Section 3117.

(6) **Stable or Equine Facility.** A site or structure intended to house, train or care for horses or other equines that may include horse trot tracks or other training facilities, and veterinary facilities.

# Chapter 530. Defined Terms

5301.A

(1) **ABANDONDED SIGN** (see definition of **SIGN, ABANDONDED**).

(2) **ACCEPTABLE MANAGEMENT PRACTICES** means the most recently adopted state laws and regulations governing timber harvesting in Vermont.

(3) **ACCEPTED AGRICULTURAL PRACTICES** means the most recently adopted state laws and regulations governing farming in Vermont.

(4) **ADVERSE EFFECT** means an effect that would endanger public health, safety or welfare, reduce environmental quality, or impair the reasonable development, use and/or enjoyment of property.

(5) **ADVERSE EFFECT, UNDUE** means an adverse effect that an applicant has not taken reasonable measures to avoid, minimize or mitigate.

(6) **AFFORDABLE HOUSING** as defined in state law means ownership or rental housing with a total housing cost that does not exceed 30% of the household income of a household earning 80% of the median income in Washington County, and that is subject to covenants or restrictions that will preserve that affordability for at least 15 years.

(7) **AGRICULTURE** (see definition of **FARMING**).

(8) **AGRITOURISM** means the accessory use of a working farm to offer accommodations and/or activities to visitors for the purpose of enjoyment, education, and/or hands-on involvement in the operation of the farm.

(9) **ANTENNA** means a structure intended to send or receive radio, television, cellular or other electromagnetic signals.

(10) **ARTERIAL STREET** means a major, high-capacity street that connects minor, low-capacity roads to highways and major destinations as mostly recently classified by VTrans (includes all state highways and Airport Road). For the purposes of these regulations, Paine Turnpike, Fisher Road and Junction Road will also be considered arterial streets.

(11) **ATTIC** means the space immediately below the roof of a building where at least 50% of the floor area has a height of less than 7 feet between the top of the joists and the bottom of the rafters.

5301.B

(1) **BASEMENT** means a part of a building that is entirely or partly below ground where the ceiling height is less than 7 feet above the above the average grade along all of the building's walls.

(2) **BAY** means a principal division of a wall or other portion of a building marked off by vertical or traverse supports.

(3) **BEDROOM** means a room located within a dwelling that the residents use primarily as private sleeping quarters or that was designed for such use and has at least one window, one closet, one interior door that allows the room to be closed off from the remainder of the dwelling, and a floor area of at least 80 square feet.

(4) **BICYCLE RACK** means a metal frame securely anchored to the ground that is designed to accommodate at least 2 bicycles, support the bicycles horizontally in at least 2 places, and allow the bicycles to be locked to the frame with standard user-supplied locks.

(5) **BOUNDARY ADJUSTMENT** means a relocation of the common property line between adjacent lots that does not result in the creation of any additional lots and that does not create a nonconforming lot (although it may involve pre-existing nonconforming lots). See *Section 4402.

(6) **BUILDING** means a structure with a roof that is supported by walls or columns, which is intended for the shelter, housing or enclosure of people, animals, vehicles, equipment, processes, goods or materials of any kind.

(7) **BUILDING, ACCESSORY** means a building that is clearly and customarily incidental and subordinate to the principal building on the lot.

(8) **BUILDING, ATTACHED** means a building that has at least part of a wall in common with another building or that is connected to another building by a roof.

(9) **BUILDING, DETACHED** means a building that is freestanding and structurally separated from other buildings.

(10) **BUILDING, PRINCIPAL** means the main or predominate building in which the principal use on the lot is located.

(11) **BUILDING ENVELOPE** means a specific area of a lot, delineated on a recorded subdivision plat, within which land development must be located and outside of which no land development may be located, unless otherwise provided.

(12) **BUILDING FACADE** means the front of a building and any of its sides facing a road.

(13) **BUILDING FOOTPRINT** means the area encompassed by a building's exterior walls at ground level.

(14) **BUILDING FRONTLINE** means a line extending parallel from the exterior front wall of a building.

(15) **BUILDING PERIMETER** means the total length of a building's exterior walls at ground level.

5301.C

(1) **CALIPER** means the minimum diameter of a tree measured 6 inches above the ground.

(2) **CAMPSITE** means a designated area within a campground that is designed to accommodate one camping unit including, but not limited to, a tent, lean-to, camping cabin, recreational vehicle, motor home, travel trailer, or camper.

(3) **CAMPSITE, PRIMITIVE** means a designated area for camping that generally is not accessible to motor vehicles and does not provide utilities or facilities such as electricity, water or wastewater connections.

(4) **CENTERLINE RADIUS** means the minimum radius of a circle formed by a curve that is tangent to the centerline of the road.

(5) **CHARACTER OF THE AREA** means the image and perception of an area as defined by such factors as its built environment, land uses, transportation network, landscaping, natural features and open space elements, type of housing, architectural style, infrastructure, and the type and quality of public facilities and services. Standards that require uses to be compatible with the character of the area must consider generation of noise, dust, and traffic, among other features and also the location, size, and design of structures as compared to what is typical in or planned for the area as described in the purpose statement of the applicable zoning district and in the land use chapter of the town plan. The geographic scope of area to be considered will be the applicable zoning district unless the land use chapter of the town includes guidance or policies for a smaller geographic area that includes the subject property.

(6) **COMPATIBILITY** means the characteristics of different uses or activities or designs that allow them to be located near or adjacent to each other in harmony. Some elements affecting compatibility include: height, scale, mass and bulk of structures, pedestrian or vehicular traffic, circulation, access and parking impacts, landscaping, lighting, noise, odor and architecture. Compatibility does not mean "the same as." Rather, compatibility refers to the sensitivity of development proposals in maintaining or enhancing the character of the area.

(7) **CORNER RADIUS** means the minimum radius of the curb or edge of pavement at a road intersection.

5301.D

(1) **DECK** means an unroofed platform, either freestanding or attached to a building, that is raised above ground level and supported by pillars or posts.

(2) **DEMOLITION** means the destruction and physical removal of a structure or portion of a structure from a lot.

(3) **DENSITY** means the number dwellings, principal buildings or principal uses per acre of land.

(4) **DEVELOPMENT**. See definition of **LAND DEVELOPMENT**.

(5) **DRIVE-IN ESTABLISHMENT OR SERVICE** means a business that provides products or service to customers who remain in their motor vehicles, which are parked in a designated space.

(6) **DRIVE-THROUGH FACILITY OR SERVICE** means a building opening or a mechanical device through which a business provides products or services to customers who remain in their motor vehicles, which are not located in a designated parking space, and who typically do not consume the product or service on-site.

(7) **DRIVEWAY** means a minor private way providing vehicular access between a road and the parking space or garage of private or public property.

(8) **DWELLING OR DWELLING UNIT** means a structure or portion of a structure intended for habitation by one household that provides complete independent living facilities including permanent provisions for living, sleeping, eating, cooking and sanitation, and that is not less than 200 square feet in area.

(9) **DWELLING, ACCESSORY** means a secondary dwelling unit established in conjunction with and clearly subordinate to a primary dwelling unit, whether a part of the same structure as the primary dwelling unit or within an accessory structure on the same lot (see *Section 3101).

5301.E

(1) **ENERGY GENERATION FACILITY** means a facility that is intended to produce electrical or thermal energy. This definition specifically excludes facilities that are intended to supply back-up or emergency power or heat (ex. standby generator).

5301.F

(1) **FACADE** (see definition of **BUILDING FACADE**).

(2) **FARM** means one or more parcels of land managed as a unit and primarily devoted to farming.

(3) **FARM STAND** means a building or structure located on a farm and used for the sale of agricultural products produced primarily on that farm.

(4) **FARM STRUCTURE** (as defined in 24 V.S.A. § 4413(d)) means a building, enclosure, or fence for housing livestock, raising horticultural or agronomic plants, storing crops or livestock feed, or carrying out other practices associated with farming in accordance with accepted agricultural practices, but specifically excluding any dwelling for human habitation, and that is used for agricultural production that meets one or more of the following (from the Vermont Agency of Agriculture, Food and Markets Accepted Agricultural Practice Regulations):

(a) Is used in connection with the sale of $1,000 or more of agricultural products in a normal year;

(b) Is used in connection with the raising, feeding, and management of at least the following number of adult animals: 4 equines; 5 cattle or American bison; 15 swine; 15 goats; 15 sheep; 15 fallow deer; 15 red deer; 50 turkeys; 50 geese; 100 laying hens; 250 broilers, pheasant, Chukar partridge, or Coturnix quail; 3 camelids; 4 ratites (ostriches, rheas, and emus); 30 rabbits; 100 ducks; or 1,000 pounds of cultured trout;

(c) 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; or

(d) Is on a farm with a business and farm management plan approved by the Secretary of the Vermont Agency of Agriculture, Food and Markets.

(5) **FARMING** (as defined in 10 V.S.A. § 6001(22)) means the:

(a) Cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops;

(b) Raising, feeding, or management of livestock, poultry, fish, or bees; or the operation of greenhouses;

(c) Production of maple syrup;

(d) On-site storage, preparation and sale of agricultural products principally produced

on the farm;

(e) On-site storage, preparation, production, and sale of fuel or power from agricultural products or wastes principally produced on the farm; or

(f) Raising, feeding, or management of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training, and the management of equines.

(6) **FENCE** means a constructed barrier supported by posts intended to enclose, screen, define or separate areas, or to control access to areas. A fence is considered a structure under these regulations.

(7) **FLAT ROOF** means any roof with a slope of not more than 5% (or 0.6:12 pitch).

(8) **FLOOR AREA RATIO** means the ratio of gross floor area to the total lot area.

(9) **FORESTRY** as defined by the Vermont Department of Forests, Parks and Recreation means growing and harvesting trees or timber under proper forest management for purposes other than their fruit.

(10) **FRANCHISE OR CORPORATE ARCHITECTURE** means a standardized design that is trademarked or identified with a particular chain or corporation and that is replicated in multiple locations with minimal variation.

(11) **FRANCHISE OR CORPORATE IDENTIFICATION ELEMENTS** means the visual elements that are trademarked or identified with a particular chain or corporation and that are used in various applications to identify or promote that chain or corporation including, but not limited to: logos, wordmarks, symbols, graphics, images, color palettes, typefaces, or typographic treatments.

5301.G

(1) **GLARE** means light entering the eye directly from a light source or indirectly from reflective surfaces that causes visual discomfort or reduced visibility.

(2) **GREEN STORMWATER INFRASTRUCTURE (GSI)** means a range of soil-water-plant systems and practices that intercept and capture stormwater near the source in order to infiltrate a portion of it into the ground, evaporate a portion of it into the air, and/or in some cases release a portion of it slowly back into municipal or community stormwater systems (as compared to conventional stormwater systems that are designed to divert water away from a site quickly). GSI provides multiple benefits and functions such as reduced and delayed stormwater flows, enhanced groundwater recharge, stormwater pollutant reductions, reduced sewer overflows, urban heat island mitigation, improved air quality, additional wildlife habitat and recreational space, improved human health, and increased land values.

(3) **GROSS FLOOR AREA** means the sum of the total horizontal area of all enclosed floors of a building as measured from the exterior face of the exterior walls or the centerline of a common wall between attached buildings including any heated space in a basement, attic or mezzanine with a floor-to-ceiling height of 7 feet or more.

(4) **GROUP HOME** means a single-family dwelling occupied by not more than 8 residents with a handicap or disability and operated under state licensing or registration. See Section 3105.

5301.H

(1) **HANDICAP OR DISABILITY** (as defined in 9 V.S.A. § 4501) means a physical or mental impairment that limits one or more major life activities. This definition specifically excludes a person who is an alcoholic or drug abuser and who constitutes a direct threat to property or the safety of others due to current alcohol or drug use.

(2) **HAZARDOUS MATERIAL** means any substance or material that by reason of its form, quantity, toxic, caustic, corrosive, abrasive or otherwise injurious properties may pose a risk to health, safety or property including, but not limited to, explosives, radioactive materials, etiologic agents, flammable liquids or solids, combustible liquids or solids, poisons, oxidizing or corrosive materials, compressed gasses, or any substance defined in Section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980.

(3) **HAZARDOUS WASTE** (as defined in 10 V.S.A. § 6602(4)) means any waste or combination of wastes of a solid, liquid, contained gaseous or semi-solid form, including, but not limited to, those which are toxic, corrosive, ignitable, reactive, strong sensitizers or which generate pressure through decomposition, heat or other means, which in the judgment of the Secretary of the Vermont Agency of Natural Resources may cause or contribute to an increase in mortality or an increase in serous irreversible or incapacitating reversible illness, taking into account the toxicity of such waste, its persistence and degradability in nature, and its potential for assimilation, or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms, or any matter which may have an unusually destructive effect on water quality if discharged to ground or surface waters of the state. All special nuclear, source, or by-product material, as defined by the Atomic Energy Act of 1954 and amendments thereto, codified in 42 U.S.C. § 2014, is specifically excluded from this definition.

(4) **HEIGHT** means the vertical distance measured from the lowest finished grade to the highest point of the roof surface for structures with flat roofs, the highest eaves for structures with sloped roofs, and the highest point for any structure without a roof. It does not include customary roof-top equipment, chimneys, steeples, cupolas, towers or similar architectural elements that are not used for human habitation.

(5) **HISTORIC SITE OR STRUCTURE** (as defined in 10 V.S.A. § 6601(9)) means a site or structure listed, either individually or as a contributing structure within a historic district, in the National Register of Historic Places or the Vermont Register of Historic Properties, or a site or structure that the State Historic Preservation Officer or the Vermont Advisory Council on Historic Preservation determines to be historically significant and eligible for such listing.

(6) **HOUSEHOLD** means one or more people living together in a dwelling unit with common use of the living and cooking facilities.

5301.I

(1) **IMPERVIOUS SURFACE** means a surface composed of a material that impedes or prevents the natural infiltration of water into the soil including, but not limited to, rooftops, roads, driveways, sidewalks, walkways, patios and similar hard-surfaced areas whether constructed of concrete, asphalt, stone, brick, gravel or compacted earth, unless they are specifically designed, constructed and maintained to be pervious.

(2) **INTERESTED PERSON** (as defined in 24 V.S.A. § 4465(b)) means:

(a) A person owning title to property, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by a bylaw, who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case;

(b) The municipality that has a plan or a bylaw at issue in an appeal brought under this chapter or any municipality that adjoins that municipality;

(c) A person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under this chapter, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality.

(d) Any ten persons who may be any combination of voters or real property owners within a municipality who, by signed petition to the appropriate municipal panel of a municipality, the plan or a bylaw of which is at issue in any appeal brought under this title, allege that any relief requested by a person under this title, if granted, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality. This petition to the appropriate municipal panel must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal.

(e) Any department and administrative subdivision of this state owning property or any interest in property within a municipality, and the agency of commerce and community development of this state.

(3) **IRREGULARLY SHAPED LOT** means a multi-sided lot with more than 4 sides.

5301.J

(1) **JUNK** (as defined in 24 V.S.A. § 2241(5)) means old or scrap copper, brass, iron, steel, and other old or scrap or nonferrous material, including rope, rags, batteries, glass, rubber debris, waste, trash, or any discarded, dismantled, wrecked, scrapped, or ruined motor vehicles or motor vehicle parts.

(2) **JUNK MOTOR VEHICLE** (as defined in 24 V.S.A. § 2241(6)) means a discarded, dismantled, wrecked, scrapped, or ruined motor vehicle or motor vehicle parts, or a motor vehicle, other than an on-premise utility vehicle, which is allowed to remain unregistered or uninspected for a period of 90 days.

5301.K

5301.L

(1) **LAND DEVELOPMENT** (as defined in 24 V.S.A. § 4303(10)) means:

(a) The division of a parcel into two or more parcels;

(b) The construction, reconstruction, conversion, structural alteration, relocation or enlargement of any structure;

(c) Mining, excavating or filling; or

(d) Any change in, or extension of, the use of land or a structure.

(2) **LIGHT FIXTURE, FULLY SHIELDED** means a light fixture constructed, installed and used in such a manner that all light the fixture emits (either directly from the lamp or a diffusing element, or indirectly by reflection or refraction from any of the fixture) is projected below the horizontal (downward). Spot or flood lamps are fully shielded if they are aimed straight down.

(3) **LIGHT FIXTURE, LUMINOUS TUBE** means a light fixture created by or containing gas discharge tubes that emit light or glow when electric voltage is applied.

(4) **LIGHT FIXTURE, PARTIALLY SHIELDED** means a light fixture constructed, installed and used in such a manner that most of the light the fixture emits (either directly from the lamp or a diffusing element, or indirectly by reflection or refraction from any of the fixture) is projected below the horizontal (downwards). Light is emitted at or above the horizontal direction (outwards or upwards) only from decorative elements or through strongly colored or diffusing materials. Spot or flood lamps are partially shielded if they are aimed no higher than 45° above straight down.

(5) **LIGHT TRESPASS** means light that falls beyond the property it is meant to illuminate.

(6) **LOCALLY PRODUCED** means agricultural or silvicultural products that are raised, grown or harvested within Vermont or within 30 miles of Vermont.

(7) **LOT** means an area of land with identifiable boundaries and dimensions that is formally described and recorded in the town land records and that can be lawfully owned and conveyed separately from any other land.

(8) **LOT AREA** means the total horizontal area within a lot's property lines, including land over which easements have been granted but excluding any land within the right-of-way of a state highway or town road.

(9) **LOT COVERAGE** means the area of a lot covered by buildings, parking areas, driveways, walkways or other impervious surfaces divided by the total area of the lot.

(10) **LOT LINE ADJUSTMENT** (see definition of **BOUNDARY ADJUSTMENT**).

(11) **LOW IMPACT DEVELOPMENT (LID)** means land planning and design approaches that seek to maintain a site's pre-development ecological and hydrological functions by protecting, enhancing, or mimicking natural processes. LID approaches include a range of non-structural practices that guide and minimize the impact of development such as following conservation design principles, minimizing soil disturbance and compaction, preserving natural drainage and water flow patterns, protecting riparian and other sensitive areas, reducing impervious surface area, disconnecting untreated stormwater run-off from waterways and storm drains.

5301.M

(1) **MAJOR RENOVATION** means extensive alteration work in addition to work on the exterior shell of the building, primary structural components, mechanical, electric and plumbing systems, and/or site work. Typically, the extent and nature of the work is such that the building cannot be used for its intended purpose while the work is in progress.

(2) **MANUFACTURED HOME** (as defined in 10 V.S.A. § 6201(1)) means a structure that is:

(a) Built on a permanent chassis;

(b) Designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities;

(c) Transportable in one or more sections; and

(d) Certified as complying with the construction and safety standards established under Title 24 of the U.S. Code by the federal Department of Housing and Urban Development.

(3) **MANUFACTURED HOME PARK** (as defined in 10 V.S.A. § 6201(2)) means any parcel or development site that contains or is designed to accommodate more than two manufactured homes. This definition specifically excludes the use of manufactured homes as farm worker housing and the retail sales or storage of manufactured homes.

(4) **MATERIAL CHANGE** means a change in the planned use or development of land or a structure that may have changed the decision made or any conditions placed on the permit if it had been included in the plans as approved.

(5) **MIXED USE** means land development that includes both residential and nonresidential principal uses.

(6) **MOTOR VEHICLE** means any self-propelled conveyance used to transport people, animals, goods or materials.

(7) **MULTIPLE USE** means a building or site developed with more than one principal use.

5301.N

(1) **NOISE** means an unwanted sound that may disturb or annoy the average person.

(2) **NONCONFORMITY** means a structure or use that lawfully existed prior to the adoption or revision of these regulations, but now does not conform to one or more standards of these regulations.

(3) **NORMAL REPAIR AND MAINTENANCE** means the regular upkeep of property to avoid deterioration, fix damage caused by normal wear and tear, and/or replace worn out components, which does not result in a change in the use or dimension of any structure, or in a structural alteration.

5301.O

(1) **OUTDOOR DISPLAY** means the placement of merchandise, goods, materials, vehicles, or equipment for sale, rental, lease or advertising in an unenclosed area.

(2) **OUTDOOR STORAGE** means the keeping of any merchandise, goods, materials, vehicles, equipment, junk or waste in an unenclosed area.

(3) **OVERLAY DISTRICT** means a zoning district that overlays another zoning district(s) and that modifies the regulations of that underlying district(s) in recognition that the land included has special circumstances or character that distinguish it from land elsewhere in the zoning district(s). See *Chapter 220.

5301.P

(1) **PARCEL**. See definition of **LOT**.

(2) **PARKING LOT** means an open area, other than the traveled portions of a road, to be used for the storage, for limited periods of time, of operable passenger automobiles and commercial vehicles, and available to the public, whether for compensation, free, or as an accommodation to clients or customers.

(3) **PAVE** means to cover the ground with asphalt, concrete, stones, gravel, brick, tile, wood, compacted earth or other impervious materials in order to make a firm, level surface.

(4) **PAVEMENT** means asphalt, concrete, stones, gravel, brick, tile, wood, compacted earth or other impervious materials used to cover the ground in order to make a firm, level surface.

(5) **PREVIOUSLY DEVELOPED LOT** means a lot that has been altered by land use, construction or paving that would, if undertaken anew, require a permit under these regulations. Land that has been altered for agriculture, forestry or conservation purposes will not be considered previously developed. A lot for which a permit has been issued, but the land development has not commenced, will not be considered previously developed.

(6) **PUBLIC ART** means a fountain, monument, sculpture, painting, mural or similar art object that:

(a) Is accessible to public view;

(b) Is intended for the enjoyment of the general public; and

(c) Does not identify or draw attention to a business, profession or industry, to the type of products sold, manufactured or assembled, or to the type of services or entertainment offered or available on the premises.

5301.Q

5301.R

(1) **REFUSE** means materials and substances discarded or rejected as having served their original intended use or as being spent, useless, worthless or in excess to the owner at the time of such discard or rejection including but not limited to household and commercial garbage, industrial waste, rubbish, debris, litter, and ashes.

(2) **RETAINING WALL** means a wall that is constructed between lands of different elevations that supports and holds back the slope behind it. A retaining wall is considered a structure under these regulations.

(3) **RIGHT-OF-WAY** means a type of easement granted or reserved over a parcel of land that is intended to allow access through the property, typically for transportation (ex., roads, driveways, sidewalks, trails, etc.) or utility (ex. electric, gas, water, sewer, stormwater, telephone, cable etc.) purposes.

(4) **RIPARIAN BUFFER** means an area of land adjacent to streams, rivers, lakes, ponds or other surface waters that is naturally vegetated and provides a variety of ecosystem services including, but not limited to, filtering stormwater, providing habitat and stabilizing banks or shorelines.

(5) **ROAD** means state highways, town highways or private rights-of-way that meet the standards of these regulations established for the purpose of providing vehicular access to abutting properties.

(6) **ROAD CENTERLINE** means a line located in the physical center of a road. It frequently coincides with the center painted line that divides the road into travel lanes for traffic moving in opposite directions.

(7) **ROAD FRONTAGE** means the uninterrupted linear or curvilinear extent of a lot measured along the road right-of-way from the intersection of one side lot line to the intersection of the other side lot line.

(8) **ROOFLINE** means the highest edge of a roof or parapet, whichever forms the top line of the building's silhouette, excluding any minor architectural elements or projections such as dormers, cupolas, steeples, spires, skylights, chimneys, mechanical equipment or similar features.

(9) **RURAL AND RESIDENTIAL DISTRICTS** means the Residential, Rural, Shoreland Conservation and Upland Conservation zoning districts.

(10) **RURAL CHARACTER** means the sense of place created by a relatively undeveloped landscape that is primarily devoted to working agricultural and forest lands and/or open space.

5301.S

(1) **SETBACK** means the required distance between a property line or road right-of-way and the nearest point of any structure or site development. If the edge of the road right-of-way is unknown, it will be assumed to be 25 feet (or ½ the road right-of-way if the road right-of-way is not 50 feet) from the road centerline.

(2) **SHRUB, LARGE** means a shrub with a mature or maintained height of at least 6 feet.

(3) **SHRUB, MEDIUM** means a shrub with a mature or maintained height of at least 3 and less than 6 feet.

(4) **SHRUB, SMALL** means a shrub with a mature or maintained height of less than 3 feet.

(5) **SIGN** means any device (including but not limited to letters, words, numerals, figures, emblems, symbols, pictures, flags, streamers, balloons, lights, or any part or combination) used for visual communication intended to attract the attention of the public and visible from public rights-of-way or other properties. This definition specifically excludes merchandise normally displayed in a storefront window, merchandise displayed or stored outside as approved under these regulations, and public art.

(6) **SIGN, ABANDONED** means:

(a) A commercial sign whose message describes the availability of goods or services at a location where such goods and services are no longer available and have ceased to be available for at least 90 days;

(b) A non-commercial sign whose message pertains to a time, event or purpose that has elapsed or expired in the preceding 30 days; or

(c) A sign that has not been maintained.

(7) **SIGN, ELECTRONIC MESSAGE** means a sign whose message may be changed by electronic means.

(8) **SIGN BAND** means the flat, horizontal area on a building facade usually located immediately above the storefront and below the second story window sill where signs may be attached.

(9) **SMART GROWTH** means land development that:

(a) Maintains the historic development pattern of compact village and urban centers separated by rural countryside, rather than a linear pattern of development along well-traveled roads that lacks depth as measured from the highway.

(b) Develops compact mixed-use centers at a scale appropriate for the community and the region rather than scattered development located outside compact centers that is excessively land consumptive.

(c) Enables choice in modes of transportation and does not limit transportation options, especially for pedestrians.

(d) Protects important environmental, natural and historic features, including natural areas, water quality, scenic resources, and historic sites and districts.

(e) Serves to strengthen agricultural and forest industries, minimizes conflicts of development with these industries, and avoids the fragmentation of farm and forest land.

(f) Balances growth with the availability of economic and efficient public utilities and services, and does not require extension of municipal infrastructure across undeveloped lands in a manner that would extend service to lands located outside compact village and urban centers.

(g) Supports a diversity of viable businesses in downtowns and villages.

(h) Provides for housing that meets the needs of a diversity of social and income groups in each community.

(10) **STORY** means the portion of a building between the surface of any floor and the ceiling above it. Attics and basements are not considered stories for the purposes of measuring building height in stories.

(11) **STREAM** means a naturally created and defined channel or bed that demonstrates clear evidence of the regular passage of surface water but that does not need to contain water year-round, as shown on the current Vermont Natural Resource Atlas maintained by the Vermont Agency of Natural Resources.

(12) **STREET**. See definition of ROAD.

(13) **STRIP DEVELOPMENT** means a linear development pattern along an arterial street or highway that is generally characterized by:

(a) Broad road frontage;

(b) Predominance of single-story buildings;

(c) Predominance of single-use buildings and properties;

(d) Predominance of parking and auto-oriented features visible from the frontage;

(e) Limited provision for shared or cross access;

(f) Limited provision for access by walking, biking or transit; and/or

(g) Lack of coordination with and connections to surrounding neighborhoods and land uses except by vehicle and by the road.

(14) **STRUCTURAL ALTERATION** means a change in the dimension or configuration of a structure's roof, or any exterior walls or other supporting members, including but not limited to, any change in the dimension, location or number of windows or doors.

(15) **STRUCTURE** (as defined in as defined in 24 V.S.A. § 4303(27)) means an assembly of materials for occupancy or use.

(16) **STRUCTURE, ACCESSORY** means a detached subordinate structure located on a lot with a principal structure, the use of which is clearly and customarily incidental to that of the principal structure.

(17) **STRUCTURE, PRINCIPAL** means the structure on a lot from which the principal use is conducted. On a lot with a single- or two-family dwelling, the dwelling will be considered the principal structure.

(18) **SUBDIVISION** means any land, vacant or improved, that is divided or proposed to be divided into two or more lots, parcels, sites, units, plots, or interests for the purpose of offer, sale, lease, or development. The term includes amended subdivisions and resubdivisions. The term also includes the development of a parcel of land as a planned unit development.

(19) **SUBSTANTIAL IMPROVEMENT** means any combination of repair, reconstruction, alteration, modification, addition, new construction or other improvement to a site or structure within any 5-year period that has a cumulative cost of 50% or more of the site or structure's market value at the time of the first improvement

(20) **SUBSTANTIAL MODIFICATIONS.** See definition of **MAJOR RENOVATION**.

(21) **SUBSTANTIALLY COMPLETE** means that construction or development has been completed to a point where a structure or site can be safely used for its intended purpose.

5301.T

(1) **TEMPORARY** means a use or structure that will be occurring or located on a lot for a limited and fixed period of time after which there will be no evidence remaining of the use or structure.

(2) **TRAILER** means a conveyance used to transport people, animals, goods or materials that is not self-propelled and that is designed to be pulled or moved by a motor vehicle.

(3) **TREE, LARGE** means a tree with a mature height of at least 50 feet.

(4) **TREE, MEDIUM** means a tree with a mature height of at least 30 and less than 50 feet.

(5) **TREE, SMALL** means a tree with a mature height of less than 30 feet.

(6) **TRUCK, SINGLE-UNIT** means a commercial motor vehicle on a single frame.

(7) **TRUCK, TRAILER** means a commercial vehicle consisting of two or more units, one of which is the motor vehicle and the remainder of which are trailers.

5301.U

(1) **UNDERGROUND STORAGE TANK** means a storage tank that has at least 10% of its volume underground. An underground storage stank is considered a structure under these regulations and is subject to all applicable provisions of these regulations, including but not limited to, the minimum required setbacks for the applicable zoning district.

(2) **USE** means the purpose or activity that a lot or structure (or a portion of a lot or structure) is intended, designed or arranged to house, accommodate, support or facilitate.

(3) **USE, ACCESSORY** means a use of a lot or structure (or a portion of a lot or structure) that is clearly and customarily incidental and subordinate to the principal use.

(4) **USE, PRINCIPAL** means the main or predominate use of a lot or structure (or a portion of a lot or structure).

(5) **UTILITY FACILITY** means a structure used by a public utility (i.e., water, sanitary sewer, electricity, natural gas, telephone, cable, etc.) to deliver their services to customers. It specifically excludes electricity generation facilities.

5301.V

(1) **VEHICLE**. See definition of **MOTOR VEHICLE**.

(2) **VERNACULAR ARCHITECTURE** means the ordinary residential and agricultural building styles common in 18th and 19th century Vermont, that were designed and constructed by local builders, usually with very simple architectural details and ornamentation, and that evolved over time based on local needs, climate, construction materials, customs and traditions.

5301.W

(1) **WALKWAY** means an at-grade, hard-surfaced path for pedestrians that is free from vehicular traffic.

(2) **WALL** means a constructed barrier built directly on the ground intended to enclose, screen, define or separate areas, or to control access to areas. A wall is considered a structure under these regulations.

(3) **WASTE** means a material that is discarded or is being accumulated, stored, or treated prior to being discarded, or that has served its original intended use or is a by-product of a use and is normally discarded.

(4) **WATER DEPENDENT STRUCTURE OR USE** means a structure or use that requires access to the water or a location adjacent to, extending over or extending into the water as a necessary component of its purpose or function.

(5) **WETLAND** (as defined in 24 V.S.A. § 4303(32)) means an area that is inundated by surface or groundwater with a frequency sufficient to support vegetation or aquatic life that depends 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, mudflats, bogs and ponds.

(6) **WETLAND, MAPPED** means a wetland included in the Vermont Significant Wetlands Inventory.

5301.X

5301.Y

(1) **YARD** means an at-grade, pervious open space on a developed lot that is unoccupied by any structure except for encroachments specifically authorized under these regulations.

(2) **YARD, FRONT** means the yard that is located between the road and the nearest line of the principal building on the lot and extends across the full width of the lot. A corner lot will be considered to have two front yards.

(3) **YARD, REAR** means the yard that is located between the rear lot line and the nearest line of the principal building on the lot and extends across the full width of the lot. A corner lot will be considered to have no rear yard.

(4) **YARD, REQUIRED** means a yard or portion of a yard that is the depth required by the minimum setback established in the zoning district.

(5) **YARD, SIDE** means a yard that is located between the side lot line and the nearest line of the principal building on the lot and extends between the front and rear yards.

5301.Z