

TOWN OF WHITING  
ZONING REGULATIONS

DRAFT: \_\_\_ 9/20/05 \_\_\_\_\_

APPROVED BY PLANNING COMMISSION: \_ 11/1/05 \_\_\_\_\_

APPROVED BY SELECTBOARD: \_ 12/12/05 \_\_\_\_\_

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## ARTICLE 1: GENERAL PROVISIONS

### **SECTION 1.01: ENACTMENT**

These regulations are known as the Town of Whiting Zoning Regulations. They were established in accordance with the Vermont Municipal and Regional Planning and Development Act, 24 V.S.A., Chapter 117.

### **SECTION 1.02: PURPOSE**

These regulations are intended to provide for orderly community growth by guiding the uses of land, buildings and structures in the Town of Whiting. These regulations are designed to implement the policies set forth in the Whiting Town Plan and to further the purposes established in 24 V.S.A. § 4302.

### **SECTION 1.03: APPLICATION**

All land development, as defined in these regulations, must be undertaken in conformance with these regulations. Any use not expressly permitted in a district is prohibited unless otherwise stipulated.

### **SECTION 1.04: EXEMPTIONS**

No zoning permits are required for the following structures:

1. Pursuant to 24 V.S.A. § 4413(b), public utility power generating plants or transmission facilities regulated under 30 V.S.A. § 248.
2. Pursuant to 24 V.S.A. § 4413(d) farm structures, excluding dwellings, accepted agricultural practices and accepted silvicultural practices are exempt from local permitting requirements. However, farmers intending to erect a farm structure must notify the municipality of the intent to build a farm structure, and abide by setbacks contained within the zoning ordinance, unless they provide an approval of lesser setbacks by the Secretary of the Agency of Agriculture, Food and Markets. The notification to the town must contain a sketch of the proposed structure and include the setback distances from adjoining property owners and the street right-of-way. Additionally, all farm structures within the Flood Hazard Overlay District must comply with the National Flood Insurance Program. Lastly, the municipality may report violations of Accepted Agricultural Practices or accepted Silvicultural practices to the appropriate state authorities for enforcement.
3. Pursuant to 24 V.S.A. § 4413(e), but subject to 24 V.S.A. 2295, these regulations shall not restrict hunting, fishing, trapping and other activities under section 2295.
4. Fences, hedges or walls that do not interfere with corner visibility and that are less than eight feet in height. Setbacks do not apply to such fences, walls or hedges.
5. At grade porches, terraces, decks, or unroofed steps meeting applicable setback requirements. Roofed steps and above grade porches and decks require a permit.
6. Doghouses, sheds, tree houses, or similar structures having less than 96 square feet in floor area, which are less than eight feet in height and located at least ten feet from the property line.
7. Any sign listed in Section 5.03 of these regulations.
8. Satellite dishes for home use that are smaller than 24 inches in diameter.

9. Garage sales, yard sales, auctions or similar events provided that they last for no more than three consecutive days and not more than ten days in a calendar year. Such events must be managed in a way not to cause traffic or parking problems or other nuisances to neighbors.
10. Temporary roadside stands for the sale of agricultural products raised on the property may be operated provided that:
  - a. The stand is not in place from November 1 to April 30.
  - b. The stand is 20 feet or more from any lot line.
  - c. Off-street parking is provided for at least two vehicles.
  - d. Access to or egress from any stand will not create a traffic hazard.
  - e. The stand otherwise conforms with the exemption for agricultural products.
11. Renovations to the interior of a building.
12. Infrastructure supporting a permitted building or structure and located primarily underground, such as drainage, water and wastewater systems.
13. Certain government and community facilities, as described in Section 3.21 of these regulations are exempt from the district regulations prescribing where they may be located, but shall be regulated with respect to all aspects of siting the property within the parcel chosen to the maximum extent allowable under these regulations.

**SECTION 1.05: FEES**

The Selectboard will establish all fees to be charged with respect to the administration of these regulations, with the intention of covering the costs of administering them.

**SECTION 1.06: REPEAL OF FORMER ZONING REGULATIONS**

The Zoning Regulations and Zoning Map of the Town of Whiting previously in effect, as previously amended, are hereby repealed as of the effective date of these regulations and replaced in their entirety by these regulations.

**SECTION 1.07: AMENDMENTS**

These regulations may be amended according to the requirements and procedures established in 24 V.S.A. § 4441 and 4442.

**SECTION 1.08: SEVERABILITY**

The invalidity of any provisions of these regulations will not invalidate any other part.

**SECTION 1.09: EFFECTIVE DATE**

These regulations shall be effective upon their adoption in accordance with the procedural requirements contained in 24 V.S.A. § 4442 of the Act.



## ARTICLE 2: ZONING DISTRICTS AND THE ZONING MAP

### **SECTION 2.00: ZONING DISTRICTS**

This article describes the zoning districts within the Town of Whiting. Each district description is divided into three sections. Section A will discuss objectives and guidelines describing the intent for each district, specifically how each district relates back to the town plan. Section B describes the uses permitted in each district either as “by right uses”, secured through a permit issued by the Zoning administrator or “conditional uses”, which are subject to more intensive review by the Board of Adjustment. Lastly, Section C includes the specific regulations for acreage, setbacks and other physical design elements imposed in each district. Please refer to the official Whiting Zoning Map for a delineation of the boundaries for each zoning district described below. In addition to the uses permitted in each district, certain uses are allowed within each district and are exempt from these regulations, either by design of the Planning commission, like small sheds, or by state statute, like hunting, agricultural and silvicultural uses. **Exempt uses are covered in Section 1.04 of these regulations.** Even though exempt, certain uses, like farm structures, may require that a permit application be filed with the Zoning Administrator to ensure that they qualify for an exemption. **Also, other “governmental and community” uses, by statute, may only be regulated as to certain design or site planning elements as listed in statute. Those uses are addressed by Section 3.21 of these regulations and by as many of the applicable portions of this Article as are allowed by statute.**

### **SECTION 2.01: ESTABLISHMENT OF ZONING DISTRICTS**

Whiting is divided into the following Zoning Districts as shown on the Zoning Map.

1. Commercial District (COM)
2. Medium Density Residential District (MDR)
3. Low Density Residential District (LDR)
4. Conservation District (CON)

### **SECTION 2.02: OFFICIAL ZONING MAP**

The location and boundaries of the Zoning Districts are established as shown on the Official Zoning Map. The Official Zoning Map is on file at the Whiting Town Office. Where discrepancies exist between the text of the regulations and the Official Zoning Map, the map shall govern. The small-scale zoning map attached to the printed regulations is included for convenience and should not be relied on for official purposes.

### **SECTION 2.03: INTERPRETATION OF ZONING DISTRICT BOUNDARIES**

If uncertainty exists with respect to the boundary of any Zoning District on the Official Zoning Map, the Planning Commission will determine its location.

### **SECTION 2.04: GENERAL DISTRICT REGULATIONS**

The permitted and conditional uses allowed in each district are subject to the specific standards set forth for that district, the general standards designated in 24 V.S.A. § 4414(3) and other specific regulations set forth in these regulations as applicable.

**SECTION 2.05: SUMMARY OF LAND USES BY ZONING DISTRICT**

	COM	MDR	LDR	CON
<b>A. Residential Uses</b>				
Accessory Use (Existing building or new building <1,500 sq. ft.)	<i>P</i>	<i>P</i>	<i>P</i>	<i>C</i>
Home Occupation	<i>P</i>	<i>P</i>	<i>P</i>	<i>C</i>
One-Family Dwelling	<i>P</i>	<i>P</i>	<i>P</i>	<i>C</i>
Two-Family Dwelling	<i>P</i>	<i>P</i>		
Multi-Family Dwelling	<i>C</i>			
Accessory Dwelling Unit	<i>P</i>	<i>P</i>	<i>P</i>	<i>C</i>
<b>B. Public Uses:</b>				
Community Facility (24 V.S.A. 4413, subject to onsite review)	<i>E</i>	<i>E</i>	<i>E</i>	<i>E</i>
Daycare (6 children or less, See definition)	<i>P</i>	<i>P</i>	<i>P</i>	<i>C</i>
Day Care (More than six children, See definition)	<i>C</i>	<i>C</i>		
Post Office (24 V.S.A. 4413, subject to onsite review)	<i>E</i>			
Recreation, Commercial Indoor	<i>C</i>			
Recreation, Commercial Outdoor	<i>C</i>	<i>C</i>	<i>C</i>	<i>C</i>
Accessory Building (New building >1,500 square feet)	<i>C</i>	<i>C</i>	<i>C</i>	<i>C</i>
School (24 V.S.A. 4413, subject to onsite review)	<i>E</i>	<i>E</i>	<i>E</i>	<i>E</i>
Group or Residential Care Home	<i>P</i>	<i>P</i>	<i>P</i>	<i>C</i>
<b>C. Business Uses:</b>				
Bank	<i>P</i>			
Clubs	<i>P</i>			
Enclosed Manufacturing and Industrial Processes/Services				
Freight or Trucking Terminal				
Gasoline/Motor Vehicle Service Station	<i>C</i>	<i>C</i>		
Home-Based Business	<i>C</i>	<i>C</i>	<i>C</i>	
Mobile Home Trailer, Farm Implement, Contractor Equipment Sales/Service				
Kennel		<i>C</i>	<i>C</i>	
Motel/Hotel	<i>C</i>			
Personal service	<i>P</i>			
Professional and business office	<i>P</i>	<i>C</i>		
B&B	<i>P</i>	<i>C</i>		
Restaurant	<i>C</i>			
Retail Store	<i>P</i>			
Veterinary Clinic	<i>C</i>			
<b>D. Other Uses:</b>				
Agricultural Uses	<i>E</i>	<i>E</i>	<i>E</i>	<i>E</i>
Forest Uses	<i>E</i>	<i>E</i>	<i>E</i>	<i>E</i>
Telecom Antenna	<i>P</i>	<i>C</i>	<i>P</i>	
Contractors Yard			<i>C</i>	
Sand, Soil, Gravel Extraction			<i>C</i>	
Quarrying			<i>C</i>	
Campgrounds		<i>C</i>	<i>C</i>	
Telecom Tower			<i>C</i>	
Windmill (Windmills regulated by 30 V.S.A. 248 are exempt)			<i>C</i>	

P= Permitted by right

C= Permitted as a conditional use

E= Exempt either by statute or pursuant to these regulations. Exempt uses may still need to file an application to show that they qualify as exempt uses.

**SECTION 2.06: COMMERCIAL DISTRICT (COM)**

**A. Objectives and Guidelines**

The purpose of this district is to promote commercial development in Whiting’s existing village center. Infrastructure, such as roads, water and fire protection, make the village center best able to accommodate commercial activity. Additionally, Whiting wishes to prevent commercial sprawl into its agricultural areas. Agricultural, residential and commercial uses, all of which now exist in the village area, would be the primary permitted uses. Commercial activities will require conditional use review in order to provide the town greater control over future commercial growth. The minimum lot size for this district is one acre for permitted uses. Commercial uses that are permitted by right will need to go through a Site Plan Review by the Planning Commission.

**B. Permitted Uses**

<b>By Right Uses</b>	<b>Conditional Uses</b>
1. One-family dwelling	1. Indoor/Outdoor Commercial recreation
2. Two-family dwelling	2. Motel/Hotel
3. Accessory use or building (Existing building or new structure less than 1,500 sq. ft.)	3. Restaurant
4. Home occupation	4. Gasoline and motor vehicle service station
5. Accessory Dwelling Unit	5. Agricultural processing service and storage
6. Group Home	6. Clinic, including veterinary clinic
7. Daycare facility (6 children, See Definition)	7. Daycare (Over 6 children, See Definition)
8. Retail store < 5,000 sq. ft.	8. Home Based Business
9. Professional and business offices	9. Accessory use (New Building > 1,500 sq. ft.)
10. Personal service	10. Multi-family dwelling
11. Club	
12. Bank	
13. B&B/ Inn	
14. Telecom antenna	

Community facility (See Section 3.21)

**C. Specific Standards**

11. Lot Area Minimum	1 Acre
Minimum Acreage Required For Each Primary Dwelling Unit or Primary Use	1 Acre
Lot Frontage Minimum	150 Feet
Lot Depth Minimum	150 Feet
Front Yard Setback Minimum	65 Feet
Rear Yard Minimum	25 Feet
Side Yard Minimum (Each Side)	25 Feet
Building Height Maximum	35 Feet
Lot Coverage Maximum	20%

**SECTION 2.07: MEDIUM DENSITY RESIDENTIAL DISTRICT (MDR)**

**A. Objectives and Guidelines**

This district is located along most of Whiting’s roads and in a substantial area in the southwest portion of Whiting where soil conditions appear best able to accommodate on-site sewage disposal. Typically extending 400 feet from public roads with a minimum lot size of two acres, the purpose of this district is to allow for reasonable and affordable residential development in Whiting. This district provides property owners the opportunity to sell off moderate sized lots suitable for development, while retaining larger tracts of agricultural land.

**B. Permitted Uses:**

<b>By Right Uses</b>	<b>Conditional Uses</b>
1. One-family dwelling	1. Outdoor recreation
2. Two-family dwelling	2. Professional offices
3. Accessory use or building (Existing building or new structure less than 1,500 sq. ft.)	3. Gasoline and motor vehicle service station
4. Accessory Dwelling Unit	4. Campground
5. Group Home	5. Kennel
6. Daycare (6 children, See Definition)	6. Home-based business
7. Home occupation	7. Telecom Antenna
8. Private Recreation	8. Daycare (Over 6 children, See definition)
9. Community facility (See Section 3.21)	9. Accessory structure (New building > 1,500 sq. ft.)

**C. Specific Standards**

Lot Area Minimum	2 Acres
Minimum Acreage Required For Each Primary Dwelling Unit or Primary Use	2 Acres
Lot Frontage Minimum	275 Feet
Lot Depth Minimum	300 Feet
Front Yard Setback Minimum	100 Feet
Rear Yard Minimum	50 Feet
Side Yard Minimum (Each Side)	50 Feet
Building Height Maximum	35 Feet
Lot Coverage Maximum	10%

**SECTION 2.08: LOW DENSITY RESIDENTIAL DISTRICT (LDR)**

**A. Objectives and Guidelines**

This district is located on most of Whiting’s agricultural lands and includes significant blocks of land without access from public roads. Agriculture is principal existing use of these areas and the primary purpose of this district is to encourage continued agricultural uses of this land. With most of the soils in this district not suitable for on-site sewage disposal, a minimum lot size of 25 acres is required.

**B. Permitted Uses**

<b>By Right Uses</b>	<b>Conditional Uses</b>
1. One-family dwelling	1. Outdoor commercial recreation
2. Accessory use or building (Existing building or new structure less than 1,500 sq. ft.)	2. Home-based business
3. Home occupation	3. Telecom Antenna
4. Accessory Dwelling Unit	4. Telecom Tower
5. Group Home	5. Kennel
6. Daycare (6 children, See Definition)	6. Windmill (Not exempt per 30V.S.A. 248)
7. Community facility (See Section 3.21)	7. Quarry/Sand/Gravel Extraction
	8. Contractors yard

**C. Specific Standards**

Lot Area Minimum	25 Acres
Minimum Acreage Required For Each Primary Dwelling Unit or Primary Use	25 Acres
Lot Frontage Minimum	275 Feet
Lot Depth Minimum	300 Feet
Front Yard Setback Minimum	100 Feet
Rear Yard Minimum	50 Feet
Side Yard Minimum (Each Side)	50 Feet
Building Height Maximum	35 Feet
Lot Coverage Maximum	5%

## **SECTION 2.09: CONSERVATION DISTRICT (CON)**

### **A. Objectives and Guidelines**

This district contains land with significant limitations for development, including areas flooded periodically by the Otter Creek. The Federal Emergency Management Agency (FEMA) has identified a majority of the land in this district as special flood hazard areas. Only open space uses, not involving structural improvement, such as agriculture, outdoor recreation and conservation, are permitted by right in this district. Development in the flood hazard areas is required to meet the flood hazard regulations, in addition to specific regulations for this district. A minimum lot size of 25 acres is required for all uses in this district.

### **B. Permitted Uses**

#### **By Right Uses**

1. Please see Exemptions, Section 1.04, and Community Facilities, Section 3.21

#### **Conditional Uses**

1. Single-family dwellings
2. Outdoor commercial recreational uses
3. Accessory use or building (Existing building or new structure less than 1,500 sq. ft.)

### **C. Specific Standards**

2. Lot Area Minimum	25 Acres
Minimum Acreage Required For Each Primary Dwelling Unit or Primary Use	25 Acres
Lot Frontage Minimum	500 Feet
Lot Depth Minimum	500 Feet
Front Yard Setback Minimum	150 Feet
Rear Yard Minimum	75 Feet
Side Yard Minimum (Each Side)	75 Feet
Building Height Maximum	35 Feet
Lot Coverage Maximum	1% (Buildings/impervious surfaces)

## ARTICLE 3: GENERAL REGULATIONS

### **SECTION 3.00: PROMOTE AND PROTECT AFFORDABLE HOUSING**

These regulations shall be interpreted to promote and protect affordable housing as follows:

3. Meet the needs of the housing population provided in the Town Plan by allowing and encouraging all housing types permitted as uses in each district;
4. Protect Mobile/modular/manufactured homes by treating them the same as all other single family homes (See Article X, Definitions);
5. Not discriminating against mobile home parks by treating new applications the same as other subdivisions and allowing the replacement of mobile homes on existing lots;
6. Provide for multi-unit and multifamily homes in certain zoning districts (See Article II, Sections 2.05, 2.06);
7. Promoting accessory apartments in all districts allowing single family homes, subject to specified requirements (See Article X, Definitions Section; Article II, Sections 2.05, 2.06, 2.07, 2.08);
8. Allowing residential Group care homes in all districts allowing single family homes, subject to specified requirements (See Article X, Definitions Section; Article II, Sections 2.05, 2.06, 2.07, 2.08);

### **SECTION 3.01: EXISTING SMALL LOTS**

Any lot meeting the requirements below that was in existence on the effective date of these regulations may be developed for the purposes permitted in the district in which it is located without conforming to minimum lot size requirements. Such a lot must be:

1. Not less than one-eighth acre in area with a minimum width or depth dimension of 40 feet; and
2. Not contiguous with another lot owned by the same owner, in which case the provisions of 24 V.S.A. § 4406 apply.

### **SECTION 3.02: REQUIRED FRONTAGE ON, OR ACCESS TO, PUBLIC ROADS OR WATERS**

No land development will be permitted on lots that do not have frontage on either a public road or public waters, or with the approval of the Planning Commission, access to such a road or waters by a permanent easement or right-of-way at least 20 feet in width.

### **SECTION 3.03: INTERIOR LOTS**

Any lot that does not have frontage on either a public road or public waters must have:

1. An access to a public road or water approved by the Planning Commission via a permanent easement or right-of-way at least 20 feet in width and meeting the requirements of Section 4.02 of these regulations;
2. A minimum yard requirement for all yards equal to the front yard setback distance for lots in that district; and
3. At least one rectangular-shaped area meeting the minimum lot frontage and depth requirements for the district in which it is located.

If the lot is located in more than one district, the distance requirements for the most restrictive district apply.

**SECTION 3.04: LOTS IN TWO ZONING DISTRICTS**

Where a district boundary line divides a lot in existence on the effective date of these regulations, the regulations for the less restricted part of such lot can be extended up to 30 feet into the more restricted part.

Any lot meeting the minimum acreage and setback requirements for one district may extend into other districts, so long as the lot or resulting lot meets the requirements of the zone in which the primary structure is located or may be located.

**SECTION 3.05: FRONT YARD SETBACK**

The front yard setback is measured from the centerline of the existing roadway.

**SECTION 3.06: REDUCTION OF LOT AREA**

No lot will be reduced in area in a manner that causes it to no longer meet the area, yards, frontage, coverage and other regulations as specified for the district. The provisions of this section will not apply when part of a lot is taken for a public purpose or may be waived as part of a Planned Unit Development.

**SECTION 3.07: REQUIRED AREA OR YARDS**

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

**SECTION 3.08: PROJECTION IN YARDS**

Every part of a required yard must be open from grade level to the sky unobstructed, except for vegetation and for the ordinary projections of sills, cornices, pilasters, chimneys and eaves. Additionally, certain architectural features needed for the operation of active and passive solar energy systems, including but not limited to overhangs, detached solar collectors, reflectors and piping may be permitted by the Board of Adjustment to project into the required yard if conformance with yard requirements will cause undue expense or unusual difficulties.

**SECTION 3.09: YARDS IN CORNER LOTS**

Any yard adjoining a street is a front yard. A corner lot has only front yards and side yards.

**SECTION 3.10: HEIGHT RESTRICTIONS**

Through the conditional use review procedure, the Board of Adjustment may permit a structure to exceed the applicable building height maximum provided:

1. The general standards of Section 8.08(e) are met; and



2. The structure or its extension is a steeple, bell tower, fire tower, antenna, monument, cooling tower, chimney, flagpole, electric transmission pole, wind energy conversion system, or other similar structure meeting all other applicable requirements of these regulations.

Barns and farm silos are exempt from height restrictions.

### **SECTION 3.11: ACCESSORY USES AND BUILDINGS**

Both by-right accessory uses or buildings and conditional accessory uses or buildings must conform to lot setback, lot coverage, and building height requirements for their district, unless exempted by Section 1.04 of these regulations.

### **SECTION 3.12: HOME OCCUPATIONS AND HOME-BASED BUSINESSES**

#### **A. Home Occupations**

Nothing in these regulations is intended to infringe upon the right of any residents to use a minor portion of their dwelling for an occupation which is customary undertaken in residential areas and which does not adversely impact the character of the residence or neighborhood in which it is located.

A home occupation is an accessory use to a residential use and is allowed in any district in which residential uses are allowed. A home occupation cannot employ any non-resident employees and can have no exterior storage of equipment or materials. A zoning permit application must be submitted to the Zoning Administrator so that a determination can be made as to whether the proposed use is in fact, a home occupation as defined by these regulations.

#### **B. Home-Based Businesses**

By providing for home-based businesses, the Town of Whiting wants to support the ability of its residents to work from home, encourage small-scale economic enterprises, promote the reuse of existing agricultural buildings and provide for employment opportunities. However, Whiting recognizes the need for such businesses to be compatible with the surrounding neighborhood. The limit on the size of new facilities constructed and on the number of employees recognizes that a business may grow too large to remain in the neighborhood in which it started and will need to be relocated.

A home-based business is a light industrial or non-retail service use conducted within:

1. A portion of a dwelling;
2. An existing separate garage or outbuilding; or
3. One building or other structure to be constructed, which must be smaller than the square footage of the home used for residential purposes by the owner.

Home-based businesses may employ up to four non-resident full-time equivalent employees. The outdoor storage of supplies, inventory or equipment is allowed, with the restrictions the appropriate municipal panel may impose on them pursuant to its rules governing contractor's yards. Legitimate uses may conduct a small amount of retail trade, provided the retail trade is clearly subordinate to the allowed use. Home-based businesses are a conditional use and are subject to site plan review.

The following activities, and all others not meeting the definition noted above, will not constitute home-based businesses:

1. Smelters or blast furnaces;
2. Slaughterhouses, rendering plants, hide tanning or curing plants;
3. Manufacture or processing of fertilizer, bone, rubber, asphalt, ammonia and/or chlorine;
4. Manufacture or refining of petroleum, gas, or explosives;
5. Bulk storage of wholesale fuel oil, butane, propane or gasoline;
6. Junkyards, machinery wrecking yards; and
7. Unenclosed manufacturing or processing of goods.
8. Retail sales

**SECTION 3.13: EQUAL TREATMENT OF HOUSING**

Except as provided in 24 V.S.A. § 4414(1)(E) and (F), nothing in these regulations will treat mobile homes, modular housing or other forms of prefabricated housing differently from any other one-family dwelling type. Nothing in these regulations will be construed to prevent the establishment of mobile home parks. Nothing in these regulations will have the effect of excluding from Whiting affordable housing to meet the needs of the population as determined by studies described in 24 V.S.A. § 4382(c).

**SECTION 3.14: DAYCARE OR CHILDCARE HOME**

A qualifying “daycare” or “family childcare home or facility” as defined in Article X of these regulations shall be considered to constitute a permitted single-family residential use and shall be allowed in all districts on the same basis as a single-family residential use. Larger Daycares may be permitted as conditional uses, depending upon the district in which it is located.

**SECTION 3.15: RESIDENTIAL BUILDINGS ON LOTS**

There can be up to two residential buildings on a lot, except for Planned Residential or Unit Developments. The first residential building will be treated as a by-right use or conditional use as specified in the permitted use for the district in which it is located. The second residential building will be treated as a conditional use. In order for the Planning Commission to allow a second residential building, the property must be able to accommodate the two structures in a manner that would allow the parcel to be subdivided into two legal lots in the future. The required lot size and setbacks, including side lot distances between the structures, must be met.

**SECTION 3.16: NON-CONFORMITIES**

The following provisions shall apply to all buildings and uses legally created and existing on the effective date of these regulations which do not conform to the requirements set forth in these regulations and to all buildings and uses that in the future do not conform by reason of any subsequent amendment to these regulations.

Any legally created non-conforming use of structures or land may be continued indefinitely, but:

1. Shall not be moved, enlarged, altered, extended, reconstructed or restored (except as provided below), nor shall any external evidence of such use be increased by any means whatsoever, without approval by the Zoning Board of Adjustment, and then only after a public hearing carried out pursuant to the provisions governing a conditional use review in Section 8.30 et

- seq. in a manner, which, in the opinion of the Board does not enlarge the nature of the non-conformance.
2. Shall not be changed to a nother non-conforming use without approval by the Zoning Board of Adjustment, and then only after a public hearing carried out pursuant to the provisions governing a conditional use review in Section 830 et seq. and only to a use, which, in the opinion of the Board is of the same or of a more restricted nature.
  3. Shall not be re-established if such use has discontinued for a period of one year or has been changed to, or replaced by, a conforming use. Intent to resume a non-conforming use shall not confer the right to do so.
  4. Shall not be restored for other than a conforming use after damage from any cause unless the non-conforming use is reinstated by the commencement of construction within one year of such damage and the completion of construction and restoration of such building within two years; otherwise, the non-conforming use of such building shall be deemed to have been discontinued, unless such non-conforming use is carried on uninterrupted in the damaged part of the building.

Nothing in this section shall be deemed to prevent normal maintenance and repair of a non-conforming building provided that such action does not increase the degree of non-conformance.

### **SECTION 3.17: CONSTRUCTION APPROVED PRIOR TO THESE REGULATIONS**

Whiting does not require any change in the plans for or construction of a structure or use for which a permit has been issued and which has subsequently been made non-complying or non-conforming by adoption of or a mendment to these regulations if the construction is completed while the permit is valid.

### **SECTION 3.18: ABANDONMENT OF STRUCTURES**

Within one year after work on an excavation for a building has begun or within six months after a permanent or temporary structure has been destroyed, demolished or abandoned, all structural materials must be removed from the site, and the excavation remaining must be covered over or filled to the normal grade and seeded to prevent erosion by the owner, unless otherwise permitted by the Board of Adjustment.

### **SECTION 3.19: TEMPORARY USES AND STRUCTURES**

Temporary permits may be issued by the Zoning Administrator for a period of up to one year for non-conforming uses incidental to construction projects, provided such permits are conditioned upon agreement by the owner to remove the structure or use upon expiration of the permit. Such permits may be renewed upon application for an additional one-year period.

### **SECTION 3.20: DWELLING UNITS BELOW GRADE**

The finished floor level of all habitable rooms in all two-family and multiple-family dwellings cannot be more than one foot below finished grade level measured at a point ten feet outside and at right angles to each window lighting each habitable room. Each finished floor level must have access leading outside the building.

### **SECTION 3.21: SPECIAL PUBLIC USE EXEMPTIONS**

Pursuant to 24 V.S.A. § 4413 the following uses may only be regulated with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-road parking, loading facilities, traffic, noise, lighting, landscaping or screening requirements and only to the extent that the regulations do not have the effect of interfering with the intended functional use:

1. State or community owned and operated institutions and facilities.
2. Public and private schools and other educational institutions certified by the state Department of Education.
3. Churches, and other places of worship, convents and parish houses.
4. Public and private hospitals.
5. Regional Solid Waste Management Facilities certified under 10 V.S.A. Chapter 159.
6. Hazardous Waste Management Facilities for which a notice of intent to construct has been received under Section 6606(a) of Title 10.

It is the intent of these regulations to regulate these facilities to the maximum extent allowable under law. The uses noted above shall be subject to Site Plan Review under Article III of these regulations and any other portion of these regulations that pertain to aspects of the project that may be regulated.

### **SECTION 3.22: PUBLIC UTILITY SUBSTATIONS**

Public utility substations and similar utility structures, where subject to regulation or for the purposes of guiding review under 30 V.S.A. 248, shall comply with the following:

1. The facility shall be surrounded by an aesthetically attractive fence which is set back from the property lines in conformance with the district regulations for front, side, and rear yards.
2. The facility shall include a landscaped area at least twenty-five feet wide to be maintained on all yards. The landscaping chosen shall be designed to screen the view of the facility from all neighboring and nearby roads and properties.

### **SECTION 3.23: STORAGE OF FLAMMABLE LIQUIDS**

The storage of any highly flammable and combustible liquids or gases must be in accordance with the current adopted addition of the Vermont Fire Prevention and Building Code, as administered by the Fire Prevention Division of the Vermont Department of Labor and Industry.

### **SECTION 3.24: GASOLINE OR MOTOR VEHICLE SERVICE STATIONS**

Gasoline or motor vehicle service stations must comply with all the following:

1. A gasoline or motor vehicle service station lot cannot be located within 300 feet of any lot occupied by a school, hospital, library or religious institution.
2. The lot size, frontage and depth must conform to the standards for the district.
3. Pumps, lubricating and other service devices must be located on property and not in the road right-of-way.
4. All fuel and oil must be stored in accordance with the current adopted addition of the Vermont Fire Prevention and Building Code, as administered by the Fire Prevention Division of the Vermont Department of Labor and Industry.

5. All automobile parts and dismantled vehicles are to be stored within a building unless screened from public view.
6. Signs must conform to Article 5 of these regulations.
7. There can be no more than two access driveways from the street. The access driveways cannot be more than 40 feet in width. Access must otherwise conform to the standards contained in Section 4.02 of these regulations.
8. Landscaping must be maintained on the property in conformance with Section 4.03 and as specified in the Conditional Use Permit.
9. Lighting will not alter the character neighborhood and will be minimized to a reasonable level in conformance with Section 6.02(b) of these regulations. Canopy lighting is severely discouraged.
10. The buildings will be designed to conform to the character of the surrounding neighborhood, including its size, scale, materials and architectural period design.

**SECTION 3.25: CAMPERS**

No one can park a camper except:

1. In an approved campground;
2. In an approved camper sales lot; or
3. The owner of a property may allow a camper to be parked on his or her property provided it is:
  - a. Parked behind the building front line of the principal building;
  - b. Not located within required setbacks for the district in which it is located;
  - c. Not used as permanent living quarters; and
  - d. Not hooked up to water or sewer utilities.

Invited guests of a property owner may also park campers in the same manner as required of any camper owner for up to 30 days.

**SECTION 3.26: CAMPGROUNDS**

**A. Permitting**

No one will construct or operate a campground without first obtaining a conditional use permit. Before approving a permit, the Board of Adjustment will require a performance bond from the applicant to ensure that the area is constructed and maintained in a satisfactory manner.

Application for approval must be made to the Board of Adjustment. The application must be accompanied with:

1. A site plan and drawings prepared by a professional engineer showing the property lines and area of the campground;
2. A contour map showing the proposed grading of the area;
3. A layout of the roads, walkways, campsites, parking areas, garbage collection stations, electrical distribution, water lines, sanitary sewer facilities and storm sewer drainage facilities; and
4. Any other material required by Section 8.08 of these regulations to secure a conditional use permit.

## **B. Standards**

1. A campground cannot be located on a parcel less than three acres in size.
2. A campground must provide for individual vehicles, access driveways and parking.
3. Each campsite must have at least 2,500 square feet with each dimension at least 25 feet.
4. All access driveways within a campground must have a right-of-way at least 30 feet wide and have a compacted gravel surface, or other type of all-weather road, at least 20 feet wide.
5. Each campground must have an attachment for water supply. The state Department of Environmental Conservation or other appropriate agency must approve the water supply source.
6. Each campsite must have provisions for public toilets and sewage disposal. The method of sewage disposal must be in compliance with the state Department of Environmental Conservation regulations.
7. A strip of land at least equal to the district setbacks for structures must be maintained as a landscaped area designed to screen the campground from view of public roads and property lines.
8. No vehicle or tent can be located closer than the setback to a property line.
9. The campground must be closed to the public for at least 30 days each year.

### **SECTION 3.28: LANDSCAPING**

Every commercial development or residential subdivision must provide landscaping to complement the buildings and provide sufficient screening of service and storage areas to the benefit of neighboring properties. Where any commercial district abuts any residential district, a strip of land at least 25 feet wide must be maintained as a landscaped area to provide screening in the front, side or rear yards that abut the residential district. The outdoor storage of trash must be screened or hidden from public view and the view of abutting properties. In commercial or industrial districts, such storage must be located to the rear of the buildings.

Landscaping required by these regulations minimally consists of evergreen trees, shrubs and protective ground cover. Wherever possible existing trees must be preserved. Extra planting, as necessary, will be of a type and size recommended for the proposed site. The Planning Commission or Board of Adjustment may require landscape design and maintenance be completed by qualified professionals as it deems necessary to satisfy these requirements.

### **SECTION 3.29: FILLING OF LAND**

In all districts a zoning permit is required for the depositing of rock, concrete, gravel, sand, cinders, stumps and soil used for the filling of land. The Zoning Administrator will issue a permit only if the applicant demonstrates that the activity will not significantly alter existing drainage patterns, cause soil erosion and result in any hazard or expense to the community. State laws governing the filling of land must be followed.

### **SECTION 3.30: GRADING**

No grading, cutting or filling will be carried out in any district that leaves a finished grade in excess of 1:2.

### **SECTION 3.31: EXTRACTION OF SOIL, SAND OR GRAVEL AND QUARRYING**

The removal of soil, sand or gravel or stone for sale, except when incidental to construction of a building on the same premises, is a conditional use subject to Section 8.08 of these regulations. Additionally, the following specific provisions apply:

1. Before approval of any new soil, sand, gravel or quarrying operation, or extension of it, a performance bond will be secured from the applicant sufficient to ensure that upon completion the site will be left in a safe, attractive and useful condition. The owner must submit a site closure plan and the bond will be set to cover the cost of the plan.
2. The removal of all material must be conducted with regard to the contours of the land, such as leveling slopes and removing hills. The creation of pits or steep slopes will not be permitted, unless provision is made to refill or re-grade them.
3. The excavation operation sites must be graded smooth and left in a neat condition. Cut slopes and spoil banks cannot remain. The site must be fertilized, mulched and reseeded so as to establish a firm cover of grass or other vegetation sufficient to prevent erosion.
4. The owner must control all surface drainage affected by excavation operations to prevent erosion debris and other loose materials from filling any drainage course, street, or private property
5. No excavation, blasting or stockpiling of materials will be located within 200 feet of any street or other property lines.
6. No power-activated sorting machinery or equipment will be located within 300 feet of any street or other property line. All such machinery must be equipped with satisfactory dust elimination devices.
7. All excavation slopes in excess of one to two must be fenced.
8. Extension of an existing non-conforming operation will not be permitted.
9. Stripping of topsoil for sale or for use on other premises, except as may be incidental to a construction project, is prohibited.
10. The Board of Adjustment may attach any additional conditions it finds necessary to protect the public health, safety and general welfare.
11. The Zoning Administrator may periodically inspect and affirm that the operation is meeting the conditions of its permit.

### **SECTION 3.32: PLANNED UNIT DEVELOPMENTS**

In accordance with the provisions set forth in 24 V.S.A. § 4 417, the modification of district regulations by the Planning Commission is permitted simultaneously with approval of a site plan under the following procedures.

#### **A. Purpose**

The purpose of the Planned Unit Development (PUD) provision is to encourage flexibility of design and development of land in such a manner as to promote the most appropriate use of land, to facilitate the adequate and economic provision of streets and utilities, to preserve the natural and scenic qualities of open land, to provide for a mixture and variety of housing types at different densities, and to provide for the development of existing lots which because of physical, topographic or geological conditions could not otherwise be developed.

## **B. Application Procedure and Administration**

The application procedures, submission requirements, hearing requirements and deadlines for action by the Planning Commission are the same as those required by the Town of Whiting's Subdivision Regulations.

## **C. General Standards for Review**

The following general standards must be met in order for the Planning Commission to approve the application:

1. The PUD is consistent with the municipal plan.
2. The overall density of the project does not exceed the number of dwelling units that could be permitted in the Planning Commission's judgment if the land, excluding the area within the boundaries of any proposed road, was subdivided into lots in accordance with the district regulations. However, the Planning Commission, in its sole discretion, may allow for a density bonus of up to 25 percent in order to encourage PUDs. Density bonuses shall be granted only for developments that demonstrate exceptional design, or provide for elderly and/or affordable housing, and which advance the objectives for housing stated in the Town Plan.
3. The uses proposed for the project are residential and commercial (PUD). Dwellings may be of varied types, including one-family, two-family or multi-family units. All proposed development within a PUD must be permitted, either exempt, by right or as a conditional use in the district in which it is proposed.
4. The PUD must be an effective and unified treatment of the development possibilities of the project site. The development plan must provide for the preservation of streams, stream banks, steep slopes, wet areas, and unique natural and built features.
5. The development plan is proposed over a reasonable period of time in order that adequate municipal facilities and services may be provided.
6. Where possible, buildings will be sited so as to take advantage of southeast, south or southwest orientations. No building in the development can cast shadows that would preclude the proposed or potential use of solar energy collectors that are located upon or within the most southerly facing wall or roof of any other dwelling unit within the development, except where topographical conditions make compliance unreasonable.
7. Any modification of the zoning regulations approved under this section will be specifically set forth in terms of standards and criteria for the design, bulk and spacing of building and the sizes of lots and open spaces which shall be noted on or appended to the application.

## **D. Specific Standards for Review**

The following specific standards must be met in order for the Planning Commission to approve the application.

1. District regulations on height and spacing between main buildings must be met unless otherwise waived by the Planning Commission.
2. To ensure adequate privacy for existing or proposed use adjacent to the PUD, structures on the perimeter must be set back equal to the setback requirements for the district in which it is located and screening may be required.
3. Adequate water supply and sewage disposal facilities must be provided.



## **E. Open Space**

If the PUD results in lands available for parks, recreation, open space or other municipal purposes, the Planning Commission as a condition of its approval may establish such conditions as to the ownership, use and maintenance of such land as it deems necessary to assure the preservation of such lands for their intended purposes.

### **SECTION 3.33: FREESTANDING DISHES AND ANTENNAS**

The installation of freestanding dishes and antennas not exempt under Section 104 of these regulations must meet the minimum setback, lot coverage, and height requirements for the district in which they are located and will be permitted only in the rear yard of the building served. The Board of Adjustment will permit alternative siting if the following criteria are met:

1. Quality reception requires alternative siting.
2. Screening that does not impair reception is used to minimize the visibility of the installation from the public right-of-way and neighboring properties.

### **SECTION 3.34: SOLAR AND WIND ENERGY SYSTEMS**

A solar energy system, whether as a part of a building or incidental to a building, is an accessory use in all districts. A wind energy conversion system not exempt from these regulations is a conditional use with the Board of Adjustment considering the following criteria in addition to the general standards specified in Section 8.08 of these regulations:

1. Climbing access to the tower must be restricted;
2. For rotors 20 feet in diameter or less, a setback from all lot lines must be 275 feet minus 11 feet for each foot of rotor diameter less than 20 feet; and
3. For rotors larger than 20 feet in diameter, a setback from any lot line must be 275 feet plus 6 feet for each foot of rotor diameter greater than 20 feet.

### **SECTION 3.35: TELECOMMUNICATIONS FACILITIES**

The purpose of this provision is to preserve the character and appearance of the Town of Whiting and to regulate the location of commercial wireless telecommunications services. Small-scale devices for personal use (satellite dishes, antennas, etc.) are exempt from this regulation.

The use of existing structures to locate wireless telecommunications antennas is encouraged and will be subject to only Site Plan Review by the Planning Commission. Wherever possible, communications antennas must be mounted on existing structures, such as silos or water towers, and camouflaged to blend with their existing surroundings.

Siting of structures and antennas must be accomplished in a manner designed to limit the visual impact on Whiting's countryside and ridgelines. Structures and antennas must be camouflaged to blend in with their surroundings to the greatest extent possible.

The Planning Commission will conduct its review pursuant to the site plan criteria contained in these regulations. Applications submitted must meet the requirements for site plan review. Additionally, at the discretion of the Planning Commission and pursuant to 24 V.S.A. § 4440, the Planning Commission is authorized to hire qualified professionals, to be paid by the applicant, to determine an application's compliance with these regulations.

A new telecommunications tower will be allowed as a conditional use in the Low Density Residential District and Conservation District only. It will be allowed only after the applicant has demonstrated that no existing structure is suitable for their proposed use within a 30-mile radius of the proposed site and the applicant has agreed to allow co-location on the new structure.

In addition to the conditional use review by the Board of Adjustment, telecommunication towers are also subject to site plan review by the Planning Commission. Pursuant to 24 V.S.A. § 4440, the Board of Adjustment is authorized to hire qualified professions, to be paid by the applicant, to determine an application's compliance with these regulations.

All telecommunications structures and antennas must be maintained in accordance with the requirements of permits granted. Abandoned or unused structures or antennas must be removed from the property within 180 days of cessation of their use and the Zoning Board of Adjustment may require a bond or other guarantee be posted with the town to cover such removal.

## ARTICLE 4: TRANSPORTATION, ACCESS, SAFETY AND PARKING

### SECTION 4.01: PARKING

1. Commercial parking lots must be screened or hidden from public highway view and from the view of neighboring residential properties.
2. No non-residential parking of motor vehicles will be allowed in setbacks. This provision may be waived in the Commercial District. It may also be waived for home occupations and home-based business, provided that they can meet the all other requirements of the conditional use standards. Outside the Commercial District, and except for home occupations and home based businesses, commercial parking lots adjacent to residential uses must be set back at least 50 feet.
3. Residential uses must provide for at least two parking spaces per dwelling unit on the parcel.
4. Each retail commercial unit must provide permanently dedicated off-street parking on the same or an adjacent lot at the rate of one parking space for every 150 square feet of floor space.
5. Each office unit must provide permanently dedicated off-street parking on the same or an adjacent lot at the rate of one parking space for every 250 square feet of floor space.
6. Community facilities, restaurants and other public meeting places must provide permanently dedicated off-street parking on the same or an adjacent lot at the rate of one parking space for every three customers or members of the public they can hold.

### SECTION 4.02: ACCESS PERMIT

Any activity for which a zoning permit is required and which involves the construction or modification of a driveway intersecting with a public right-of-way must obtain an access permit from the Selectboard prior to the issuance of a zoning permit. The Selectboard may attach conditions to the access permit with respect to the design, construction, landscaping or location of such driveways in order to ensure safety, provide access by emergency vehicles, and minimize traffic difficulties. The Selectboard may set specific standards.

### SECTION 4.03: OBSTRUCTION OF VISION

On a corner lot, within the triangular area formed by the intersection of two roads and a line joining them at points 25 feet away from their intersection, there will be no obstruction to vision between the height of three feet and ten feet above the average grade of each street.

### SECTION 4.04: DRIVEWAYS

The design, construction, landscaping, or location of driveways should conform to the following conditions in order to ensure safety, provide access by emergency vehicles and minimize traffic difficulties. Specific standards for driveways include:

1. To provide for fire and ambulance access, driveways shall be constructed and maintained with an unobstructed corridor of at least 12 feet in width, minimum vertical clearance of 14 feet, a grade not to exceed 15% and a minimum outside curve radius of curvature of 48 feet.
2. No driveway shall be constructed in a corridor of land or ROW having a width of less than 20 feet. To provide room for snow, drainage and landscaping a driveway shall be set back at least 5 feet from the lot or right of way lines.

3. A driveway shall be constructed in accordance with Agency for Transportation Standard B-71 with respect to slope and site distances only.
4. Drives serving more than one property shall be permitted only where the interests of both property owners will be protected by a deed or agreement providing for the private joint maintenance of the driveway.
5. No residential lot shall be served by more than one access drive or roadway, unless such access roadway is approved as part of a subdivision review.
6. No driveway shall be wider than reasonably necessary to accommodate traffic passing over it.

## ARTICLE 5: SIGNS

### **SECTION 5.01: GENERAL**

No signs or billboards will be permitted in any district except as specifically permitted in this article.

### **SECTION 5.02: ADVERTISING BILLBOARDS**

Advertising billboards will not be permitted in any zoning district. State Act No. 333, entitled “An Act to Provide Services for Tourists and to Regulate Outdoor Advertising,” regulates outdoor advertising.

### **SECTION 5.03: EXEMPT SIGNS**

The following signs are permitted without a permit when located on the immediate property:

1. One unlit professional or home occupation sign, not exceeding six square feet.
2. One temporary real estate sign, not exceeding six square feet.
3. Directional or information sign not exceeding four square feet.
4. Non-advertising signs necessary for public safety or welfare.
5. Signs erected by the state or town on streets;
6. One residential sign per dwelling identifying the occupant, not to exceed two square feet in area and residential flags or banners not intended for advertising purposes.
7. Temporary lawn auction or garage sale signs removed immediately following the event.
8. Temporary election signs to be posted and removed according to state law.
9. Temporary signs or banners displayed on town property with the permission of the Selectboard advertising a public or community event that are removed immediately following the event.
10. Unlit permanent signs associated with farm operations not to exceed 16 square feet in area and 10 feet above the ground.
11. Signs related to trespass or hunting not exceeding two square feet.
12. Historic landmark signs less than 16 square feet in area and 10 feet above the ground.

### **SECTION 5.04: COMMERCIAL SIGNS**

The following signs are permitted in all districts when located on the immediate property:

1. All signs permitted under Section 5.03.
2. One business sign conforming to either Section 5.03 or Section 5.05.
3. One directory sign not exceeding four square feet.

### **SECTION 5.05: WALL, PROJECTING, GROUND AND ROOF SIGNS**

Every wall sign must:

1. Not exceed the highest point of the building’s roof.
2. Not exceed 10 percent of the wall or 50 square feet whichever is less.

Every projecting wall sign must:

1. Not extend beyond the street line.
2. Not extend more than two feet from the building wall.
3. Not be less than ten feet above the surface of a public walkway area.
4. Not exceed 16 square feet.

The highest point of every ground sign must:

1. Not exceed 12 feet in height above the finished grade.
2. Be set back at least 20 feet from any street line and at least 12 feet from any other lot line.
3. Not exceed 24 square feet.

Roof signs are not permitted in any zoning district.

**SECTION 5.06: COMPUTATION OF PERMISSIBLE SIGN AREA**

When computing the total permissible sign area for any use:

1. Existing signs are included.
2. The total area of all signs cannot exceed the requirements as set forth in these regulations.
3. Signs consisting of free standing letters, numerals or other devices will include any intervening spaces between them.
4. Back-to-back signs may be counted as one sign for the purpose of calculating square footage. For example, a ground sign may have a maximum of 24 square feet on both sides.

**SECTION 5.07: TRAFFIC, HAZARD, SAFETY AND OBSTRUCTION**

All signs must be designed and located in such a manner as to:

1. Not impair public safety.
2. Not restrict clear vision between a sidewalk and street.
3. Not be confused with any traffic sign or signal.
4. Not prevent free access to any door, window or fire escape.
5. Withstand a wind pressure load of at least 30 pounds per square foot.

**SECTION 5.08: ILLUMINATED AND FLASHING SIGNS**

A steady light may illuminate signs permitted under Section 5.05 of these regulations provided that such lighting is down-shielded in accordance with the standards required for lighting in Section 6.02(b) of these regulations and will not illuminate or reflect onto other properties. Flashing, oscillating or revolving signs are not permitted, unless necessary for public safety or welfare.

## ARTICLE 6: PERFORMANCE STANDARDS

### **SECTION 6.01: GENERAL**

No land or structure in any zoning district will be used or occupied in any manner so as to create dangerous, injurious, noxious or otherwise objectionable conditions that could adversely affect the reasonable use of neighboring properties. The following specific standards are set forth to implement this purpose. The burden of proof that the following standards are met shall be on the applicant.

### **SECTION 6.02: SPECIFIC STANDARDS**

All new land development and substantial changes in existing land development shall be constructed and maintained to comply with the following performance standards:

#### **A. Noise**

Volume must be limited to levels that will not be a nuisance to adjacent uses. Noise levels or frequencies that are not customary in the neighborhood or which represent a substantial repeated disturbance to others will be presumed to constitute a nuisance. Customary agricultural operations undertaken in accordance with Acceptable Agricultural Practices, church or school bells, and municipal safety alarms and sirens would not violate this section.

Earth moving and hauling, rock drilling or crushing, jack hammering and similar excessively loud equipment will not be operated on Sundays or between the hours of 5:30 p.m. and 7:00 a.m. This will not apply to emergency activities such as utility repairs.

#### **B. Lighting**

All outdoor lighting and illuminated signs must be installed, constructed and maintained to minimize the intrusion of light across property lines, eliminate upward illumination, reduce glare and maximize the effectiveness of site lighting by limiting light to a target area.

Up lighting is prohibited. All parking area lighting will be full cut-off type fixtures. Lights on poles will be shorter than the building whose area they illuminate or not greater than 15 feet, whichever is less. Commercial signs may be internally illuminated or externally lit if the light is fully cut off or shielded or shone from the top down.

All building lighting for security or aesthetics will be cut off or shielded and targeted. Wall pack lights are prohibited. All outdoor lighting fixtures, including display fixtures must be turned off after the close of business, unless needed for safety or security, in which case the lighting will be minimized.

Technical definitions and lighting levels should conform to those recommended by the Illuminating Engineering Society of North America (IESNA) as contained in the IESNA Lighting Handbook, as revised from time to time.

#### **C. Vibration**

Blasting and other activities causing substantial vibration cannot cause vibrations or sound waves that would result damage beyond their property line.

#### **D. Other Standards**

1. Dust and air pollution must be controlled to conform to the State of Vermont Air Quality Performance Standards.
2. Electromagnetic and microwave transmissions must be shielded or otherwise controlled so as not to cause a health hazard or a nuisance to adjacent land uses. Transmissions exclusively regulated by the Federal Communications Commission are exempt from this provision.
3. Drainage must be managed so as not to cause a nuisance or damage to other properties. Changes in grading will be done so that drainage is directed to established drainage courses and controlled so as not to cause ponding or flooding of other properties, or to exceed the capacity of downstream drainage facilities.
4. Excavation, filling and re-grading must conform to the most current edition of the Vermont Handbook for Soil Erosion and Sediment Control on Construction Sites. The location of fill sites and access restrictions for hauling equipment shall be reviewed and approved by the Director of Public Works consistent with State Solid Waste Management Rule 6-309 or as amended.
5. Noxious odors must not be detectable beyond property lines. Odors from agricultural operations following Accepted Agricultural Practices are exempt from this provision.
6. Fire, explosive and similar safety hazards that would substantially increase the risk to an abutting property, or which would place an unreasonable burden on firefighters, are prohibited.
7. All sewage and other wastes must be safely disposed of so that there will not be a hazard to public health. Any activity which poses a clear threat to water supplies or which would cause undue water pollution is prohibited.
8. Commercial, industrial or institutional fuel storage facilities, where regulated by the Vermont Department of Labor and Industry, must maintain all tanks and related equipment with leak detection and spill control systems incorporating the best available safety practices and technology, consistent with government and industry standards.



## ARTICLE 7: FLOOD HAZARD REGULATIONS

### **SECTION 7.01: STATUTORY AUTHORIZATION**

To affect the purposes of 10 V.S.A., Chapter 32, and in accordance with the Vermont Planning and Development Act, Chapter 117, Section 4410, 4411 and 4424, the zoning regulations for areas of special flood hazards in the Town of Whiting are established.

### **SECTION 7.02: STATEMENT OF PURPOSE**

It is the purpose of these regulations to promote the public health, safety, and general welfare, to prevent increases in flooding caused by the uncontrolled development of lands in areas of special flood hazard, and to minimize losses due to floods by:

1. Restricting or prohibiting uses that are dangerous to health, safety, or property in times of flood or cause excessive increase in flood heights or velocities;
2. Requiring that uses vulnerable to floods, including public facilities that serve such uses, shall be protected against flood damage at the time of initial construction; and
3. Protecting individuals from buying land that are unsuited for their intended purposes because of flood hazard.

### **SECTION 7.03: APPLICABILITY**

These regulations shall apply to all lands in the Town of Whiting, Vermont identified as Zone A or areas of special flood hazard on the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM), dated September 18, 1985, and any subsequent revisions.

### **SECTION 7.04: OFFICIAL FLOOD HAZARD AREA MAP**

The Official Flood Hazard Area Map shall consist of the Flood Insurance Rate Map (FIRM). The Official Flood Hazard Area Map, together with all explanatory matter thereon and attached thereto, is hereby adopted by reference and declared to be part of these regulations.

### **SECTION 7.05: INTERPRETATION OF DISTRICT BOUNDARIES**

The Zoning Administrator shall determine the boundaries of any designated area of special flood hazard by utilizing the official Flood Hazard Area Map and by obtaining, reviewing, and reasonably utilizing any base flood elevation data available from a federal or state agency. Filing a notice with the Secretary of the Board of Adjustment within 15 days of the decision or act shall make appeals with respect to a boundary interpretation. Interested persons may appeal the decision of the Zoning Administrator by filing an appeal with the Board of Adjustment. Appeals to the Board of Adjustment shall proceed pursuant to the provisions of Section 8.10 of these regulations.

### **SECTION 7.06: PERMIT REQUIRED; PERMITTED USES**

A permit issued by the Zoning Administrator or the Board of Adjustment is required for all development in areas of special flood hazard. Upon issuance of a permit by the Zoning Administrator, the following open space uses shall be permitted within the area of special flood hazard to the extent that they are not prohibited by any other ordinance, that all other permits have been received from

those governmental agencies for which approval is required and provided that they do not require the erection of structures or storage of materials and equipment, the borrowing of fill from outside the flood hazard area, or channel modification or relocation, and do not obstruct flood flows, affect the water carrying capacity of the floodplain, or increase offsite flood damage potential.

1. Agricultural uses, such as general farming, pasture, orchard grazing, outdoor plant nurseries, truck farming, and forestry.
2. Recreation uses, such as parks, camps, picnic grounds, tennis courts, golf courses, golf driving ranges, archery and shooting ranges, hiking and riding trails, hunting and fishing areas, game farms, fish hatcheries, wildlife sanctuaries, nature preserves, swimming areas, and boat launching sites.
3. Accessory residential uses, such as lawns, gardens, parking areas, and play areas.

### **SECTION 7.07:           CONDITIONAL USES**

All new construction, substantial improvement, and development uses prescribed by the Town of Whiting zoning ordinance that do not meet the requirements of Section 7.06 and fall within the designated area of special flood hazard are permitted only upon the granting of a conditional use permit by the Board of Adjustment in accordance with the procedures and requirements of Sections 7.10, 7.11, and 7.12 of these regulations.

### **SECTION 7.08:           PERMIT REQUIREMENTS AND APPLICATION PROCEDURES**

Permits are required for all proposed new construction, substantial improvements and other developments, including the placement of mobile homes, within all lands to which these regulations apply.

All zoning permit applications shall be submitted to the Zoning Administrator, on forms furnished by him, who shall determine, on application, whether or not the proposed development is located within the area of special flood hazard by the procedures established in Section 7.05 of these regulations.

If the proposed use will be located in the areas of special flood hazard and meets all the requirements of Section 7.06 of these regulations, the Zoning Administrator shall issue a permit. If the proposed use does not meet the requirements of Section 7.06, the Zoning Administrator shall refer all applicants to the Secretary of the Board of Adjustment.

### **SECTION 7.09:           RECORDS**

The Zoning Administrator shall maintain a record in the Town Office of:

1. The elevation, in relation to mean sea level, of the lowest habitable floor, including basement, of all new residential construction or substantial improvement of structures and whether or not such structures contain a basement; and
2. The elevation, in relation to mean sea level, to which such non-residential structures have been flood proofed.

### **SECTION 7.10:           CONDITIONAL USE REVIEW PROCEDURES**

Upon receiving an application for a conditional use permit under these regulations, the Board of Adjustment shall, prior to holding a hearing and rendering a decision thereon, obtain from the applicant:

1. Base flood elevation data for all subdivisions and other proposed new developments greater than 50 lots or 5 acres, whichever is the smaller;
2. The elevation, in relation to mean sea level, of the lowest habitable floor, including basement, of all new construction or substantial improvement of structures;
3. Where flood proofing is used in lieu of elevation, the elevation, in relation to mean sea level, to which any structure or substantial improvement has been flood proofed;
4. Certification from a registered professional engineer or architect that the flood proofed structure meets the flood proofing criteria of Section 7.12(3) of these regulations
5. A description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.

In addition, the Board of Adjustment shall require such of the following information, as it deems necessary for determining the suitability of the particular site for the proposed use:

1. Plans in triplicate, drawn to scale, showing the location, dimensions, contours (2' in the area of development, 10' elsewhere), and elevation of the lot; the size and location on the site of existing or proposed structures, fill or storage of materials; and sanitary facilities; and the relation of the above to the location of the channel, floodway, and base flood elevation.
2. A typical valley cross-section showing the channel of the stream, elevation of land areas adjoining each side of the channel, and cross-sectional areas to be occupied by the proposed development.
3. A profile showing the slope of the bottom of the channel or flow line of the stream.
4. Specifications for building construction and materials, flood proofing, mining, dredging, filling, grading, paving, excavation, or drilling, channel improvement, storage of materials, water supply, and sanitary facilities sufficient to allow the Board of Adjustment to determine that all new construction and substantial improvements shall (i) be designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure resulting from hydrodynamic or hydrostatic loads, including the effect of buoyancy, (ii) be constructed with materials resistant to flood damage, (iii) be constructed by methods and practices that minimize flood damages, and (iv) be constructed with electrical, heating, ventilation plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
5. All other permits have been received from those governmental agencies for which approval is required

In unnumbered A zones, the Board of Adjustment shall obtain, review, and reasonably utilize any base flood elevation data available from a federal, state or other source, as criteria for approval of all new construction and substantial improvements under Section 7.12(1), (2) and (3) below.

The Board of Adjustment shall notify adjacent communities and the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Division prior to approval of an alteration or relocation of a watercourse and shall submit copies of such notifications to the FEMA Administrator.

The Secretary of the Board of Adjustment shall transmit one copy of the information required by subsections 7.10(1) and (2) to the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Division in accordance with 24 V.S.A. Section 4424(D)(1).

In reviewing each application, the Board of Adjustment shall consider the evaluation of the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Division and shall determine that the proposed use will conform to the development standards of Section 7.12 of these regulations.

In accordance with 24 V.S.A. Section 4424(D)(2), no permit may be granted for new construction or the development of land in any area designated as a flood plain prior to the expiration of a period of 30 days following the submission of a report to the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Division under Section 7.10(5) above.

### **SECTION 7.11: CONSIDERATIONS BY THE BOARD OF ADJUSTMENT**

In reviewing each application, the Board of Adjustment shall consider:

1. The danger to life and property due to increased flood heights or velocities caused by encroachments;
2. The danger that materials may be swept onto other lands or downstream to the injury of others;
3. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions under conditions of flooding;
4. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;
5. The importance of the services provided by the proposed facility to the community;
6. The necessity to the facility of a waterfront location;
7. The availability of alternative locations not subject to flooding for the proposed use;
8. The compatibility of the proposed use with existing development and development anticipated in the foreseeable future;
9. The relationship of the proposed use to the proposed comprehensive plan, insofar as it has been developed;
10. The safety of access to the property in times of flood of ordinary and emergency vehicles;
11. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site;
12. The costs of providing governmental and public facilities and services during and after flooding;
13. Such other factors as are relevant to the purposes of this ordinance.

### **SECTION 7.12: CONDITIONS ATTACHED TO CONDITIONAL USE APPROVAL**

As a condition of approval, the Board of Adjustment shall specifically require that:

1. All new construction or substantial improvement of any residential structure have the first floor and basement floor elevated to or above the base flood elevation, unless the Town of Whiting has been granted an exception by the Administrator for the allowance of basements flood proofed below the base flood level;
2. All new construction or substantial improvement of nonresidential structures have the lowest floor, including basement, elevated to or above the base level elevation, or be flood proofed below the base flood level in accordance with subsection (3) of this section;

3. The lowest floor, including basement, and attendant utility and sanitary facilities of all new construction or substantial improvement below the base flood elevation be flood proofed so that the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy;
4. Structures be designed and anchored to resist flotation, collapse, or lateral movement;
5. Any encroachment, including fill, new construction, substantial improvement, or other development, be prohibited that will result in any increase in flood levels within the regulatory floodway during the occurrence of the base flood discharge, except as a flood control measure;
6. The flood carrying capacity within any portion of an altered or relocated watercourse be maintained;
7. All gas and electrical equipment, circuits, and appliances be located and constructed to minimize or eliminate flood damage;
8. All new and replacement water supply systems be designed so as to minimize or prevent the infiltration of flood waters into the systems;
9. All new and replacement sanitary sewage systems be designed to minimize or prevent infiltration of flood waters into the systems and discharges from the systems into flood waters;
10. On-site waste disposal systems be located to avoid impairment to them or contamination from them during flooding;
11. No mobile home shall be placed in the floodway, except in an existing mobile home park or existing mobile home subdivision;
12. All mobile homes to be placed in the designated area of special flood hazard or regulatory floodway be anchored to resist flotation, collapse, or lateral movement by:
  - a. Over-the-top ties at each of the four corners of the mobile home, with two additional ties per side at intermediate locations, and mobile homes less than 50 feet long requiring one additional tie per side;
  - b. Frame ties at each corner of the home, with five additional ties per side at intermediate points, and mobile homes less than 50 feet long requiring four additional ties per side;
13. All components of the mobile home anchoring system required for mobile homes placed in the designated area of special flood hazard or regulatory floodway shall be capable of carrying a force of 4,800 pounds and any additions to the mobile home shall be similarly anchored;
14. Within zones A 1-30, for new mobile home parks and subdivisions, for expansions to existing mobile home parks and subdivisions, for existing mobile home parks and subdivisions where the repair, reconstruction, or improvement of the streets, utilities, and pads equals, or exceeds 50 percent of the value of the streets, utilities, and pads before the repair, reconstruction, or improvement has commenced, and for mobile homes not placed in a mobile home park or subdivision:
  - a. Stands or lots be elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the base flood level;
  - b. Adequate surface drainage and access for a hauler be provided; and

- c. In the instance of elevation on pilings, (1) the lots are large enough to permit steps, (2) piling foundations are placed in stable soils no more than six feet above the ground level.
15. An evacuation plan indicating alternate vehicular access and escape routes be filed with an approved by the local emergency management director for mobile home parks and mobile home subdivisions located within the designated area of special flood hazard;
  16. All necessary permits be obtained from those governmental agencies from which approval is required by federal or state law;
  17. All subdivision proposals be reasonable safe from flooding and that;
    - a. All public utilities and facilities serving subdivisions, such as sewer, gas, electrical, and water systems, be located and constructed to minimize or eliminate flood damage, and
    - b. Adequate drainage be provided within subdivisions to reduce exposure to flood hazards.
    - c. Upon consideration of those factors in Section 7.11, and the purposes of these regulations, the Board of Adjustment shall attach such additional conditions to the granting of a permit as are necessary to meet the purposes and flood hazard area management requirements of these zoning regulations.

**SECTION 7.13: TIME FOR ACTING ON APPLICATION**

The Board of Adjustment shall act on an application pursuant to the procedures governing Conditional use review set forth in Section 8.08 of these regulations and in a manner described in Sections 7.11 and 7.12, subject to the limitations of Section 7.10(6) of these regulations.

A copy of the public notice shall be mailed to the applicant at least 15 days prior to the hearing date.

**SECTION 7.14: ISSUANCE AND TRANSMISSION OF PERMITS**

Upon granting a permit, the Board of Adjustment shall send to the applicant, by certified mail, a copy of the decision. Copies of the decision also shall be mailed to every person appearing and having been heard at the hearing, with the Administrative Officer, who shall forthwith issue a permit, and with the Town Clerk as a part of the public records.

**SECTION 7.15: EFFECTIVE DATE**

No permit issued pursuant to this section shall take effect until the time for appeal in Section 4465 of this title has passed, or in the event that a notice of appeal is properly filed, no such permit shall take effect until adjudication of that appeal by the appropriate municipal panel is complete and the time for taking an appeal to the environmental court has passed without an appeal being taken. If an appeal is taken to the environmental court, the permit shall not take effect until the environmental court rules in accordance with 10 V.S.A. § 8504 on whether to issue a stay, or until the expiration of 15 days whichever comes first.

**SECTION 7.16: APPEALS**

An interested person, as defined in these regulations pursuant to 24 V.S.A. Section 4465( b), may appeal a decision of the Board of Adjustment to the Environmental Court in accordance with the provisions of Section 8.80 of these regulations and 24 V.S.A. Section 4471.

**SECTION 7.17: VARIANCES**

1. Variances shall be granted by the Board of Adjustment only:
  - a. In accordance with the provisions of 24 V.S.A., Section 4469 and 44 C.F.R. §60.6;
  - b. Upon a determination that during the base flood discharge the variance will not result in increased flood levels in the designated regulatory floodway, threats to public safety, extraordinary public expense, or create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
2. The Secretary of the Board of Adjustment shall notify the applicant that the issuance of a variance to construct a structure below the base flood level;
  - a. Will result in increased premium rates for flood insurance commensurate with the resulting increase in risk;
  - b. Increase risks of life and property.
3. The Secretary of the Board of Adjustment shall:
  - a. Maintain a record of all variance actions, including justification for their issuance, and
  - b. Report such variances issued to the Administrator upon request.

**SECTION 7.18: FEES**

The Selectboard shall establish such fees as may be necessary for the filing of notices and the processing of hearings and action thereon as established in Section 1.05 of these regulations.

**SECTION 7.19: DISCLAIMER OF LIABILITY**

These regulations do not imply that land outside the areas of special flood hazard or land uses permitted within such districts will be free from flooding or flood damages. These regulations shall not create liability on the part of the Town of Whiting or any town official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

**SECTION 7.20: PRECEDENCE OF REGULATIONS**

The provisions of these regulations shall take precedence over any conflicting and less restrictive local laws.

**SECTION 7.21: ANNUAL REPORT TO THE FEDERAL EMERGENCY MANAGEMENT AGENCY**

The Zoning Administrator shall, to the extent possible, submit to the Administrator the information required by the FEMA annual report form with respect to the administration and enforcement of these flood hazard area bylaws.

A copy of the annual report shall be submitted to the state-coordinating agency.

**SECTION 7.22: DEFINITIONS**

**Administrator:** The Federal Emergency Management Administrator.

**Area of Special Flood Hazard:** The land in the flood plain within a community subject to a one percent or greater chance of flooding in a given year. The area includes all A zone designations on the FIRM, or, in the absence of the FIRM, on the FHBM. It does not include Zones B and C.

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

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

**FEMA:** Federal Emergency Management Agency.

**FHBM:** Flood Hazard Boundary Map. An official map of a community, issued by the Administrator where the boundaries of the flood, mudslide, related erosion areas having special hazards have been designated as Zones A, M, and/or E. **FIRM:** Flood Insurance Rate Map. An official map of a community, on which the Administrator has delineated both the areas of special flood hazard and the risk premium zones applicable to the community. **Floodway:** The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

**Flood proofed or Flood proofing:** Any combination of structural and nonstructural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**Manufactured/Mobile Home:** A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles or travel trailers.

**Manufactured/Mobile Home Park or Subdivision:** A parcel of land divided into two or more mobile home lots for rent or sale.

**New Construction:** Structures commenced on or after the effective date of the original flood hazard ordinance.

**Start of Construction:** The date the permit was issued if work starts within 180 days from that date. Otherwise, the date shall be that on which a structure is placed on the site.



**Structure**: See definitions of Article 10 of these regulations.

**Substantial Improvement**: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either, (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before damage has occurred. The term does not, however include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or (2) any alterations of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

## ARTICLE 8: ADMINISTRATION, PERMITS AND ENFORCEMENT

### **SECTION 8.00: APPLICATION OF REGULATIONS**

The application of these regulations is subject to Sections 4411 and 4413 of the Act. Except as hereinafter provided, no building or structure shall be erected, moved, altered or extended, and no land, building or structure or part thereof, shall be occupied or used unless in conformity with the regulations herein specified for the district in which it is located.

### **SECTION 8.01: ZONING ADMINISTRATOR**

A Zoning Administrator duly nominated by the Planning Commission and appointed by the legislative body, shall administer the Zoning Regulations, as provided for in Section 4448 of the Act. The Zoning Administrator must literally enforce the provisions of these regulations. The Zoning Administrator will inspect developments, maintain records and perform all other necessary tasks to carry out the provisions of these regulations and the scope of duties outlined in 24 V.S.A. § 4448. The Zoning Administrator will also assist applicants and other interested parties in understanding Whiting's permitting process.

### **SECTION 8.02: ZONING PERMIT**

No land development or construction may commence without a zoning permit being issued by the Zoning Administrator, as provided for in Section 4449 of the Act, or the use or structure anticipated is exempt as per Section 1.04 of these regulations or the provisions of the Act.

### **SECTION 8.03: PERMIT APPLICATION**

The Zoning Administrator shall not issue a Permit unless a completed application is filed with the Zoning Administrator. The application shall include the following information:

1. A permit fee.
2. Written approval of the Selectboard or their designated agent regarding access plans to any street, including the location of the driveway, culverts, and, if required, drainage along streets; and
3. Written approval by or waiver of jurisdictional matters by the State of Vermont, Department of Environmental Conservation regarding applicant's plans for sewage disposal and water supply.
4. Any other approvals required by these regulations.
5. A complete Site Plan including:
  - a. Information identifying the location of the parcel and accurately depicting the improvement proposed in relationship to the lot lines and other structures on the parcel;
  - b. Information depicting the shape, design, size and height of the proposed structure, plus the location of all infrastructure proposed to serve the structure, including driveways, parking areas, utilities, drainage and other proposed improvements;
  - c. drawn on paper not more than 24 x 36 inches in size; and
  - d. Drawn to scale, with the scale clearly identified and large enough to depict the details clearly and with an arrow indicating north.

**SECTION 8.04: ZONING ADMINISTRATOR ACTION ON PERMIT APPLICATION**

The Zoning Administrator should act to determine the completeness of the application as soon after receipt as practicable and if incomplete, provide notice to the applicant. The Zoning Administrator shall within thirty days of submission of complete application, including approvals, either issue a decision or refer an application to the appropriate municipal panel. If the Zoning Administrator fails to act upon a complete application, upon which the Zoning Administrator has a duty and the authority to issue a decision, within 30 days, a permit shall be deemed issued on the 31<sup>st</sup> day for a permit. If denied, the Zoning Administrator shall notify the applicant in writing, stating the reasons therefore.

**SECTION 8.05: EFFECT OF ISSUANCE OF A ZONING PERMIT**

No permit issued pursuant to this section shall take effect until the time for appeal in Section 4465 of this title has passed, or in the event that a notice of appeal is properly filed, no such permit shall take effect until adjudication of that appeal by the appropriate municipal panel is complete and the time for taking an appeal to the environmental court has passed without an appeal being taken. If an appeal is taken to the environmental court, the permit shall not take effect until the environmental court rules in accordance with 10 V.S.A. § 8504 on whether to issue a stay, or until the expiration of 15 days whichever comes first.

**SECTION 8.06: POSTING OF PERMIT**

Each permit issued under this section shall contain a statement of the period of time within which an appeal may be taken. The applicant shall be required to post a notice of permit on a form prescribed by the municipality within view from the public right-of-way most nearly adjacent to the subject property until the time for appeal (15 days) has passed.

**SECTION 8.07: CERTIFICATE OF OCCUPANCY**

Upon completion of any work or change in use requiring a permit under these regulations and prior to its occupancy, the permittee must request and receive a Certificate of Occupancy from the Zoning Administrator.

The permittee must notify the Zoning Administrator when a structure, or part of a structure, is staked and about to have its footings poured and again when the building or structure is ready for use. The Zoning Administrator must inspect the site within seven days of notification. Upon determining that the structure ready for use conforms with the provisions of these regulations and any other conditions contained within a validly issued zoning permit, the Zoning Administrator must issue a Certificate of Occupancy.

**SECTION 8.08: EXPIRATION AND REVOCATION OF PERMITS**

All permits or approvals issued in conformance with these regulations expire two years from their date of issue. If requested, the Zoning Administrator may extend permits or approvals for up to one additional year. The request for extension should identify the reasons why the project could not be completed within the two-year period and indicate how much longer the work is expected to take.

In addition to any other remedies provided by law, permits and approvals may be canceled or revoked by the issuing entity for violation of these regulations or violations of the conditions of the permit approval.

**SECTION 8.09: VIOLATIONS AND PENALTIES**

These regulations will be enforced as prescribed in 24 V.S.A. Sections 4451 and 4452 of the Act. The Zoning Administrator will investigate all claims of alleged violations. If the Zoning Administrator finds grounds to support the claim of alleged violation, the Zoning Administrator must enforce this provision.

The Zoning Administrator must provide the alleged offender with at least seven days' warning notice by certified mail and an opportunity to resolve the violation. If the violation is not resolved, the offender can be fined (Currently up to \$100 for each offense). Each day that a violation continues can be considered a separate offense. This will not prevent the Town or Zoning Administrator from exercising other remedies as prescribed by the Act.

**SECTION 8.10: APPROPRIATE MUNICIPAL PANELS**

Two bodies shall constitute appropriate municipal panels in Whiting, the Planning Commission and the Zoning Board of Adjustment. Each shall be responsible for conducting quasi-judicial reviews of specific types of applications as listed below. Rules of procedures, rules of ethics, public notice requirements, requirements regarding decisions, appeals and all other matters before either appropriate municipal panel shall be established as provided by the Act and as set forth in these regulations.

**SECTION 8.11: PLANNING COMMISSION**

The Town of Whiting Planning Commission will consist of members to be appointed by the Selectboard. The Planning Commission has the following functions:

1. Prepare and update the Whiting Town Plan every five years and amend it as necessary.
2. As needed, prepare amendments to these regulations and other regulations as permitted by 24 V.S.A. Chapter 117.
3. Resolve any uncertainties regarding district boundaries on the Official Zoning Map.
4. Appoint the Zoning Administrator with approval of the Selectboard to administer these regulations, as provided for in 24 V.S.A. § 4448

The Planning Commission shall be the appropriate municipal panel for the purpose of:

1. Hearing and granting or denying Site Plan Approval; and
2. Hearing and granting or denying approval to modify district requirements under the Planned Unit Development provisions of these regulations as it considers subdivision applications pursuant to the Subdivision Regulations.

**SECTION 8.12: BOARD OF ADJUSTMENT**

The Town of Whiting Board of Adjustment will consist of members to be appointed by the Selectboard. Those members may also be members of the Planning Commission. The Board of Adjustment has the following functions:

1. Hear and grant or deny appeals of actions of the Zoning Administrator.
2. Hear and grant or deny requests for variances.
3. Hear and grant or deny Conditional Use Approval.
4. Hear and grant or deny approval for expansions of non-conforming uses and non-complying structures.
5. Hear and grant or deny approval for activities in the floodplain.
6. Hear and Grant Requests for Waivers.
7. Any other form of land use request for which it is the appropriate panel as authorized by these regulations and 24 V.S.A. §4460.

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

## **SECTION 8.20: PUBLIC NOTICE AND REVIEW PROCEDURE**

The applicant shall submit to the Zoning Administrator, at least 25 days prior to the regular meeting of the Appropriate Municipal Panel, seven (7) copies of those materials required by the appropriate section of these regulations governing the type of action requested:

Conditional Use: See Section 8.30

Appeal: See Section 8.40

Variance: See Section 8.50

Waivers: See Section 8.60.

Site Plan Approval: See Section 8.70

Subdivision: See Subdivision Regulations

Other: See Section 8.70

1. **Notice procedures:** All development review applications or appeals before the Appropriate Municipal Panel shall require notice for a warned public hearing as follows:
  - a. Public Notice of hearings for **conditional use review, variances, appeals of decisions of the Zoning Administrator, and final plat review for subdivisions** shall be given not less than **15 days** prior to the date of the public hearing by all the following:
    - i. Publication of the date, place, and purpose of the hearing in a newspaper of general circulation in the municipality affected. The Zoning Administrator or clerk of the Appropriate Municipal Panel shall place the notice in the paper.
    - ii. Posting of the same information in three or more public places within the municipality in conformance with location requirements of 1 V.S.A. § 312(c)(2), including posting within view from the public right-of-way most nearly adjacent to the property for which an application is made. The Zoning Administrator or clerk of the Appropriate Municipal Panel shall post notices two places within town. The applicants shall be responsible for posting the property.

- iii. Written notification to the applicant or appellant and to owners of all properties adjoining the property subject to development, without regard to any public right-of-way. The notification shall include a description of the proposed project and shall be accompanied by information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal. The Zoning Administrator or clerk of the Appropriate Municipal Panel shall be responsible for notifying all adjoining landowners and shall do so by a certificate of mailing or hand delivery. At the first hearing, the clerk shall demonstrate compliance with this provision by producing a copy of the letter sent, a list of those it was sent to and the certificate of mailing demonstrating that the letters were sent (The Zoning Administrator or clerk of the Appropriate Municipal Panel need only demonstrate that the letter was sent, not that it was received) or signed receipts if the letter was hand-delivered.
  - b. Public Notice of Hearings on **all other types of development review, including site plan review** shall be given not less than **7 days** prior to the date of the public hearing, and shall include, at a minimum all the following:
    - i. Posting of the date, place, and purpose of the hearing in three or more public places within the municipality in compliance with the notice requirements for special meetings contained in 1 V.S.A. § 312(c)(2); The Zoning Administrator or clerk of the Appropriate Municipal Panel shall post notices two places within town. The applicant shall be responsible for posting the property.
    - ii. Written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to any public right-of-way. The notification shall include a description of the proposed project and shall be accompanied by information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal. The Zoning Administrator or clerk of the Appropriate Municipal Panel shall be responsible for notifying all adjoining landowners and shall do so by a certificate of mailing or hand delivery. At the first hearing, the Zoning Administrator or clerk shall demonstrate compliance with this provision by producing a copy of the letter sent, a list of those it was sent to and the certificate of mailing demonstrating that the letters were sent (The Zoning Administrator or clerk of the Appropriate Municipal Panel need only demonstrate that the letter was sent, not that it was received) or signed receipts if the letter was hand-delivered.
- 2. **Review Procedures.** Pursuant to the requirements of 24 V.S.A. § 4461, for development review and §4468 for appeals, the Appropriate Municipal Panel shall set a date and place for a public hearing of an application or an appeal under this chapter that shall be within 60 days of the filing of a complete application or the notice of appeal with the Appropriate Municipal Panel. The Appropriate Municipal Panel shall give public notice of the hearing pursuant to the procedure described in Subsection 1 of this section and shall mail to the applicant, or in the case of appeals, the appellant, a copy of that notice at least 15 days prior to the hearing date. Any person or body empowered by Section 4465 of the Act to participate as an interested party or to take an appeal with respect to that property at issue may appear and be heard in person or be

represented by an agent or attorney at the hearing. The Appropriate Municipal Panel may adjourn the hearing from time to time; provided, however, that the date and place of the adjourned hearing shall be announced at the hearing. All hearings shall be open to the public and the rules of evidence applicable at these hearings shall be the same as the rules of evidence applicable in contested cases in hearings before administrative agencies as set forth in 3 V.S.A. §810, Vermont Statute.

3. **Decisions.** The Appropriate Municipal Panel shall issue a written decision, which shall include findings of fact, any conditions, and provisions for appeal within 45 days after completing the hearing and shall within that period send the applicant or appellant, by certified mail, a copy of the decision. Copies of the decision shall also be mailed to every interested person who appeared and was heard at the hearing. A copy of the decision shall be filed with the Zoning Administrator and the town clerk who shall record the decision as a public record.

If the Appropriate Municipal Panel fails to make a decision within 45 days, on the 46<sup>th</sup> day the Appropriate Municipal Panel shall be deemed to have rendered a decision in favor of the applicant.

## **SECTION 8.30: CONDITIONAL USES**

### **SECTION 8.31: GENERAL STRUCTURE**

The Zoning Administrator shall not issue a Zoning Permit for any use or structure that requires conditional use approval, or for the expansion or enlargement or change in use of an existing conditional use until the Board of Adjustment grants such approval. Uses requiring conditional use approval are listed in Article II as Subsection B (2) of the articles governing each zoning district. The Board of Adjustment shall make findings on general and specific standards, hold hearings and attach conditions if any, as provided for in 24 V.S.A. § 4414(3) of the Act and all applicable sections of these regulations. Per Section 4413 of the Act, in any district certain uses may be permitted only by approval of the Board of Adjustment, if the Board of Adjustment after public notice and public hearing determines that the proposed use will conform to general and specific standards contained in these regulations.

### **SECTION 8.32: APPLICATION FOR CONDITIONAL USE APPROVAL**

The applicant shall submit to the Zoning Administrator, at least 25 days prior to the meeting of the Board of Adjustment, seven (7) copies of a letter summarizing the proposed conditional use which addresses all elements of this article, and all other information necessary to illustrate compliance with these regulations and for the Board of Adjustment to make its decision including: property identification numbers of the property taken from the latest tax records; Name and address of the owner of record and the owners of adjoining lands; Name and address of person or firm preparing the map; Scale of Map, north point and date.

In addition to the information noted above, the Board of Adjustment may require the following:

1. An accurate map of the property showing existing features, including contours, structures, large trees, streets, utility easements, rights-of-way, land use and deed restrictions.

2. Site plan, showing proposed structure locations and land use areas; streets, driveways, traffic circulation, parking and loading spaces and pedestrian walks; landscaping plans, including site grading, landscape design, and screening.
3. Construction sequence and time schedule for completion of each phase for buildings, parking spaces, and landscaped areas of the entire development.
4. A description of energy utilization and conservation measures for each heated structure.
5. Other information as requested by the Board of Adjustment

**SECTION 8.33: PUBLIC NOTICE AND REVIEW PROCEDURE**

The Board of Adjustment shall give public notice of hearing as specified in Section 8.20(1)(a) of these regulations. The Board of Adjustment shall review this application pursuant to the review procedure established in Section 8.20(2) of these Regulations and pursuant to any rules of procedure it adopts.

**SECTION 8.34: CRITERIA FOR REVIEW**

When determining the appropriateness of a proposed conditional use, the Board of Adjustment shall determine that the development or use will not result in an undue adverse impact on any of the following:

1. The capacity of existing or planned community facilities.
2. The character of the area affected as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the municipal plan. A conditional use may not, by its nature, scale, or conduct, cause an undue adverse change to the character of the area, as the area would exist if fully developed in accordance with the Town Plan. To that end, the conditional use shall meet or, where it is deemed appropriate by the Board of Adjustment, exceed the dimensional requirements for the district, the sign standards indicated in Article 7, and the performance standards specified in Article 8. The estimated traffic generated by a conditional use shall not exhaust or exceed the capacity of the road to accept increased traffic unless the applicant agrees to a condition requiring the applicant to upgrade the road.
3. A conditional use must comply with bylaws and regulations adopted at the time of submission of the application.
4. A conditional use shall not excessively inhibit or restrict access to or the use of renewable natural resources (including, but not necessarily limited to, water and sunlight) for energy generation.

As a result of its review of the aforementioned general criteria in response to a conditional use application, the Board of Adjustment may make such additional requirements as it deems necessary conditions of the permit with respect to the following specific standards:

1. Minimum lot size. Where the Board of Adjustment has determined that the minimum lot size for the applicable zoning district is inadequate to permit the proposed conditional use without undue adverse impacts to neighboring uses, it may increase the minimum requirement.
2. Distance from adjacent or nearby uses. Where the Board of Adjustment has determined that the minimum front, side, or rear yard setback for the applicable zoning district is inadequate to permit the proposed conditional use without undue adverse impacts to neighboring uses, it may increase the minimum requirements.



3. Performance standards, per Section 4414(3) of the Act and Article 8 of these Regulations. Where strict adherence to any applicable performance standards required by the Zoning Regulations will not prevent negative impacts by a proposed conditional use, the Board of Adjustment may make such reasonable adjustments as it deems necessary to achieve compliance with the general conditional use criteria specified above.
4. Minimum off-street parking and loading facilities. The applicant shall conform with the off-street parking and loading facilities standards specified in these Regulations for the proposed use and other conditions the Board may require to permit safe internal circulation or access to the site, as it deems necessary.
5. Landscaping and fencing. The Board of Adjustment may require landscaping or fencing improvements pursuant to the standards specified in these Regulations if it determines that the proposed landscaping and buffering is insufficient to screen the adverse visual impacts of the proposed conditional use from adjoining streets or properties or such additional landscaping is necessary to mitigate adverse visual impacts.
6. The design and location of structures and service areas. The Board of Adjustment may require such reasonable changes in the design or location of structures and service areas, as it deems necessary to ensure that the conditional use will be compatible in scale and design with neighboring uses in the area.
7. The site, location, and design of signs. A conditional use shall, at a minimum, comply with the sign standards outlined in Article 5.
8. Such other factors these zoning regulations may include and that the Board of Adjustment deems are necessary to satisfy the general conditional use criteria specified above. ARTICLE 3 contains general standards applicable to many uses. ARTICLE 4 contains specific standards relating to Transportation. ARTICLE 5 contains standards regarding signs. ARTICLE 6 contains performance standards and ARTICLE 7 contains Flood Hazard standards.

### **SECTION 8.35: DECISIONS**

Upon the close of the hearing, the Board of Adjustment shall issue its decision, and any conditions included therein, pursuant to the procedure outlined in subsection 3 of Section 8.20 of these regulations.

### **SECTION 8.36: PERFORMANCE BONDS**

The Board of Adjustment may require that the applicant furnish the town with a performance bond up to the value of the cost of the work/improvement to be guaranteed by such bond as set forth in 24 V.S.A. § 4440 of the Act in order to assure the proper development of the conditional use according to the restrictions and conditions specified by the Board of Adjustment and as set forth in these regulations. The Board of Adjustment may determine the amount of the bond or certified check based upon the recommendations of a professional architect/engineer hired by the town.

### **SECTION 8.40: APPEALS TO THE BOARD OF ADJUSTMENT**

Appeals of any decision of the zoning administrator shall be made to the Board of Adjustment. The Board of Adjustment shall conduct hearings on appeals pursuant to the authority derived from and the procedures contained in 24 V.S.A. § 4465, 4466, 4468, and 4470.

**SECTION 8.41: DEADLINE FOR APPEAL**

An appeal taken with respect to an act or decision of the zoning administrator must be filed within 15 days of such act or decision.

**SECTION 8.42: INTERESTED PERSONS**

Only an “interested person” as defined in Section 1100 of these regulations and by 24 V.S.A. § 4465(b) may appeal the decision or action of the zoning administrator under these regulations.

**SECTION 8.43: NOTICE OF APPEAL**

The appellant shall file a notice of appeal with the secretary of the Board of Adjustment or with the town clerk if no such secretary has been elected. The following information shall be included as part of the submittal:

1. Name and address of the appellant;
2. Names and addresses of the applicant, co-applicant or any person party to the original application;
3. A brief description of the property from which the appeal is taken;
4. A reference to the regulatory provisions applicable to that appeal;
5. The relief requested;
6. The grounds as to why the relief requested is proper under the circumstances;

**SECTION 8.44: PUBLIC NOTICE AND REVIEW PROCEDURE**

Public notice of hearings shall be given as required by Section 8.20(1)(a) of these regulations. The Board of Adjustment shall review all appeals pursuant to the procedure established in Section 8.20(2) of these regulations.

**SECTION 8.45: DECISIONS**

Upon the close of the hearing, the Board of Adjustment shall issue its decision pursuant to the procedure outlined in subsection 3 of Section 8.20 of these regulations.

**SECTION 8.50: VARIANCES**

Requests for variances shall be made to the Board of Adjustment pursuant to the procedure outlined below.

**SECTION 8.51: APPLICATION**

The applicant shall submit to the Zoning Administrator, at least 25 days prior to the meeting of the Board of Adjustment, seven (7) copies of a letter summarizing the proposed variance which addresses all elements of this article, and all other information necessary to illustrate compliance with these regulations and for the Board of Adjustment to make its decision, including property identification numbers of the property taken from the latest tax records; Name and address of the owner of record and those of adjoining lands; Name and address of person or firm preparing the map; Scale of Map, north point and date.

In addition to the information noted above, the Board of Adjustment may require the following:

1. An accurate map of the property showing existing features, including contours, structures, large trees, streets, utility easements, rights of way, land use and deed restrictions.
2. A scaled plan, showing proposed structure locations and land use areas; streets, driveways, traffic circulation, parking and loading spaces and pedestrian walks; landscaping plans, including site grading, landscape design and screening.
3. Construction sequence and time schedule for completion of each phase for buildings, parking spaces and landscaped areas of the entire development.
4. A description of energy utilization and conservation measures for each heated structure.
5. Other information pertinent to the issue before the Board of Adjustment.

### **SECTION 8.52: PUBLIC NOTICE AND REVIEW PROCEDURE**

Public notice of hearings shall be given as required by Section 8.20(1)(a) of these regulations. The Board of Adjustment shall review this application pursuant to the review procedure established in Section 8.20(2) of these Regulations and pursuant to any rules of procedure it adopts.

### **SECTION 8.53: REVIEW CRITERIA**

The Board of Adjustment shall review all variance requests to determine if they can meet **all** of the following standards:

1. There are unique physical circumstances or conditions, including irregularity, narrowness, topography or other physical conditions and that the hardship is due to these conditions and not the circumstances or provisions of the bylaw in the district in which the property is located;
2. Because of these conditions or circumstances, there is no possibility that the property can be developed in strict conformity with the bylaws and that therefore a variance is necessary to enable the reasonable use of the property.
3. Unnecessary hardship has not been created by the appellant;
4. The variance, if authorized will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable resources or be detrimental to the public welfare;
5. The variance will represent the minimum variance that will afford relief and will represent the least deviation possible from the plan.

Please see 24 V.S.A. § 4469 for more information or for matters dealing with variances relating to renewable energy resource structures.

### **SECTION 8.54: DECISION**

The Board of Adjustment shall make its decision on the request for variance by applying the facts presented in the application and at hearing to the criteria, listed above, and incorporating all into its decision. Upon the close of the hearing, the Board of Adjustment shall issue its decision pursuant to the procedure outlined in subsection 3 of Section 8.20 of these regulations.

**SECTION 8.55: CONDITIONS**

In approving a project the Board of Adjustment shall act to ensure, and may impose conditions requiring that the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan. The nature of any variance and any conditions attached to it shall be entered on the face of the zoning permit, incorporated therein and shall be enforceable in the same manner as all other applicable requirements of these regulations.

**SECTION 8.60: WAIVERS**

As an alternative to the Variance procedures noted above, Applicants may apply for site waivers of dimensional requirements pursuant to the criteria below:

**SECTION 8.61: APPLICATION**

The applicant shall submit to the Zoning Administrator, at least 25 days prior to the meeting of the Board of Adjustment, seven (7) copies of a letter summarizing the proposed waiver which addresses all elements of this article, and all other information necessary to illustrate compliance with these regulations and for the Board of Adjustment to make its decision, including property identification numbers of the property taken from the latest tax records; Name and address of the owner of record and those of adjoining lands; Name and address of person or firm preparing the map; Scale of Map, north point and date.

In addition to the information noted above, the Board of Adjustment may require the following:

1. An accurate map of the property showing existing features, including contours, structures, large trees, streets, utility easements, rights of way, land use and deed restrictions.
2. A scaled plan, showing proposed structure locations and land use areas; streets, driveways, traffic circulation, parking and loading spaces and pedestrian walks; landscaping plans, including site grading, landscape design and screening.
3. Construction sequence and time schedule for completion of each phase for buildings, parking spaces and landscaped areas of the entire development.
4. A description of energy utilization and conservation measures for each heated structure.
5. Other information pertinent to the issue before the Board of Adjustment.

**SECTION 8.62: PUBLIC NOTICE AND REVIEW PROCEDURE**

Public notice of hearing shall be given as required by Section 8.20(1)(b) of these regulations. The Board of Adjustment shall review this application pursuant to the review procedure established in Section 8.20(2) of these Regulations and pursuant to any rules of procedure it adopts.

**SECTION 8.63: REVIEW CRITERIA**

The Zoning Board of Adjustment may grant waivers to reduce dimensional requirements, if the applicant can satisfy the following standards:

1. The waiver requested is for a use permitted with in the district in question as by right use (as opposed to a conditional use).
2. The waiver requested is in conformance with the town plan and the goals set forth in Section 4302 of the Act.
3. The waiver requested is designed to conform to the character of the land use area in which it lies as defined in the Plan and further designed to reasonably limit impact or the potential for impact upon ones neighbors.
4. The design used incorporates design techniques (restricted height, lack of windows) screening (fencing or plantings) or other remedies to reasonably limit impact or the potential for impact upon ones neighbors.
5. The waiver requested accommodates structures providing for disability accessibility, fire safety and other requirements of land or energy conservation or renewable energy structures.

**SECTION 8.64: DECISION**

The Board of Adjustment shall make its decision on the request for waiver by applying the facts presented in the application and at hearing to the criteria, listed above, and incorporating all into its decision. Upon the close of the hearing, the Board of Adjustment shall issue its decision pursuant to the procedure outlined in subsection 3 of Section 8.20 of these regulations.

**SECTION 8.65: CONDITIONS**

In approving a project the Board of Adjustment shall act to ensure, and may impose conditions requiring that the waiver, if authorized, will represent the minimum waiver that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan. The nature of any waiver and any conditions attached to it shall be entered on the face of the zoning permit, incorporated therein and shall be enforceable in the same manner as all other applicable requirements of these regulations.

**SECTION 8.70: SITE PLAN AND OTHER APPLICATIONS**

**SECTION 8.71: GENERAL CONDITIONS**

Site Plan approval by the Planning Commission shall be required only for proposed commercial uses not subject to subdivision or conditional use review. Unlike conditional use approval, Site Plan Approval assumes that the use proposed is appropriate for the district in which it is located. As such, it focuses solely on proper development within the site, not its compatibility or lack thereof with the surrounding area.

Any other applications or uses that require approval of the Board of Adjustment, but are not specifically listed shall be reviewed under the procedure for site plan review.

**SECTION 8.72: APPLICATION FOR SITE PLAN OR OTHER APPROVAL**

The owner shall submit seven (7) sets of site plan maps and supporting data to the Planning Commission (Site Plan) or Board of Adjustment (Other), which shall include the following information, presented in drawn form and accompanied by written text:

1. Property identification numbers of the property taken from the latest tax records; Name and address of the owner of record and the owners of adjoining lands; Name and address of person or firm preparing the map; Scale of Map, north point, and date.
2. An accurate map of the property showing existing features, including contours, structures, large trees, streets, utility easements, rights-of-way, land use, and deed restrictions.
3. Site plan, showing proposed structure locations and land use areas, streets, driveways, traffic circulation, parking and loading spaces, and pedestrian walks; landscaping plans, including site grading, landscape design, and screening.
4. Construction sequences and time schedules for completion of each phase of buildings, parking spaces, and landscaped areas of the entire development.
5. A description of energy utilization and conservation measures for each heated structure.

**SECTION 8.73: PUBLIC NOTICE AND REVIEW PROCEDURE**

Public notice of hearings shall be given as specified in Section 8.20(1)(b) of these regulations. The Planning Commission (Site Plan) or Board of Adjustment (Other) shall review this application pursuant to the review procedure established in Section 8.20(2) of these Regulations and pursuant to any rules of procedure it adopts.

**SECTION 8.74: SITE PLAN REVIEW CRITERIA**

The Planning Commission (Site Plan) or Board of Adjustment (Other) may impose appropriate conditions and safeguards only with respect to the adequacy of traffic access, circulation and parking, landscaping and screening, and protecting the utilization of renewable energy resources.

The Planning Commission or Board of Adjustment shall review the site plan or other plan map and supporting data, taking into consideration the following objectives, before approval with or without stated conditions, or disapproval, is given:

1. Safety of vehicular circulation between the site and the street network.
2. Adequacy of circulations, parking, and loading facilities, with particular attention to safety.
3. Adequacy of landscaping, screening and setbacks in regard to achieving maximum compatibility and protection to adjacent property.
4. Freedom from flooding and ponding.
5. Adequacy of landscaping and screening with regard to the potential shading of the most southerly facing wall and/or roof of adjacent buildings.

**SECTION 8.75: DECISIONS**

Upon the close of the hearing, the Planning Commission or Board of Adjustment shall issue its decision pursuant to the procedure outlined in subsection 3 of Section 8.20 of these regulations. In approving a project with conditions, the Planning Commission or Board of Adjustment may require specific modifications to the design, scale, layout and/or design or configuration of the project.

## **SECTION 8.80: APPEALS FROM THE AMP TO THE ENVIRONMENTAL COURT**

An “interested person” who has participated in a proceeding before the appropriate municipal panel (the Zoning Board of Adjustment or Planning Commission, depending upon the type of application) may appeal a decision rendered in that proceeding to the Environmental Court. Participation in a local regulatory proceeding shall consist of offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding. An appeal from a decision of the appropriate municipal panel shall be taken in such a manner as the Supreme Court may by rule provide for appeals from state agencies governed by 3 V.S.A. Sections 801 - 816.

Notice of the appeal shall be filed by certified mailing, with fees, to the environmental court and by mailing a copy to the municipal clerk or the administrative officer, if so designated, who shall supply a list of interested persons to the appellant within five working days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person, and, if any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.

## ARTICLE 10: DEFINITIONS

Except where specifically defined in these regulations, all words used carry their customary meanings. The Board of Adjustment will clarify doubt as to the precise meaning of any word used in these regulations.

### **ACCESSORY DWELLING UNIT**

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

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

### **ACCESSORY USE OR BUILDING**

A use or building customarily incidental and subordinate to the principal use or building and located on the same lot. Accessory buildings constitute existing buildings as of January 1, 2003 or proposed buildings of less than 1,500 square feet. Proposed buildings larger than 1500 sq. Feet may be deemed accessory buildings, but must be reviewed as conditional uses.

### **ACCEPTED AGRICULTURAL OR SILVICULTURAL PRACTICES**

Agricultural or silvicultural practices as determined by the Secretary of the Agency of Agriculture, Foods and Markets or the Department of Forest Parks and Recreation respectively under Subsections 1021(f) and 1259(f) of Title 10 and section 4810 of Title 6 of the Vermont Statutes Annotated.

### **ADJOINING LAND OWNER**

A person who owns land in fee simple if that land:

Shares a boundary with the tract of land where a proposed or actual development or subdivision is located; or is adjacent to a tract of land where a proposed or actual development or subdivision is located and the two properties are separated only by a river, stream or public highway. See 24 V.S.A. 4464(a)(1)(C).

### **AFFORDABLE HOUSING**

Housing that is owned or rented by its inhabitants, whose gross annual household income does not exceed 80 percent of the county median income, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, for owners (including principal, interest, taxes and insurance) and for renters (including rent, utilities, and condominium association fees) is not more than 30 percent of the household's gross annual income. 24 V.S.A. § 4303(1)(A).



**AGRICULTURAL USE OR FARMING**

Land or structure used for raising livestock, growing agricultural or forest products or nursery stock, storing agricultural equipment, or, as an accessory use, selling agricultural products or nursery stock raised on the property, pursuant to the definition of farming contained in 10 V.S.A. §6001(22).

**ALTERATION**

External structural change, rearrangement, change of location or addition to a building.

**BASEMENT**

Story partially underground. A basement shall be counted as a story only if the vertical distance between the basement ceiling and the average grade level of the adjoining ground is more than six feet.

**BED AND BREAKFAST (B&B)/INN**

A dwelling unit that provides short-term lodging for up to ten paying transient guests. Food service is limited to breakfast served to overnight guests. Bed and breakfast does not include motel/hotel.

**BUILDING**

Structure having a roof supported by columns or walls and intended for the shelter or enclosure of persons, animals or personal property. Includes any carport, porch, terrace, deck or steps covered overhead. Existing buildings for the purposes of these regulations constitute buildings or structures substantially completed prior to January 1, 2003.

**BUILDING AREA**

Total of the areas taken on a horizontal plane at the at the main finished grade level of all roofed buildings. Any solar collection device or related apparatus not roofed is not included all dimensions shall be measured between exterior faces of walls.

**BUILDING FRONT LINE**

Line parallel to the street line transecting that point of the building that is closest to the street line. Where a lot fronts on public waters but not a public road, “mean water line” shall replace “street line” in this definition.

**BUILDING HEIGHT**

Vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat and mansard roofs, and to the average height between eaves and ridge for other types of roofs.

**BUILDING REAR LINE**

Line parallel to the street line transecting that point of the building that is furthest from the street line. Where a lot fronts on public waters but not a public road, “mean water line” shall replace “street line” in this definition.

**BUILDING SIDE LINE**

Line parallel to the nearest side lot line transecting that point of the building that is nearest the side lot line.

**CAMPER**

Any motorized or unmotorized vehicle mounted on wheels and used as sleeping, camping or living quarters. This includes a camper body mounted on a truck, and excludes mobile homes.

**CAMPGROUND**

Any tract or parcel of land occupied by four or more campers, tents, or tent sites for vocational or recreational purposes.

**CLINIC**

A non-residential office building used by members of the medical professions for the diagnosis and outpatient treatment of human or animal ailments.

**CLUB**

Building or use catering exclusively to club members and their guests for recreational, educational or service purposes.

**COMMUNICATIONS ANTENNA**

A device used for transmitting and/or receiving electromagnetic waves, which is attached to a communications tower or other structure.

**COMMUNICATIONS TOWER**

A fixed structure used for the purpose of facilitating communications antenna(s).

**COMMUNITY FACILITY**

Any state or community owned institutions and facilities, public and private schools or other educational institutions certified by the State Department of Education; churches and other places of worship, convents or parish houses; and public and private hospitals.

**CONDITIONAL USE**

Use which may be permitted only by approval of the board of adjustment after public notice and public hearing to determine whether the proposed use will conform to general and specific standards as set forth or referred to in this regulation and pursuant to 24 V.S.A. § 4414(3).

**CONTRACTOR'S YARD**

Lot or buildings used to store a contractor's equipment and materials. Not to include retail sales facility.

**DAY CARE OR FAMILY CHILDCARE HOME OR FACILITY**

A family childcare home or facility means a home or facility where the owner or operator is licensed or registered by the state for childcare. A family childcare home serving not more than six children shall be considered to constitute a permitted single-family residential use of property. A family childcare home serving not more than six fulltime children and four part-time children, as defined in subdivision 33 V.S.A. §4902(3)(A), shall be considered a permitted single-family residential use, but shall be subject to site plan approval. A family childcare facility serving more than 6 fulltime and four part-

time children shall be subject to the portion of Article II of these regulations governing the uses allowed in each district.

**DRIVEWAY**

A private access road for vehicular travel serving up to three residences and related accessory units.

**DWELLING UNIT**

Building or part thereof used as living quarters for one family. The terms “dwelling,” “one-family dwelling,” “two-family dwelling,” or “multiple-family dwelling” shall not include a bed and breakfast, inn, hotel or motel.

**DWELLING, ONE-FAMILY**

Detached building used as living quarters by one family.

**DWELLING, TWO-FAMILY**

Building used as living quarters by two families living independently of each other.

**DWELLING, MULTI-FAMILY**

Building used as living quarters by three or more families living independently of each other.

**FAMILY**

One or more people living, sleeping, cooking and eating on the same premises as a single housekeeping unit.

**FENCE**

Structure or vegetation used primarily for enclosure or screening.

**FINISHED GRADE**

Completed surfaces of ground, lawn, walks, paved areas and roads brought to grade as shown on plans relating thereto.

**FLOOR AREA**

Sum of the gross horizontal area of the floors of a building, excluding basement floor areas. All dimensions shall be measured between exterior faces or walls.

**FRONT YARD SETBACK**

Consists of the depth of the front yard (distance from building front line to street line) plus the distance from the street line to the centerline of the existing roadway. Where a lot fronts on public waters but not a public road, the front yard setback shall consist only of the depth of the front yard (building front line to mean water line).

**GASOLINE OR MOTOR VEHICLE SERVICE STATION**

Any lot or area of land, including the building or buildings thereon, which is used for the sale of any motor vehicle fuel or lubricant, or which has commercial facilities for lubricating, washing, painting, repairing, or servicing motor vehicles.

**GROUP HOME OR RESIDENTIAL CARE HOME**

A residential care or group home operated under state licensing or registration, serving not more than 8 persons, who have a handicap or disability as defined in 9 V.S.A. §4501, shall be considered by right to constitute a permitted single-family residential use of property, except that no such home shall be so permitted if it is located within 1,000 feet of another existing or permitted such home.

## **HOME OCCUPATION**

Accessory use conducted within a minor portion of a dwelling by the residents thereof, which is clearly secondary to the residential uses, is customary in residential areas, and does not have an undue adverse impact on the character of the residential area in which it is located. See Section 3.12(A).

## **HOME-BASED BUSINESS**

A light industrial or non-retail service use conducted within a portion of a dwelling by a resident thereof, or in an existing separate garage or outbuilding, or within one building or other structure to be constructed, provided the building or other structure to be constructed is smaller than square footage of the home used for residential purposes by the owner. Home-based businesses may employ up to four (4) non-resident fulltime equivalent employees. A home-based business shall be a conditional use and shall be subject to site plan review. The outdoor storage of supplies, inventory or equipment is allowed. Legitimate uses may conduct a small amount of retail trade, provided the retail trade is clearly subordinate to the allowed use. See Section 3.12(B)

## **IMPERVIOUS AREA**

Any structure or surface constructed on the land that water cannot penetrate, including but not limited to, buildings, paved and gravel driveways and parking areas, walkways, porches and other structures.

## **INTERESTED PERSON**

A person owning or occupying real property in the immediate neighborhood of a parcel of land 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. Please see 24 V.S.A., §4465 for a more complete definition.

## **JUNKYARD**

Any place of outdoor storage or deposit used for the collecting, storage or sale of waste paper, rags, scrap material or discarded material; or for the collecting, wrecking, dismantling, storage, salvaging and sale of machinery parts or vehicles not in running condition or the outdoor storage of (four) or more unregistered vehicles not in running condition that are within 300 feet of the lands of others, public or private or within view of a public road.

## **KENNEL**

Any lot or premise on which two or more dogs, at least four months of age, are kept for sale or commercial breeding or boarding purposes.

## **LAND DEVELOPMENT**

The division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining, excavation or landfill, and any change in the use of any building or other structure or land, or extension of use of land.

## **LOADING SPACE**

Off-street space, which is at least twelve feet wide, forty feet long, and fourteen feet high, not including access driveway, and having direct access to a street or alley, used for the temporary location of one licensed motor vehicle.

**LOT**

For the purposes of land development, land and premises, with or without buildings, having not less than the minimum area, width and depth required for a lot in the district in which such land is situated, and having frontage on a public road or public waters, or other means of access as may be required elsewhere in these bylaws. This definition includes an existing small lot, per section 501, which may not meet minimum area, width or depth requirements.

**LOT AREA**

Total area within the property lines excluding any part thereof lying within the boundaries of an existing or proposed street.

**LOT, CORNER**

Lot that has an interior angle of less than 135 degrees at the intersection of two streets.

**LOT COVERAGE**

That percentage of the lot area covered by the building area and any other impervious surfaces.

**LOT DEPTH**

Mean horizontal distance from the street line to the rear lot line measured at right angles to the building front line. Where a lot fronts on public waters but not a public road, “mean water line” shall replace “street line” in this definition.

**LOT FRONTAGE**

Distance measured across the width of the lot at the public road, or, in the absence of a public road, the public waters or on an approved ROW.

**LOT LINE**

Property lines bounding a lot.

**LOT LINE, REAR**

The lot line opposite and most distant from the street line. Where a lot fronts on public waters but not a public road, “mean water line” shall replace “street line” in this definition.

**LOT WIDTH**

Width measured at right angles to its lot depth, at the proposed or existing building front line.

**MOBILE HOME/MODULAR HOME/MANUFACTURED HOME**

A prefabricated dwelling unit which is designed for long term and continuous residential occupancy, is designed to be moved on wheels as a whole or in sections, and is ready for occupancy upon arrival at the site except for incidental unpacking, assembly, connections with utilities, and placement on supports or foundation or any structure for which the manufacturer voluntarily files a certification required by the U.S. Department of Housing and Urban Development and complies with the standards established under Title 42 of the U.S. Code. 10 V.S.A. § 6201(1) (governing mobile homes).

**MOTEL/HOTEL**

A building or group of buildings used for the purpose of providing overnight lodging facilities to the general public for compensation, with or without meals. Does not include bed and breakfast /inn.

**MOTOR VEHICLE SALES FACILITY**

A retail establishment for the display and sale of motor vehicles, including but not limited to cars, trucks, vans, campers, boats, motorcycles, or snowmobiles. Includes an enclosed showroom and a parking lot.

**NON-CONFORMING STRUCTURE**

Structure not conforming to the Zoning Regulations for the district in which it is located, where such structure conformed to all applicable laws, ordinances and regulations prior to enactment of these regulations, including a structure improperly authorized as a result of error of the Zoning Administrator.

**NON-CONFORMING USE**

Use of land or structure that does not comply with all Zoning Regulations for the district in which it is located, where such use conformed to all applicable laws, ordinances and regulations prior to enactment of these regulations, including a parcel improperly authorized as a result of error of the Zoning Administrator.

**PARKING SPACE**

Off-street space used for the temporary location of one licensed motor vehicle, such space being at least nine feet wide and twenty feet long not including access driveway, and having direct access to a street.

**PERMITTED USE**

A use specifically allowed in the district, excluding illegal uses and non-conforming uses.

**PERSONAL SERVICE**

Barber, beauty parlor, shoe repair, Laundromat, dry cleaner, photographic studio and other businesses providing similar personal services, except for medical services.

**PLANNED UNIT DEVELOPMENT (PUD)**

An area of land to be developed as a single entity for a number of dwelling units, and/or commercial and industrial uses, if any, the plan for which does not correspond in lot size, bulk, or type of dwelling, commercial, or industrial use, density, lot coverage, and required open space to the zoning regulations established for the district in which it is proposed to be located. A PUD can encourage new communities, innovation in design and layout, and more efficient use of land. See Section 3.32 and 24 V.S.A. § 4417 for a more detailed description of PUDs.

**PLAT**

A document of record describing a plot of land.

**PROFESSIONAL OFFICE**

Professional office including architect, accountant, dentist, doctor, lawyer, engineer, psychologists or other similar occupation.

**QUARRYING**

Marble, granite, or other stone extraction operations and any land development incidental thereto. Quarrying includes the enlargement of any existing quarrying excavations.

**RECREATION, INDOOR**

Bowling alley, theater, pool hall, arcade, skating rink, gymnasium or other similar places of commercial indoor recreation

**RECREATION, LOW IMPACT OUTDOORS**

Recreation uses, such as parks, camps, picnic grounds, tennis courts, golf courses, golf driving ranges, archery ranges, hiking and riding trails, cross-county skiing facilities, hunting and fishing areas, game farms, fish hatcheries, wildlife sanctuaries, nature preserves, swimming areas, and boat launching sites.

**RESIDENTIAL HEALTHCARE FACILITY**

Any residential facility for the diagnosis or treatment of human ailments, including but not limited to hospital, sanitarium, nursing home, convalescent home, and hospice.

**RESIDENTIAL USE**

One-family dwelling, two-family dwelling or multiple family dwelling.

**RESTAURANT**

A public eating establishment in which the primary function is the preparation and serving of food.

**RETAIL STORE**

Any enclosed business concerned primarily with the sale of produce, products, goods, equipment or commodities; and shall exclude any drive-in facility, free-standing retail stand, gasoline or motor vehicle service station, motor vehicle sales facility, restaurant or junkyard.

**SANITARY LANDFILL**

Land used for the disposal by abandonment, dumping, burial, burning or any other means and for whatever purpose, of garbage, sewage, trash, refuse, junk, discarded machinery, vehicles or parts thereof, or waste material of any kind.

**SERVICE AREA**

A designated space used for waste storage or pickup, utility areas, or for the delivery of goods and services to any building or land use.

**SIGN**

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

**SOLAR COLLECTOR**

A device or structure, combination or part thereof that transforms direct solar energy into thermal, chemical or electrical energy.

**SOLAR ENERGY SYSTEM**

A complete design or assembly consisting of a solar energy collector, an energy storage facility, where used, and components for the distribution of transformed energy, to the extent they cannot be used jointly with conventional energy system. Passive solar energy systems, those that use natural or architectural components to collect and store solar energy without using external mechanical power, are included in this definition.



**STABLE, PRIVATE**

A facility where less than four horses are permanently boarded for private use, not for remuneration, hire, or sale.

**STREET**

Public way for vehicular traffic that affords the principal means of access to abutting properties.

**STREET LINE**

Right-of-way line of a street as dedicated by a deed or other proper instrument of record. Where the width of the street is not established, the street line shall be considered to be twenty-five feet from the centerline of the street.

**STRUCTURE**

Anything constructed or erected, the use of which requires location on the ground, or attachment to something located on the ground, except a wall or fence on an operating farm.

**VARIANCE**

A departure from the zoning bylaws, which is granted or denied by the board of adjustment. The conditions specified in 24 V.S.A. § 4469 must exist in order for a variance to be granted.

**VETERINARY CLINIC/ANIMAL HOSPITAL**

A building or premises for the medical or surgical treatment of domestic animals.

**WAIVER**

A reduction in dimensional requirements of zoning by the appropriate municipal panel based on specific criteria. See Section 8.60-8.65 and 24 V.S.A. 4414(8).

**WAREHOUSE/STORAGE FACILITY**

A structure or part thereof for storing goods wares and merchandise. A warehouse may include a wholesale establishment, discount house, bulk storage and bulk sales outlet.

**WIND ENERGY CONVERSION SYSTEM**

A device that converts wind energy to mechanical or electrical energy.

**YARD**

Space on a lot not occupied with a building or structure.

**YARD, FRONT**

Yard between the street line and the building front line.

**YARD, SIDE**

Yard between a side lot line and a building sideline.

