Montgomery Zoning Regulations

Draft for Planning Commission Public Hearing

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Article 1: Authority and Purpose

Section 1.1: Enactment

These Zoning Regulations for the Town of Montgomery (Regulations) are enacted in accordance with the provisions 24 V.S.A. Chapter 117, the Vermont Municipal and Regional Planning and Development Act, ("The Act" herein).

Section 1.2: Purpose

It is the purpose of the Montgomery Zoning Regulations to provide for orderly community growth, to further the purposes established in §4302 of the Act, and to implement the Town Plan.

Section 1.3: Applicability

No land development, as defined in 24 V.S.A. Chapter 117, §4303(10) of the Act, including the division of a lot into two or more lots; new construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure (see Section 4.1(A)(1)(a)), or of any mining, earth resource extraction, and change in the use of any building or other structure, or land or extension of use of land shall commence except in compliance with these Regulations.

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Section 1.4: Severability

If any portion of these Regulations are held unconstitutional or invalid by a court of competent jurisdiction, the unaffected portions shall remain in force, and for this purpose the provisions of these Regulations are severable.

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Section 1.5: Interpretation

These Regulations shall not repeal, abrogate or impair any other applicable land use controls (including statutes, regulations, rules, ordinances, permits, easements, deed restrictions, covenants or similar devices). However, in their interpretation and application, the provisions of these Regulations shall be held to be minimum requirements which shall take precedence over any concurrent and less restrictive control. It is also hereby stated that in any conflict or dispute involving these Regulations, that the intent shall be considered in resolving any ambiguity.

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Section 1.6: Amendments

These Regulations may be amended according to the requirements and procedures established in §§4441and 4442 of the Act. Mandatory requirements enacted by the State will automatically become a part of these Zoning Regulations.

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Section 1.7: Effective Date

The Regulations and any Amendment thereto shall take effect upon adoption.

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Section 1.8: Review of Applications during Adoption

An application filed upon the date of public notice for the Selectboard's first public hearing on this proposed amendment, and for a period of 150 days thereafter, an application must meet the conditions of both present and proposed bylaws, as stated in 24 V.S.A. §4449(d).

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Section 1.9 Computation of Time

When computing a period of time beginning with an event (e.g. submission of a permit application) the day of the event shall not be counted and the final day shall be counted per 24 V.S.A. §4303a. Computation shall be based on calendar days unless otherwise indicated.

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Article 2: Administration and Enforcement

Section 2.1: Administrative Officer, Development Review Board and Montgomery Planning Commission (MPC)

A) Zoning Administrator (ZA). The Zoning Administrator (ZA) shall be nominated by the Montgomery Planning Commission (MPC), and appointed by the Selectboard, for a term of three years. The ZA may serve on any municipal board or hold any town office except the Development Review Board (DRB). The ZA may be removed from office for just cause at any time by the Selectboard, after consultation with the Montgomery Planning Commission.

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1) The ZA is empowered by §4448 of the Act and shall administer and interpret these Regulations literally, and shall not have the power to permit any land development which is not in accordance with these Regulations.
2) The ZA shall maintain a record of all Applications received for zoning permits along with any accompanying documents, and of all permits or other determinations issued.

B) Development Review Board (DRB). The Selectboard shall appoint five members and two alternates, who shall serve for a term of four years. Members may be compensated at the Selectboard's discretion for the performance of their duties pursuant to 24 V.S.A §4461(c).

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The DRB shall have the following powers and duties:

1) Hear and decide appeals of actions made by the ZA, including, without limitation, any appeal alleging an error committed by the ZA;
2) Hear and decide variance applications;
3) Hear and decide conditional use approval applications;
4) Hear and decide Planned Unit Development, (PUD) applications under conditional use review;
5) Hear and decide applications for development in the Special Flood Hazard Area or the River Corridor; and
6) Hear and decide anything else that requires DRB review according to these Regulations.

C) Montgomery Planning Commission. Shall be comprised of five members who also may serve as members of the DRB. Members shall be elected at town meetings by ballot for a term as decided by the voters. Elections shall occur only as terms are completed, or as vacancies occur. Vacancies shall be filled by appointment of the Selectboard only until the next meeting of the town, at which time the voters shall elect a member to fill the unexpired term.

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The duties shall be to keep the Town Plan and Zoning Regulations current with changes in the Act or requested by the Selectboard, and responsive to the needs of

the town by amending and updating when necessary in accordance with §§4441 and 4442 of the Act, and may perform such other duties as set forth in §4325 of the Act.

Section 2.2: Zoning Permit Issuance and Posting Requirements.

The ZA shall act upon complete zoning permit applications within thirty days from the date of receipt by approving, referring the application to the DRB, or denying the application. If the application is denied or referred to the DRB, the ZA shall so notify the applicant in writing, stating the reasons for the denial or referral. In issuing zoning permits, if the ZA fails to act with regard to an application for a permit within thirty days, whether by issuing a decision or by making a referral to the DRB, a permit shall be deemed issued on the thirty first day.

A) Statement of Appeal. In accordance with §4449(b) of the Act, a zoning permit shall include a statement of the time within which appeals to the DRB may be taken. No permit shall become effective until the time for appeal has passed.

B) Posting/Notice.

a) Upon issuance of a zoning permit, the applicant must post a permit notice on a form prescribed by the municipality within view from the public right-of-way most nearly adjacent to the subject property for a fifteen (15) day appeal period during which time appeals may be accepted.

b) The ZA, within three days of the date of issuance, shall deliver a copy of the zoning permit to the Listers and shall post a copy of the permit in the municipal offices.

C) Expiration. If the application is approved, all activities authorized by the zoning permit shall be commenced within one year from the date of issuance, otherwise the permit becomes null and void.

Section 2.3: Fees

A) The fees for applications required by these Regulations shall be as established in a rate fee schedule adopted by the Selectboard. Upon request of the Selectboard the MPC shall propose a schedule.

B) Every application for a zoning permit and/or DRB approval must be accompanied by the required fee, unless waived by the Selectboard.

Section 2.4: Public Hearings

A) Public Notice.

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1) In accordance with the §4464 of the Act, the DRB is required to hold a warned public hearing for conditional use review, PUD under conditional use review, ZA appeals and variances. Any public notice for a warned public hearing shall be given not less than 15 days prior to the date of the public hearing by all of the following:
   a) Publication of the date, time, place and purpose of the hearing in a newspaper of general circulation in the municipality;
   b) Posting of the same information in three (3) or more public places within the municipality, in addition to the posting of a notice within view from the public right-of-way nearest to the property for which the application is being made;
   c) Written notification, by first class mail, to the applicant and to owners of all properties adjoining the property subject to development, including those separated by a right of way, which includes, 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. This notice shall be sent by the ZA, while all associate costs shall be borne by the applicant through any application fees, as established by the Selectboard. The ZA shall by personal attestation certify to the mailing. Upon issuance of the permit approved by operation law, the ZA shall post the permit for a 15-day appeal period, if applicable.

2) No defect in the form or substance of any required public notice under this section shall invalidate the action of the DRB where reasonable efforts have been made to provide adequate posting and notice. However, the action shall be invalid when the defective posting or notice was materially misleading in content. If an action is ruled to be invalid by the DRB, the DRB shall provide new posting and notice, hold a new hearing, and take a new action.

B) Meeting and Hearing Procedures.

1) In accordance with §4464 of the Act, the DRB shall hold all public hearings within 120 days of the application being deemed complete by the Zoning Administrator.

2) In accordance with §4461 of the Act, all meetings and hearings of the DRB, except for deliberative sessions, shall be open to the public.

3) For the conduct of any meeting or hearing, and the taking of any action, a quorum shall be not less than the majority of members of the DRB.

4) In any public hearing there shall be an opportunity for each person wishing to achieve status as an interested person to demonstrate that the criteria set forth under §4465 of the Act are met. The DRB shall keep a record of the name, address, and participation of each of these persons.

5) In accordance with §§4464(b), 4468 of the Act; the DRB may recess a hearing on any application or appeal pending the submission of additional information,

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provided that the next hearing date, the time, and place is announced at the hearing or the hearing is re-warned according to Section 2.4(A).

C) Pre-Hearing Conference. The DRB is hereby authorized to conduct a public pre-hearing conference with the applicant or appellant under such rules as the Board shall establish in its Bylaws and Rules of Procedure. The purpose of such pre-hearing conferences shall be to clarify the issues in controversy, to identify documents and information to be submitted as evidence at the hearing, and to circumvent unnecessary delays that would interfere with an expeditious public hearing process.

D) Hearings on the Record.

1) In accordance with §§4420, 4471(b) of the Act; the Town of Montgomery has adopted the Municipal Administrative Procedures Act (MAPA) 24 V.S.A., Chapter 36. All applications and appeals heard by the DRB shall be on record. Accordingly:
   a) Such hearings shall be considered "contested hearings" as defined under the MAPA, to be conducted in accordance with the requirements of the MAPA.
   b) The DRB shall comply with the provisions of 12 V.S.A. §61(a) regarding conflicts of interest.
   c) Public notice of hearings shall be provided in accordance with 24 V.S.A. §1204.
   d) The chair or vice chair shall preside over the hearing. If neither is available, the DRB shall elect a temporary chair. The presiding officer shall cause the proceeding to be recorded.
   e) All testimony of parties and witnesses shall be made under oath or affirmation.
   f) The rules of evidence as applied in civil cases in superior court shall be followed. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible to proof under those rules, evidence not admissible under those rules may be admitted if it is of a type commonly relied upon by reasonable prudent people in the conduct of their affairs.
   g) When a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form, to expedite the presentation of direct testimony of a witness, provided the witness is available for direct testimony and cross-examination at the hearing on this evidence.
   h) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original.
   h) Requirements regarding ex parte communications shall be followed. No member of the DRB shall communicate on any issue in the proceeding, directly or indirectly, with any party, party's representative, party's counsel, or any interested person in the outcome of the proceeding while the proceeding

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is pending without notice and opportunity for all parties to participate. All ex parte communications received by DRB members, all written responses to such communications and a memorandum stating the substance of all oral communications received, all responses made, and the identity of each person making the ex parte communication shall be entered into the record.

h) Members of the DRB shall not participate in the decision unless they have heard all the testimony and reviewed all the evidence submitted in the hearing. This may include listening to a recording of the hearing, or reading the transcripts of testimony they have missed and reviewing all exhibits and other evidence prior to deliberation.

i) All final decisions shall be in writing and shall separately state findings of fact and conclusions of law in accordance with Section 2.5 and 24 V.S.A. 4464(b)(1).

j) Transcripts of proceedings shall be made upon the request and payment of reasonable costs of transcription by any party.

Section 2.5: DRB Decisions

Any action or decision of the DRB shall be taken by the concurrence of a majority of the members of the DRB. In accordance with §4464(b)(1) of the Act, the DRB shall issue a decision within 45 days after the adjournment of the hearing. Failure to issue a decision within the 45-day period shall result in deemed approval and shall be effective on the 46th day upon issuance.

Section 2.6: Recording Requirements

A) Within thirty (30) days after the issuance of a municipal land use permit or notice of violation, the Zoning Administrator shall deliver the original or a legible copy to the Town Clerk for recording in the municipal land records as provided in 24 V.S.A. §1154(a). The applicant may be charged the cost of the recording fees as required by law. A copy of each land use permit shall be filed in the Town office in a location where all municipal land use permits shall be kept.

Section 2.7: Appeals

A) Appealing Decisions/Actions of the Administrative Officer. Any interested person as defined in Article 9 herein and §4465 of the Act, may appeal any decision or action taken by the ZA by filing a written notice of appeal with the DRB within fifteen days of such decision or act. Within sixty days of receiving a notice of appeal, the Board shall hold a public hearing in accordance with Section 2.4.

1) **Notice of Appeal**. A notice of appeal shall be made on the Town of Montgomery's Application to the DRB and include the following information: a brief description of the property with respect to which the appeal is taken, a reference to

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the regulatory provisions applicable to that appeal, the relief requested by the appellant, and the alleged grounds why the requested relief is believed proper under the circumstances.

B) Appealing Decisions of the DRB. In accordance with §4471 of the Act, an interested person who has participated in a regulatory proceeding of the DRB may appeal a decision rendered by the DRB, within 30 days of such decision, by filing a notice of appeal to the Vermont Environmental Division of the Superior Court. Appeals to Environmental Division shall also meet the following requirements:

1) "Participation" in a DRB proceeding shall consist of offering, through oral or written testimony, evidence of a statement of concern related to the subject of this proceeding.
2) For all proceedings of the DRB that are on the record, as identified under Section 2.4(D), appeals to the Environmental Division shall be taken on the record in accordance with the Rules of Civil Procedure.
3) The notice of appeal shall be filed by certified mailing, with fees, to the Environmental Division and by mailing a copy to the Municipal Clerk, or the ZA if so designated, who shall supply a list of interested persons (including the applicant if not the appellant) 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. If any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.

Section 2.8: Penalties

A) Violations of these Regulations shall be enforced as prescribed in §§4451, 4452 and 4470(b) of the Act. Any person who violates these Regulations shall be fined not more than two hundred dollars for each offense. Each day that a violation is continued shall constitute a separate offense. The alleged offender shall be given at least seven days' notice by certified mail that a violation exists and opportunity to cure it.

B) An action, injunction, or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of a zoning permit or DRB approval may be instituted within 15 years from the date the alleged violation first occurred and not thereafter. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.

C) Any structure of any type started without a permit may be removed at the owners' or builders' expense upon order of the Environmental Division of the Superior Court.

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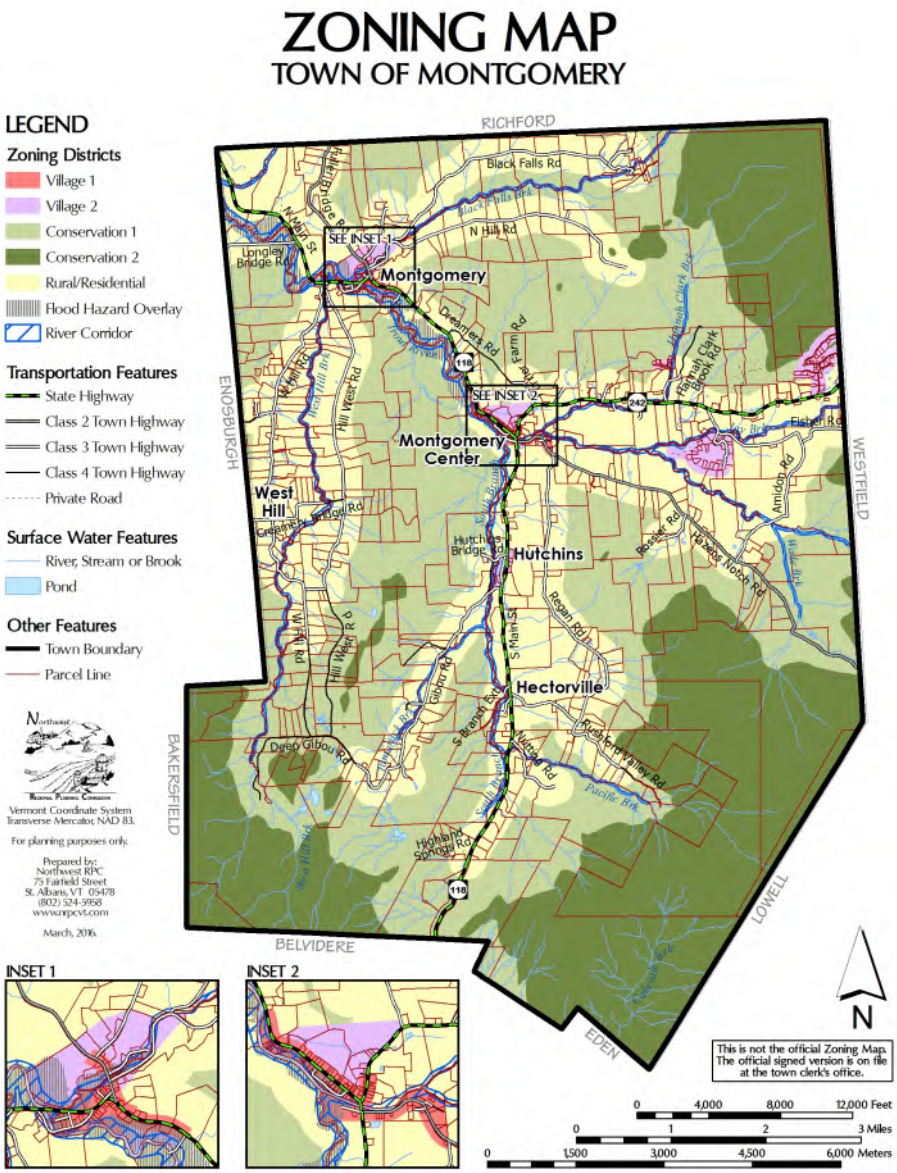

Map 3(A)

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Article 3: Establishment of Zoning Districts and Official Zoning Map

Section 3.1: Establishment of Zoning Districts

For the purposes of these Regulations the Town is divided into the following Zoning Districts:

- Village I
- Village II
- Rural Residential
- Conservation I
- Conservation II
- Hazard Area Overlay District
- River Corridor Area

A) Zoning District Purpose Statements.

1) Village Districts. The Village Districts encompass the historic village areas of each of Montgomery's Village Centers – Montgomery Village and Montgomery Center. The Districts are intended to further growth and economic development in keeping with Montgomery's traditional village character. Consistent with the historic development pattern, development is allowed at higher densities and intensities in the village areas. Historic buildings are a significant contributor to village character and are encouraged to be preserved and adapted for re-use. New development should be consistent in siting and scale with the surrounding historic structures in the villages. Enhancing the pedestrian friendly streetscape is a high priority in the village areas.

Figure 3(A)

Traditional Village Character in Montgomery

- Small lots
- Shallow setbacks
- Mixed residential, commercial and public uses
- Historic architecture
- Pedestrian accessibility
- Slow traffic

The ***Village 1 District*** is used for mixed use development consistent with village character along the main corridors, including single and multi-household residential, commercial and public uses. The District provides access to municipal and community services, including water supply. Enhancing the pedestrian friendly streetscape is a high priority in the Village 1 District.

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The ***Village II District*** encompasses areas of Montgomery Village and Montgomery Center outside the mixed use core. The density of development remains consistent with the Village I District; however, uses transition to primarily residential. Enhancing pedestrian accessibility is also important in the Village II District.

Metes and Bounds Description of Village 1 District
at Montgomery Center and Montgomery Village

Montgomery *Center*: Beginning at a point 200 feet south of the junction of Hazen's Notch Road (Town Road 58), and South Main Street, (Vt. Rte. 118), proceed west to the centerline of the South Branch of the Trout River, then follow downstream of said Branch to the confluence with the Trout River, then follow the centerline of said River downstream to the nearest point West of the Recreation Center right-of-way, then turn East across North Main Street (Vt. Rte. 118), to the centerline of said right-of-way, then continue East along the centerline of said right-of-way for a distance of 200 feet, then turn southerly and follow parallel with and 200 feet from the centerline of North Main Street to a point 200 feet west of Mountain Road (Rte. 242), then turn north and follow parallel with and 200 feet from the centerline of Mountain Road to the centerline of Hart Road (Town Road 38), then turn easterly and follow the centerline of Hart Road to Mountain Road then continue in the same direction across Mountain Road to a point 200 feet beyond the centerline of said Road, then turn southerly and follow parallel with and 200 feet from the centerline of Mountain Road to the centerline of the Trout River, then turn easterly and follow the centerline of said River to a point due North of the junction of Hazen's Notch Road and Regan Road (Town Road 28), then turn south and cross Hazen's Notch Road to the centerline of Regan Road, then follow the centerline of Regan Road to a point 200 feet southerly of the centerline of Hazen's Notch Road, then turn westerly and follow parallel with and 200 feet from the centerline of Hazen's Notch Road to the point of beginning on South Main Street

Montgomery Village: Beginning at a point on Vincent's Bridge Road 200 feet south of the center line of North Main Street, turn westerly and follow parallel and 200 feet of North Main to the intersection of the Ryea/Carpenter property line , proceed southwesterly along said property line to the centerline of the Trout River, then tum westerly and follow the centerline of said River to the confluence with Black Falls Brook, then turn east and follow the centerline of said Brook upstream to a point 200 feet southwest of Fuller Bridge Rd., (Town Rd. 1), then turn northerly and follow 200 feet from and parallel with the centerline of said Road to a point 200 feet beyond the junction of Fuller Bridge Road, and Green Mountain Rd., (Town Rd. 5), then turn northeasterly across Fuller Bridge Road to a point 200 feet beyond the centerline of said Road, then turn southeasterly and follow 200 feet from and parallel with the centerline of said road to a point 200 feet northeast of the intersection of North main street and fuller bridge road then follow 200 feet from and parallel the center line of north main street and the point of beginning.

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Metes and Bounds Description of Village II District
at Montgomery Center and Montgomery Village

Montgomery Center: Beginning at a point on the Recreation Center and Center Cemetery property line which is 200 feet northeasterly of the centerline of North Main Street (Vt. Rte. 118), proceed northeasterly along said property line for a distance of approximately 420 feet, then turn on a bearing of North 82 degrees East for a distance of 2,400 feet to the centerline of Purrier Farm Road (Town Road 14), then turn southeasterly and follow the centerline of said Road to the centerline of Mountain Road (Vt. Rte. 242), then turn southwesterly and follow the centerline of said Road to a point that is due east of the centerline of Hart Road (Town Road 38), then turn westerly and follow the V-1 district boundary line to the point of beginning.

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Montgomery Village:
a. Beginning at a point in the centerline of North Main Street (Vt. Rte. 118), at the junction with Vincent Bridge Road (Town Road 41), proceed southwesterly along the centerline of said Road to the centerline of the Trout River, then turn westerly and follow the centerline of said River to the V-1 District boundary line, then turn northeasterly and follow said property line to the centerline of North Main Street, then turn easterly and follow the centerline of said street to the point of beginning.
b. Beginning at a point in the centerline of the Trout River at the confluence with Black Falls Brook, proceed northwesterly downstream along the centerline of said River to the Jewett property line, then turn northeasterly and follow along said property line to Fuller Bridge Road (Town Road 1), then continue northeasterly across said road and follow along the Jewett property line for 400 feet to the Crane property line, then continue in the same direction on a bearing of approximately North 52 degrees East across the Crane property and Bosley property to Bosley's northern property line, then turn easterly along Bosley's property line to Green Mountain Road (Town Road 5), then diagonally across said road to the MacLeod-Murphy property line, then turn southeasterly and follow said property line to the Black Falls Brook, continue in the same direction across said Brook to the centerline of North Hill Road (Town Road 7), then turn southwesterly and follow the centerline of said Road to the V-1 District boundary line, then turn northwesterly and follow said boundary line around to the point of beginning.

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2) **Rural Residential District**. The Rural Residential District provides for rural residential and business land uses at lower densities than the village centers to preserve the traditional working landscape and to maintain Montgomery's rural character. Rural residential, small-scale commercial and light industrial land uses are balanced with the natural landscape of forests, rivers and streams, meadowlands and agricultural fields. Home-based occupations and industries are common throughout the Rural Residential District. The Rural Residential District encompasses the areas outside of the village centers along Class 3 town roads and state highways (excluding those portions of Rt. 58 east of Amidon Road), and including those lands comprising smaller forest blocks in town where natural resource concerns are not a primary concern (as in the Conservation I & II Districts described below).

Figure 3(B)

Rural Character in Montgomery

- The natural landscape of forests, rivers and streams, meadowlands and agricultural fields dominate the landscape.
- Development is sited to limit the fragmentation of forest blocks and agricultural fields.
- Development is sited to fit in with the existing topography and landscape.
- Farms and agricultural support structures (i.e. barns, silos) are prevalent.
- Resource based and agriculturally related industries may exist but are sited with adequate landscaping and buffering (i.e. sawmills, slaughter houses, earth resource extraction).
- Home based businesses are common.

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3) **Conservation I District**. The purpose of the Conservation I District is to preserve the ecological, cultural and economic value and function of forest blocks and the natural resources they encompass as detailed in the current Montgomery Town Plan. These include: To maintain healthy, viable populations of native wildlife; To support active forest management as a means of supporting the local wood products industry; To enhance outdoor recreation valued by residents and visitors alike; To provide for the protection of source waters which feed rivers and streams, including important aquatic habitats; And to maintain the aesthetics associated with the agricultural and forested landscape. Those lands in Conservation I are as shown on the official town zoning map.

4) **Conservation II District**. The Conservation II District consists of forest blocks at 1,600 feet in elevation and above. Placing restrictions on development is essential due to the sensitive resources located there, including wildlife habitat, steep slopes, shallow soils, headwaters, and the potential for development to affect erosion or flood hazards downstream. Protection of these areas also serves the ecological, cultural and economic benefits associated with the rural character as described above. Those lands in Conservation II are as shown on the official town zoning map.

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5) Flood Hazard Area Overlay District. The purpose of this overlay district is to prevent increases in flooding caused by development in flood hazard areas, to minimize future public and private losses due to flood, and to promote the public health, safety, and general welfare. Designation of this area is also required for continued participation in the National Flood Insurance Program (NFIP) and is regulated under Article 8 of these Regulations. Included are all areas in Montgomery identified as areas of Special Flood Hazard on the National Flood Insurance maps located at the Town Office building.

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6) **River Corridor Area Overlay.** The River Corridor consists of a floodplain corridor, including the stream and land adjacent to the stream, the dimensions of which are determined using physical relations between the channel width and the meander belt width. It identifies an area where stream processes may occur that enable the stream to re-establish and maintain a stable slope and dimensions over time. A stable stream slope occurs when a channel reaches a certain length. This length is accommodated by a corridor of floodplain area described as the meander belt. The River Corridor is a calculated belt width-based corridor where erosion is minimized when stream equilibrium conditions are achieved. River Corridor area boundaries attempt to capture lands most vulnerable to fluvial erosion in the near term and indicate the type, magnitude, and frequency of fluvial adjustments anticipated during flood events. The area can be mapped, and is based on quality-assured fluvial geomorphic data (i.e., data that describe the physical form and process of a riverine system). The River Corridor is determined on the most current River Corridor Protection Area Map published by the Vermont Agency of Natural Resources (ANR) which are hereby adopted by reference and declared to be part of these Regulations. A modification of the River Corridor Map may be made upon application of the Selectboard to the Department of Environmental Conservation (DEC) pursuant to the DEC publication Flood Hazard Area And River Corridor Protection Procedure, Section 5(c)(2). Application may be made to account for geomorphic and other physical characteristics found in the field but not accounted for in the River Corridor Map.

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Section 3.2: Official Zoning Map

The Official Zoning Map, signed by the Selectboard and attested to by the Town Clerk, located in the Town Clerk's Office, shall be the final authority as to the Zoning status of any lands or waters in the Town regardless of any copies made. Where a conflict exists between the description of Zoning Districts found in Section 3.1 and the Official Map, the Official Map shall be the final authority. The Official Zoning Map incorporates by reference the most recent Flood Insurance Rate Maps published by the Federal Emergency Management Agency and the current River Corridor map, published by the Vermont Department of Conservation, these maps are declared to be a part of these Regulations. A copy of the Zoning Map is included at the beginning of Article 3.

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Section 3.3: Interpretation of Zoning District Boundaries

A) Any interpretation of Zoning District boundaries by the ZA may be appealed to the DRB for a declaratory ruling.

B) Where a District boundary line divides a lot of record at the time such line is adopted, these Regulations and uses for the less restricted part of such lot shall extend not more than fifty feet into the more restricted part, provided the lot has frontage on a street in the less restricted District.

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C) Existing lots located in two districts may be subdivided according to the requirements of the least restrictive district of the new lot. Development within the new lot is regulated according to the district where development is to occur.

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D) District boundaries shown within the lines of roads and streams are deemed to follow the center lines. Where boundaries follow lot lines, such lot lines shall be deemed to be the boundaries. Where property owner names are used, the description “now or formerly” shall be understood.

Article 4: Zoning Permits, Zoning Districts and Allowed Land Development

Section 4.1: Zoning Permits

A) Applicability. No land development, as defined in these Regulations and §4303(10) of the Act, may be commenced until a valid zoning permit is issued by the ZA that specifically authorizes the action, unless exempted below. Land development includes but is not limited to:

- Construction, assembly or placement of a new structure.
- The division of a lot into two or more lots.
- Any repair, improvement, reconstruction or structural alteration of a structure.
- Initiating new use or changing or expanding the use of land or structures thereon (See Table 4(A)).
- Any excavation, grading and filling of land (see Section 6.2)
- Fences (See Section 7.14).
- Ponds of greater than 6,000 cubic feet (See Section 7.15).
- Signs (See Section 7.16).
- Earth resource extraction (new operations or expansions) (See Section 7.3).

1) Town Exemptions. The following land development activities specifically do not require a zoning permit unless the Special Flood Hazard Area (SFHA) or River Corridor review is required (See Article 8).

a) Any repair, improvement, reconstruction or structural alternation of a structure, the cost of which is under 50 percent of assessed value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored to the previous footprint, before the damage occurred;

b) Landscaping, including minor grading and excavation and ponds of less than 6000 cubic feet not located in the setback area for the district in which it is located.

c) Certain signs (See Section 7.16);

d) Boundary lot adjustments provided each lot remains conforming or does not increase an existing degree of non-conformity;

e) Yard sales provided they do not last longer than three (3) consecutive days.

f) Road, sidewalk, bridge, infrastructure, and utility improvements and maintenance, and related appurtenances within existing public rights-of-way.

g) Minor grading and excavation incidental to an approved use, including:

- Road and driveway maintenance (e.g., including culvert replacement and resurfacing);
- Cemetery maintenance; and
- Lawn and yard maintenance (e.g., for gardening or landscaping).

h) Sheds of 144 square feet or less which are not located in the setback area for the district.

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i) Accessory on-farm businesses (defined in Article 9) which consist solely of a retail operation and are not located in the setback area for the district.

j) The rental of a furnished house, condominium, or other dwelling room or self-contained dwelling unit, or a portion thereof, to the transient, traveling, or vacationing public for a period of 14 or fewer days per calendar year, provided the use does not fall within lodging establishment (see exclusion from definition of short-term rental in Article 9).

k) The rental of two or fewer individual bedrooms or other portions of dwelling units to the transient, traveling, or vacationing public for a period of fewer than 30 consecutive days and for no more than 14 calendar days, provided the rental is within a resident-occupied dwelling unit and provided the use does not fall within lodging establishment (see exclusion from definition of short-term rental in Article 9).

2) Statutory Exemptions. In accordance with §4412 and §4413 of the Act, no municipal zoning permit or approval under these Regulations shall be required for:

a) Required Agricultural Practices (RAPs) and Best Management Practices (BMPs) as adopted in rules by the Agency of Agriculture (see www.vermontagriculture.com), including farm structures, as defined by the Secretary of Agriculture, Food and Markets in accordance with 24 V.S.A. §4413. However, written notification, including a plot plan of the farm structure showing setback distances from road rights-of-way, property lines, and surface waters shall be made to the ZA prior to any construction as required under the RAPs. That notification shall be recorded in the land records. Agricultural practices that are governed by the RAPs include, but are not limited to the following:
   i) The confinement, feeding, fencing, and watering of livestock.
   ii) The handling of livestock wastes and by-products.
   iii) The collection of maple sap and production of maple syrup.
   iv) The preparation, tilling, fertilization, planting, protection, irrigation and harvesting of crops.
   v) The ditching and subsurface drainage of farm fields and the construction of farm ponds.
   vi) The stabilization of farm field stream banks constructed in accordance with the United States Department of Agriculture Natural Resources Conservation Service standards and specifications or other standards approved by the Commissioner.

b) Acceptable Management Practices (AMPs) for silviculture (forestry) as defined by the Commissioner of Forests, Parks, and Recreation, pursuant 24 V.S.A. §4413.

c) Public utility power generating plants and transmission facilities that are regulated by the Vermont Public Utility Commission under 30 V.S.A. §248, including net-metered wind generation facilities and solar panels.

d) Hunting, fishing or trapping on public or private land as specified by the state under 24 V.S.A. §2295. This excludes facilities that may support such

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activities, such as firing ranges, rod and gun clubs, and fish and game clubs, which are subject to these Regulations.

e) Uses considered by the Act to be a permitted single-family residential use of property (see Sections 7.4 and 7.5).

f) A home occupation (see Section 7.6).

B) Zoning Permit Applications. Montgomery Zoning Permit Application forms may be obtained from the Town Office or Town Website and submitted to the ZA. Applicants shall provide all information requested on the form, including a plot plan showing the location of existing and proposed development, the application fee, and such other information as the ZA may reasonably require to determine compliance with these Regulations. Applicants for planned unit developments require a plat instead of a plot plan (see Section 5.2). An application shall not be deemed received until all applicable information is submitted to the ZA.

C) Zoning Permit Public Notice and Issuance Requirements. Public notice and issuance requirements must be met before a zoning permit may be issued according to Section 2.2.

D) Zoning Permit Application Review and Referral. Before issuing a zoning permit, the ZA shall confirm that the proposal is in conformance with these Regulations, and may request any further information from the applicant which may be necessary to do so. For applications that require approval from the DRB, the ZA shall refer the application to the DRB for review and action. No zoning permit shall be issued by the ZA for any use or structure which requires the approval of the DRB until such approval has been obtained.

1) Permit applications within the Flood Hazard Area, (FHA) must be referred to the ANR for review and no zoning permit shall be issued until a response has been received from ANR, or the expiration of 30 days following the submission of the application to ANR.

E) Temporary Permits. Temporary permits may be issued by the ZA for a period not exceeding one (1) year for non-conforming uses incidental to construction projects, provided such permits are conditioned upon agreement by the owner to remove the structure or discontinue the use upon expiration of the one (1) year time period. Such permit may be renewed upon application for an additional period not exceeding one year.

Section 4.2: District Land Use and Development

Land uses and development are designated as permitted, conditional, exempt, or prohibited depending on the district they are located in according to Table 4(A) (Pg. 24-25). Conditional uses require conditional use approval from the DRB before the ZA may issue a zoning permit. Alterations or minor changes to an existing conditional use

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approval that are not a "change of use" may be permitted by the ZA as a permitted use under these Regulations.

Village I

Minimum Lot Dimensions:

a. Size: 10,000 square feet
b. frontage: 75 feet
c. front yard 10 feet from edge of right-of-way.
d. side yard 10 feet from lot line
e. rear yard 20 feet from lot line

See Section 4.3 (A)(2) for corner lots

Permitted Uses:

a. accessory dwelling unit (Section 7.1)
b. accessory on-farm business
c. accessory structure
d. accessory use
e. business services, personal and professional
f. camps
g. dwelling, multi-household (3-4 units) (Section 7.12)
h. dwelling, single household
i. dwelling, two household
j. fences (Section 7.14)
k. signs (Section 7.16)

Conditional Uses:

a. adaptive re-use dwelling, multi-household (5-6 units) (Section 7.13)
b. agribusiness
c. care facility
d. fuel service station
e. lodging establishment
f. home business (Section 7.6b)
g. light industry
h. lodging establishment
i. mobile home park (Section 7.8)
j. motor vehicle sales & service
k. planned unit development (Section 5.2)
l. ponds over 6000 cubic feet (Section 7.15)
m. public facilities (Section 7.9)
n. recreation, indoor
o. recreation, outdoor
p. restaurant
q. retail establishment
r. social uses (including clubs & non-profits)
s. veterinary clinic

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Exempt:

a. short-term rental
b. Uses listed in Article 4.1 (A)(1-2)

Prohibited:

a. campground (1-3 campsites) (Section 7.2)
b. campground (4+ campsites) (Section 7.2)
c. data center
d. earth resource extraction (Section 7.3)
e. salvage yard (Section 7.10)
f. hydronic heaters (except as allowed under Section 6.10)
g. All other uses not listed as permitted, conditional or exempt are considered prohibited.

Village II

Minimum Lot Dimensions:

a. size:10,000 square feet
b. frontage: 75 feet
c. front yard 10 feet from edge of right-of-way.
d. side yard 10 feet from lot line
e. rear yard 20 feet from lot line

See Section 4.3 (A)(2) for corner lots

Permitted Uses:

a. accessory dwelling unit (Section 7.1)
b. accessory on-farm business
c. accessory structure
d. accessory use
e. camps
f. dwelling, multi-household (3-4 units) (Section 7.12)
g. dwelling, single household
h. dwelling, two household
i. fences (Section 7.14)
f. signs (Section7.16)

Conditional Uses:

a. adaptive re-use dwelling, multi-unit (5-6 units) (Section 7.13)
b. agribusiness
c. home business (Section 7.6 b)

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<#>family child care home or facility (Section 7.4)¶
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d. business services, personal and professional
e. care facility
f. fuel service station
g. light industry
h. lodging establishment
i. mobile home park (Section 7.8)
j. motor vehicle sales & service
k. planned unit development (Section 5.2)
l. ponds over 6000 cubic feet (Section 7.15)
m. public facilities (Section 7.9)
n. recreation, indoor
o. recreation, outdoor
p. restaurant
q. retail establishment
r. care facility
s. social uses (including clubs & non-profits)
t. veterinary clinic

Exempt:

a. short-term rental
b. Uses listed in Article 4.1 (A)(1-2)

Prohibited:

a. campground (1-3 campsites) (Section 7.2)
b. campground (4+ campsites) (Section 7.2)
c. data center
d. earth resource extraction (Section 7.3)
e. hydronic Heaters (except as allowed under Section 6.13)
f. salvage yard (Section 7.10)
g. All other uses not listed as permitted, conditional or exempt are considered prohibited.

Rural/Residential

Minimum lot dimensions:

a. size: 4 acres
b. frontage: 300 feet
c. depth: 200 feet
d. front yard: 25 feet from edge of right-of-way
e. side yard: 50 feet from lot line
f. rear yard: 50 feet from lot line

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See Section 4.3 (A)(2) for corner lots.

Permitted Uses:

a. accessory dwelling unit (Section 7.1)
b. accessory on-farm business
c. accessory structure
d. accessory use
e. camp
f. campground (1-3 campsites) (Section 7.2)
g. dwelling, single household
h. dwelling, two household
i. fences (Section 7.14)
j. hydronic heaters (Section 6.10)
k. signs (Section 7.16)

Conditional Uses:

a. agribusiness
b. business services, personal and professional
c. campground (4+ campsites) (Section 7.2)
d. care facility
e. dwelling, multi-household (3-4 units) (Section 7.12)
f. earth resource extraction (Section 7.3)
g. home business (Section 7.6b)
h. light industry
i. lodging establishment
j. mobile home park (Section 7.8)
k. motor vehicle sales and service
l. planned unit development (Section 5.2)
m. ponds over 6000 cubic feet (Section 7.15)
n. public facilities (Section 7.9)
o. recreation, indoor
p. recreation outdoor
q. restaurant
r. retail establishment
s. salvage yard (Section 7.10)
t. social uses (including clubs & non-profits)
u. veterinary clinic

Exempt:

a. short-term rental
b. Uses listed in Article 4.1(A)(1-2)

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group home (Section 7.5)¶
group home (Section 7.5)¶
home occupation (Section 7.6 a)¶

Prohibited:

a. adaptive re-use dwelling, multi-household (5-6 units) (Section 7.13)
b. data center
c. fuel service station

All other uses not listed as permitted, conditional or exempt are considered prohibited.

Conservation I (Under 1600 Feet Elevation)

Minimum lot dimensions:

a. size:10 acres
b. frontage: 300 feet
c. depth: 300 feet
d. front yard: 50 feet from edge of right-of-way
e. side yard: 50 feet from lot line
f. rear yard: 50 feet from lot line

See Section 4.3 (A)(2) for corner lots

Permitted Uses:

a. accessory dwelling unit (Section 7.1)
b. accessory on-farm business
c. accessory structure
d. accessory use
e. campground (1-3 campsites) (Section 7.2)
f. fences (Section7.14)
g. hydronic heaters (Section 6.10)
h. signs (Section 7.16)

Conditional Uses:

a. camps
b. campground (4+ campsites) (Section 7.2)
c. dwelling, single household
d. dwelling, two household
earth resource extraction (Section 7.3)
e. home business (Section 7.6 b)
f. planned unit development (Section 5.2)
g. ponds over 6000 cubic feet (Section 7.15)
h. public facilities (Section 7.9)
i. recreation, outdoor

Exempt:

a. Uses listed in Article 4.1(A)(1-2)

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group home (Section 7.5)¶
home occupation (Section 7.6 a)¶

All other uses not listed are considered Prohibited. (See Table 4(A) - Allowed Land Uses and Development).

Prohibited:

a. adaptive re-use dwelling, multi-household (5-6 units) (Section 7.13)
b. Agribusiness
c. business services, personal and professional
d. care facility
e. data center
d. dwelling, multi-household (3-4 units) (Section 7.12)
f. fuel service station
g. light industry
h. lodging establishment
i. mobile home park (Section 7.8)
j. motor vehicle sales & service
k. public facilities (Section 7.9)
l. recreation, indoor
m. restaurant
n. retail establishment
o. salvage yards (Section 7.10)
p. short-term rental
q. social use (including clubs & non-profits)
r. veterinary clinic
s. All other uses not listed as permitted, conditional or exempt are considered prohibited.

Conservation II (1600 Feet Elevation and Higher)

Minimum lot dimensions:

a. size: 30 acres
b. frontage: 400 feet
c. depth: 300 feet
d. front yard: 50 feet from edge of right-of-way
e. side yard: 100 feet from lot line
f. rear yard: 100 feet from lot line

Permitted Uses:

a. accessory dwelling unit (Section 7.1)
b. accessory on-farm business
c. signs (Section7.16)

Conditional Uses:

a. accessory structure

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b. accessory use
c. camps
d. fences(Section 7.14)
e. hydronic heaters (Section 6.10)
f. public facilities (Section 7.9)

Exempt:

a. Uses listed in Article 4.1(A)(1-2)

Prohibited:

a. adaptive re-use dwelling, multi-household (5-6 units) (Section 7.13)
b. agribusiness
c. business services, personal and professional
d. campground (1-3 campsites) (Section 7.2)
e. campground (4+ campsites) (Section 7.2)
f. care facility
g. data center
e. dwelling, multi-household (3-4 units) (Section 7.12)
h. dwelling, single household
i. dwelling, two household
j. earth resource extraction (Section 7.3)
k. fuel service station
l. home business (Section 7.6b)
m. light industry
n. lodging establishment
o. mobile home park (Section 7.8)
p. motor vehicle sales & service
q. planned unit development (Section 5.2)
r. ponds over 6000 cubic feet (Section 7.15)
s. recreation, indoor
t. recreation, outdoor
u. restaurant
v. retail establishment
w. salvage yard (Section 7.10)
x. short-term rental
y. social uses (including clubs & non-profits)
z. veterinary clinic
aa. All other uses not listed as permitted, conditional or exempt are considered prohibited.

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group home (Section 7.5)¶
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Table 4(A) Allowed Land Uses and Development (See also Section 4.1)

P (Permitted Use), C (Conditional Use),
E (Exempt, No Zoning Permit Required), X (Prohibited)[1]
Allowable land uses and development in the Hazard Area Overlay District uses are listed in Table 8.
Uses exempt in all districts are not listed in the table. See Section 4.1A(1-2) for exempt uses.

	Village I	Village II	Rural Residential	Conservation I	Conservation II
Residential Uses					
Adaptive Re-Use Dwelling, Multi-Household (Section 7.13)	C	C	X	X	X
Accessory Dwelling Unit (Section 7.1)	P	P	P	P	P
Camps	P	P	P	C	C
Dwelling, Multi-Household (3-4 unit) (Section 7.12)	P	P	C	X	X
Dwelling, Single Household	P	P	P	C	X
Dwelling, Two Household	P	P	P	C	X
Home Business (Section 7.6(C))	C	C	C	C	X
Commercial Uses					
Agribusiness	C	C	C	X	X
Accessory On-Farm Business	P	P	P	P	P
Business Services, Personal and Professional	P	C	C	X	X

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Table 4(A) Allowed Land Uses and Development (See also Section 4.1)

P (Permitted Use), C (Conditional Use),
E (Exempt, No Zoning Permit Required), X (Prohibited)[1]
Allowable land uses and development in the Hazard Area Overlay District uses are listed in Table 8.
Uses exempt in all districts are not listed in the table. See Section 4.1A(1-2) for exempt uses.

	Village I	Village II	Rural Residential	Conservation I	Conservation II
Campground (1-3 campsites) (Section 7.2)	X	X	P	P	X
Campground (4+ campsites) (Section 7.2)	X	X	C	C	X
Data Center	X	X	X	X	X
Earth Resource Extraction (Section 7.3)	X	X	C	C	X
Fuel Service Station	C	C	X	X	X
Light Industry	C	C	C	X	X
Lodging Establishment	C	C	C	X	X
Mobile Home Park (Section 7.8)	C	C	C	X	X
Motor Vehicle Sales & Service	C	C	C	X	X
Restaurant	C	C	C	X	X
Retail Establishment	C	C	C	X	X
Short-Term Rental[2]	E	E	E	X	X
Veterinary Clinic	C	C	C	X	X
Other Uses					

[2] New structures or changes to structures used as short-term rentals shall require a zoning permit.

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Accessory Structure	P	P	P	P	C
Accessory Use	P	P	P	P	C
Care Facility	C	C	C	X	X
Fences (Section 7.14)	P	P	P	P	C
Hydronic Heaters (Section 6.10)	See Section 6.10	See Section 6.10	P	P	P
Planned Unit Development (Section 5.2)	C	C	C	C	X
Ponds over 6000 cubic feet (Section 7.15)	C	C	C	C	X
Public Facilities (Section 7.9)	C	C	C	C	C
Recreation, Indoor	C		C	X	X
Recreation, Outdoor*	C	C	C	C	X
Salvage Yard (Section 7.10)	X	X	C	X	X
Signs (Section 7.16)	P	P	P	P	P
Social Uses (including clubs & non-profits)	C	C	C	X	X

Note: These tables are a summary. Use definitions are defined in Article 9.

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Section 4.3: Density and Dimensional Standards for Lots and Structures

A) Lot Standards.

1) **Lot Size.** Lots shall comply with the minimum lot size requirements in Table 4(B) except pre-existing small lots as allowed under Section 6.5.(E).
2) **Frontage**. Lots shall either comply with the minimum frontage requirements in Table 4(B), or have been approved by the DRB as an access by permanent easement or right-of way in accordance with Section 6.8. Lots which abut more than one street shall, at minimum, meet the required lot frontage requirement on one street and the meet the required lot depth requirement on the other street.
3) **Public Purpose Exemption**. The only exception is for lots acquired for a public purpose, which are exempt from the minimum lot size and frontage requirements.

Table 4(B) Dimensional Standards for Structures and Lots

	Village 1	Village 2	Rural Residential	Conservation I	Conservation II
Minimum Lot Area	10,000 square feet	10,000 square feet	4 Acres	10 Acres	30 Acres
Frontage[1]	75 feet	75 feet	300 feet	300 feet	400 feet
Lot Depth	75 feet	75 feet	200 feet	300 feet	300 feet
Setback, Front Yard	10 feet from R/W	10 feet from R/W	25 feet from R/W	50 feet from R/W	50 feet from R/W
Setback, Side Yard	10 feet from P/L	10 feet from P/L	50 feet from P/L	50 feet from P/L	100 feet from P/L
Setback, Rear Yard	20 feet from P/L	20 feet from P/L	50 feet from P/L	50 feet from P/L	100 feet from P/L

[1]**In all districts, any lot 10 Acres and larger shall have a minimum frontage of 300 feet.**

Note: Driveways and fences are exempt from District setback requirements; see Section 6.8 & Section 7.14.

R/W means edge of right-of-way.
P/L means property line.

B) Setbacks. The setbacks for each District are those allowed as a permitted use. In each District a lesser setback may be approved by the DRB as a waiver, pursuant 24 V.S.A. Section 4414(8) upon a finding that:

1) The proposed setback will not unreasonably interfere with a neighboring property's privacy and quiet enjoyment; and

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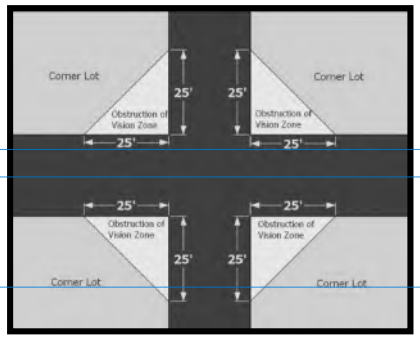
2) A reduced setback is necessary for the project because of geographic conditions of the lot; and
3) A reduced setback is in keeping with the purpose of the District as defined in these bylaws and the Town Plan.

C) Principal Structures on Lots. There shall be only one principal structure on a lot, unless approved by the DRB as a PUD.

D) Principal Uses on Lots. There shall only be one principal use on a lot, except that the DRB may approve as a conditional use more than one principal use within one principal structure if all uses are allowed within the District. In the Village I District, multiple principal uses shall be allowed as a permitted use if all uses proposed are permitted under Section 4.1.

Figure 4(A)



E) Obstruction of View on Corner Lots. On all corner lots, there shall be no obstruction to vision between the height of three feet and ten feet above the average grade of each street within the triangular area formed by the intersection of two street property lines and a third line joining them at points twenty five feet away from their intersection (See Figure 4(A)). The DRB may waive this requirement in the Village I District under conditional use review.

F) Structure Height. No structure shall exceed a height of thirty-five feet above ground level, except for chimneys, antenna structures, windmills with blades less than twenty feet in diameter, and rooftop solar collectors less than ten feet above the roof line which are mounted on complying structures. Height will be measured as the vertical distance from the mean level of the finished grade of the building to the ridge-line or deck-line of the roof (Figure 4(B)). Under conditional use review, the DRB may authorize other exceptions as long as they are unoccupied, such as steeples and cupolas, which do not disrupt the surroundings nor create a hazard.

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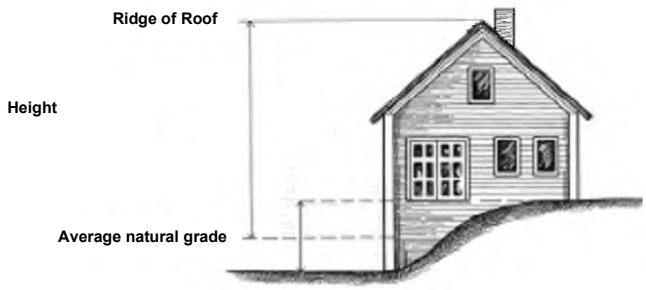
Figure 4(B) Measuring Height



Article 5: Development Approvals

Section 5.1: Conditional Use Approval

A) Applicability. The following uses require conditional use approval from the DRB:

1) Initiating a new use that is listed in Table 4(A) as conditional (C).
2) Changing an existing use to a different use that is listed as conditional (C) in Table 4(A).
3) Expanding or modifying an existing conditional use so that it no longer conforms to its existing conditional use approval. (Alterations or minor changes to an existing conditional use permit, that are not a "change of use" may be permitted by the ZA as a permitted use under these Regulations).
4) Nonconformities (in some cases, see Section 6.5)
5) Access by permanent easement or right of way to lots without frontage on a public road or waters (see Section 6.8(D)).
6) Any excavation or fill involving 6,000 or more cubic yards of material, or which the ZA determines may cause a change in the rate or direction of drainage to the detriment of neighboring properties (see Section 6.2).
7) Exceptions to the maximum height regulation (See Section 4.3(F)).
8) The approval of more than one principal use within one principal structure, except where allowed as a permitted use (see Section 4.3(C)).
9) Any other land development that requires conditional use approval according to these Regulations.

B) Purpose. Conditional use approval requires compliance with standards addressing the impact of proposed land uses on adjacent properties, the neighborhood or district in which the project is located, and the community at large. Standards and conditions emphasize considerations to identify, avoid, and/or mitigate off-site impacts of a proposed project. Conditional use approval also considers a building's and site design's consistency with the purpose and character of the district within which it is located. Standards and conditions emphasize those considerations related to internal layout of the site, its physical design and appearance as viewed from off-site, and the functional integration of the site with surrounding properties and uses.

C) Application Requirements. A complete application for conditional use approval shall include all the information requested on the Montgomery DRB Project Application Form, the requirements in Table 5, and the application fee.

D) Public Notice and Issuance Requirements. The DRB shall issue a written decision following a duly noticed public hearing according to Section 2.4 and 2.5.

E) Review Standards. The DRB may grant conditional use approval only upon finding that the proposed development shall not result in an undue adverse effect on any of the following:

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1) **The capacity of existing or planned community facilities**. The DRB shall consider the demand for community services and facilities resulting from the proposed development, and determine whether that demand will exceed the existing or planned capacity of existing facilities or services. In making such a determination, the DRB will consider any capital program or budget in effect at the time of application.

2) **The character of the neighborhood area or district affected.** The DRB shall consider the location, scale, type, density, and intensity of the proposed development in relation to the character of area likely to be affected by the proposed development, as defined by the purpose(s) of the district(s) within which the project is located and specifically stated polices and standards of the Montgomery Town Plan.

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3) **Traffic on roads and highways in the vicinity**. The DRB shall consider the projected impact of traffic resulting from the proposed development on the capacity, safety, efficiency and use of affected roads, bridges, and intersections. A traffic impact study may be required.

4) **Maximum safety of vehicular and pedestrian circulation between the site and the street network**. Particular attention shall be given to visibility at intersections, to traffic flow and control, to pedestrian safety and convenience, and to access in case of emergency.

5) **Adequacy of circulation, parking, and loading facilities**. Particular consideration shall be given to the effect of noise, glare or odors on adjoining properties and state and town highways. Adequacy of provisions for erosion control, runoff, refuse removal, service areas, and snow removal shall be considered.

6) **Conformance with applicable General Regulations and Specific Standards in Article 6 and 7.**

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7) **Other Town bylaws in effect**. No development shall be approved in violation of existing municipal bylaws and ordinances.

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8) **The utilization of renewable energy resources**. The DRB shall consider whether the proposed development will interfere with the sustainable use of renewable energy resources, including the existing and future availability of and access to such resources on adjoining properties.

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F) **Conditions**. The DRB shall have the power to impose reasonable conditions and safeguards to avoid an undue adverse effect on the standards above, including but not limited to, the following conditions:

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1) The DRB may require project phasing or improvements necessary to accommodate the proposed development to ensure that the demand for facilities or services does not exceed existing or planned capacity.
2) The DRB may limit the scale or dimensions of the proposal.
3) The DRB may increase setback distances for non-residential uses which are contiguous to residential uses, recreation uses, or natural areas.
4) The DRB may limit the hours of operation.
5) The DRB may limit outdoor storage of materials, goods, and equipment.
6) The DRB may require that outdoor storage of or work associated with goods, parts, supplies, vehicles or machinery is inside a building or behind screening.
7) The DRB may attach conditions with regard to size and location of parking areas, landscaping, and signs.
8) The DRB may require roadway improvements on-site or off-site, if deemed necessary, to accommodate the increased traffic associated with the development. Improvements may also include traffic calming, sidewalks, crosswalks and other similar improvements.
9) **Limitations on Conditions for Residential Development.** Pursuant to § 4464 of the Act, conditions attached by the DRB for a residential development or residential portion of a mixed-used development shall not:
   - **a)** Require a larger lot size than the minimum required for the zoning district in Table 4(B).
   - **b)** Require more parking spaces than the minimum required under Section 6.6.
   - **c)** Limit the size of building footprint or height beyond the standards of Section 4.3(F).
   - **d)** Limit the density of dwelling units beyond the standards of Table 4(B) or Section 5.3.
   - **e)** Otherwise disallow a development to abide by the minimum or maximum applicable standards unless it meets the criteria of Section 4464(b)(7)(B).

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G) Conservation Districts Standards. In addition to the review standards set forth in subsection F above, the DRB will also determine that proposed development in the Conservation I & II Districts comply with the following standards when granting conditional use approval.

1) Development will be designed and located to minimize encroachment (e.g., the placement of buildings and the extension of roads, driveways and utilities) into presently undeveloped, forested areas. All feasible building sites should be considered and the development located as close to existing roads, other development and disturbed areas as practical in order to maintain large areas of contiguous, undeveloped forest land.

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2) Development will not result in an undue, adverse impact on significant wildlife habitat as identified in the current Town Plan. The DRB will consider available information and inventories of wildlife habitat, and should reference natural resource inventories developed by the Conservation Commission and adopted by

the Select board, and may consult Vermont Department of Fish & Wildlife or other experts to determine the presence of various habitats and to ensure that development is designed to minimize undue adverse impacts (e.g., impacts that would significantly reduce the ability of the particular habitat to continue supporting particular wildlife species that rely on that habitat for specific functions).

3) Development will be located to avoid slopes exceeding fifteen (15) percent gradient unless such development is necessary to achieve the most desirable design for a site (e.g., if it would avoid impacts to other identified resources). In the event development on steep slopes is allowed, clearing, excavation and filling on such lands will be limited to the greatest extent practical and the preparation and implementation of an erosion control plan may be required in accordance with Section 6.9. In no instance will development be allowed on slopes greater than twenty-five percent.

4) Building siting, driveways and private roads will be configured to minimize the fragmentation of large tracts of forest land as identified in the Town Plan and the Vermont Agency of Natural Resources Natural Resources Atlas. Development of land in this district will be planned and designed to be compatible with the surrounding characteristics of the landscape, to protect and limit impacts to wildlife habitat and the species that depend on this habitat. The district includes areas which have significant geologic features, unusual or important plant and animal qualities of scientific, ecological or educational interest, steep slopes, waterways and significant wildlife habitat.

5) In the event that a distinct habitat supporting one or more specific species (e.g., deer wintering area, mast stand, vernal pool), or a stream or other water body, is located on the site a buffer that is adequate to protect that habitat from the impacts of development and associated activities may be required as a condition of approval.

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Commented [e11]: Recommended edits to this section. Since the Town does not use DRB review of subdivision this standard as written doesn't make sense. There is no ability to regulate lot layout if the lot size is met given the Town does not have comprehensive subdivision regulations. An option is to regulate building and drive/roadway siting to prevent fragmentation.

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Table 5		
Application Requirements: Conditional Use and Variance Review		
Application Requirements:		
• Application to Montgomery DRB • One original and one complete copy of a plot plan, drawn to scale, with north arrow and date of preparation; • Required application fees.		
The plot plan shall show the following information in sufficient detail to determine whether the proposal is in conformance with these Regulations:		
	Cond. Use	**Variance**
The dimensions of the lot, including property boundaries	✓	✓
Location, size, shape, height of existing and proposed buildings and structures	✓	✓
Location of existing and proposed easements, rights-of-way, sidewalks, and utilities	✓	✓
Location of natural features such as watercourses, wetlands, floodplains, rock outcroppings, and stands of trees	✓	✓
Setbacks from property boundaries, right-of-way, surface waters, and wetlands	✓	✓
Location and dimension of parking areas, loading and unloading facilities, and points of ingress and egress of vehicles to and from the site to public streets	✓	
Any other information that the DRB requires to determine compliance with the provisions of these Regulations	✓	✓

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Section 5.2: Planned Unit Development Approval

A) Purpose. The purpose of a PUD shall be to encourage flexibility of design and development so as to promote the most appropriate use of land, facilitate the adequate and economical provision of streets and utilities, and to preserve the natural and scenic qualities of the land.

B) Application Requirements. . A complete application for a PUD shall include all the information requested on the Montgomery DRB Project Application Form; a plat that shows all of information necessary to determine whether the proposal is in conformance with these Regulations, including but not limited to the information identified in Table 5 for conditional uses; and the application fee.

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C) Public Notice and Issuance Requirements. PUD shall require conditional use review. The requirements and standards in Section 5.1 shall apply to all PUD applications.

D) Modification of Regulations. Pursuant to §4417 of the Act, the DRB may vary the density or intensity of land use otherwise applicable under these zoning regulations with respect to the location and physical characteristics of the proposed PUD; the location, design, type and use of the lot and structures proposed; and the amount, location and proposed use of open space. Mixed uses shall be arranged so as to be compatible and to insure visual and aural privacy for the residents of the development and for adjoining properties. Pursuant to the Act, the DRB may grant a density increase of up to twenty percent above the otherwise allowed district density based on the minimum lot size listed in table 4(B). .

Calculating Density Increase

Allowed district density shall be calculated based on the minimum lot size allowed in Table 4(B), rounded down to the nearest whole number.

Parcel Size/Minimum Lot Size = Allowed # of Units under District Density

*Allowed # of Units under District Density *1.2= Maximum Allowed Density Increase (subject to DRB approval)*

For example: A 20 acre parcel in the Rural Residential District, where the minimum lot size is 4 acres.

20 acres/4 acres minimum lot size = 5 Units allowed under District Density
*5 Units * 1.2 = 6 units is the maximum allowed density under PUD (subject to DRB approval)*

E) Review Standards. In addition to the standards applying to conditional uses, PUDs shall comply with the following:

1) Unless modified pursuant to D) above, the number of dwelling units allowed in a PUD shall not exceed the number that could be permitted if the land were subdivided based on the dimensional requirements of the district.
2) PUDs may include a mix of compatible uses as allowed in Table 4(A). These uses shall be arranged and buffered to ensure visual and acoustical privacy to residents in and around the development.
3) The minimum setback and yard requirements for the district in which the project is located shall apply to the periphery of the development.
4) The development shall be an effective and unified treatment of the project site, and shall be designed to minimize impact on streams, stream banks, slopes greater than 15%, wetlands, soils unsuitable for development, agricultural lands, forested areas, historic sites, natural areas, wildlife habitat, floodplains, and scenic resources.

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5) The development shall take place over a reasonable period of time in order that adequate municipal facilities and services may be provided.
6) A PUD may involve the creation of separate building lots, or may include a development in which multiple buildings and uses are constructed on a single lot in common ownership.

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7) The DRB may require that a reasonable percentage of the land be utilized for open space, recreation areas or necessary town purposes and may establish conditions on the ownership, use, and maintenance of said lands as it deems necessary to assure preservation of said lands for their intended purposes.

Section 5.3: Variance Approval

A) Applicability. Requests for variances from the provisions of these Regulations may be submitted for structures (but not for uses) and shall be regulated as prescribed in §4469 of the Act.

B) Application Requirements. A complete application for a variance shall include all the information requested on the Montgomery DRB Project Application Form, the requirements of Table 5, and the application fee.

C) Public Notice and Issuance Requirements. The DRB shall issue a written decision following a duly noticed public hearing according to Section 2.4 and 2.5.

D) Review Standards. The DRB may grant a variance and render a decision in favor of the applicant only if all the five facts listed below are found and the findings are specified in its written decision.

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1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of these Regulations in the neighborhood or district in which the property is located;

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2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these Regulations and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
3) That such unnecessary hardship has not been created by the appellant;
4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public safety and welfare; and
5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of these Regulations and the Town Plan.

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E) Variances for Renewable Energy Structures. When a variance from the provisions of a Zoning Regulation is requested for a residential structure that is primarily a renewable energy resource structure, the DRB may grant such variances, and render a decision in favor of the appellant if all the following facts are found and the finding is specified in its decision:

1) It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with these Regulations;
2) That the hardship was not created by the appellant;
3) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public safety and welfare; and
4) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from these Regulations and the Town Plan.

Article 6: General Regulations

Section 6.1: Abandonment of Structures and Destroyed or Damaged Structures

A) Abandoned Structures.

1) Any structure shall be deemed abandoned when it is vacant for at least twelve months and the Health Officer determines that the structure constitutes a public health hazard pursuant to their authority in 18 V.S.A. §602a.
2) Abandoned structures must be demolished through removing all ruins and structural materials and restoring the site to a smooth grade or the public health hazard must be corrected to the satisfaction of the Health Officer.
3) If the owner fails to demolish an abandoned structure or to correct the public health hazard, the Selectboard may order removal of the structure or correction of the public health hazard and place a lien on the property for all associated costs.

B) Destroyed Non-conforming Structures and Destroyed Structures on Non-Conforming Lots.

1) A structure shall be deemed destroyed when it has been lost through fire, accident, or other act of nature.
2) Reconstruction of a destroyed non-conforming structure shall require a zoning permit.
3) The reconstruction of a destroyed structure on a non-conforming lot shall require a zoning permit.
4) An application for the reconstruction of a destroyed non-conforming structure or a structure on a non-conforming lot shall be reviewed as a permitted use provided that the replacement structure will have the same footprint as the destroyed structure and the application is submitted within one year of the structure being destroyed.

Section 6.2: Alteration of Existing Grade (Excavation, Grading and Filling)

A) Applicability. A zoning permit is required for the alteration of existing grade by excavation, grading, removal of earth, and/or depositing of rock, concrete, stone, gravel, sand, cinders, stumps, soil or other material used for the filling of land, unless exempted in Section 4.1. Any excavation or fill involving 6,000 or more cubic feet of material, or which the ZA determines may cause a change in the rate or direction of drainage to the detriment of neighboring properties shall require conditional use approval from the DRB.

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B) Specific Review Standards.

1) Filling shall only be conducted with clean material such as sod, loam, sand, gravel, or quarried stone. Biodegradable material shall not be considered clean fill.
2) The effect upon the use of adjacent property by reason of noise, dust or vibrations shall be evaluated and no undue adverse effect shall be created.
3) The effect upon traffic hazards in residential areas or excessive congestion or physical damage on public ways shall be evaluated and no undue adverse effect shall be created.
4) The project may be limited in the duration of its permit to any length of time that the DRB deems appropriate.
5) The project may be limited in the hours of operation, routes of transportation or material removed.
6) The DRB may require suitable bond or other security adequate to assure compliance with the provision of this Section for the proper rehabilitation of the site.

C) The alteration of an existing grade by excavation, grading, removal of earth, and/or depositing of rock or other material used for filling land shall not be done in a manner that may cause a change in the rate or direction of drainage to the detriment of the neighboring property.

Section 6.3: Dumping

In any District the dumping of refuse and waste material is prohibited, except in a municipally approved solid waste facility.

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Section 6.4: Landscaping and Screening

A) Under conditional use review, the DRB may require that projects provide and maintain trees and/or landscaping to complement buildings and parking lots, and sufficient screening so that:

1) Neighboring properties are shielded from any adverse external effects of that development; and
2) The development is shielded from the impacts of adjacent uses such as streets, service and storage areas.

B) Wherever possible, existing healthy trees and shrubs shall be preserved. Invasive species are prohibited as listed on http://www.vtinvasiveplants.org/invaders.php.

Section 6.5: Nonconformities

A) Applicability. Nonconformities include structures, uses and lots in existence before

the effective date of these Regulations, which do not conform to the requirements set forth herein. Structures and uses improperly authorized as a result of error by the DRB are non-conforming after the appeals period has passed.

B) Continuation of Nonconformities.

1) **Non-conforming Uses**. Any non-conforming use of a structure or of land may be continued indefinitely except that a non-conforming use shall not be reestablished after being discontinued for a period of one year, or after being changed to, or replaced by, a conforming use. Intent to resume a non-conforming use shall not confer the right to do so.

2) **Non-conforming Structures**. No provision of these Regulations shall prevent the normal maintenance and repair of a non-conforming structure provided that such action does not increase the degree of non-conformance.

C) Improvements to Nonconformities.

1) Non-conforming Uses. Any non-conforming use of structures or land shall not be changed, enlarged, altered or extended to a different non-conforming use.

2) Non-conforming Structures. The ZA may approve improvements to non-conforming structures that do not increase the degree of non-conformity through issuance of a zoning permit in accordance with these Regulations. Under conditional use review, the DRB may approve improvements to non-conforming structures that increase the degree of nonconformity only if required to comply with environmental, safety, health or energy codes, laws or regulations. See Figure 6(A) for an illustration of increasing the degree of nonconformity. Please note that if the structure is located within the SFHA, it may also be subject to the substantial improvement/substantial damage provisions in Article 8.

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Figure 6(A) Increasing the Degree of Nonconformity of a Structure

The building 'A' is the original non-conforming structure because it encroaches into the setback. Additions 'B' and 'D' are allowed under these Regulations because they do not encroach further into the setback than Building 'A'. Addition 'C' and 'E' are not allowed under these Regulations because it encroaches further into the setback than Building 'A'.

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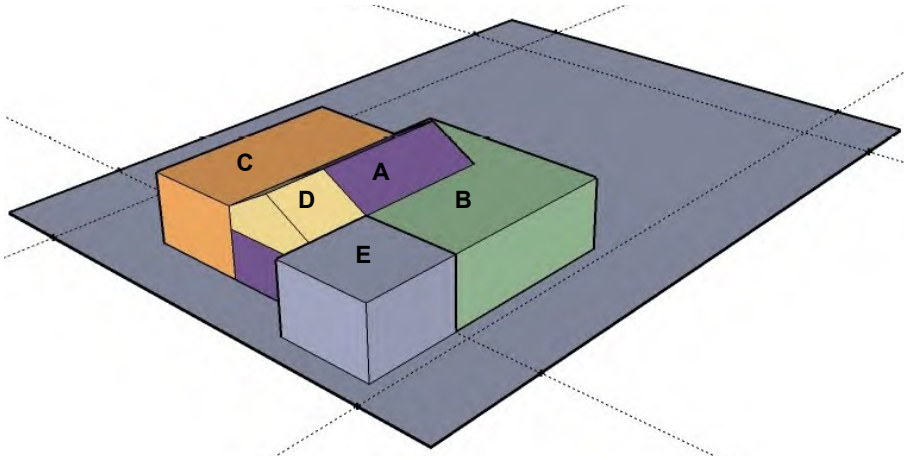

D) Nonconformities in a Mobile Home Park. If a mobile home park, as defined in 10 V.S.A. Chapter 153, is a nonconformity, the entire mobile home park shall be treated as a nonconformity, and individual lots within the mobile home park shall in no event be considered nonconformities. Its status regarding conformance or nonconformance shall apply to the lot as a whole, and not to any individual mobile home lot within the park. An individual mobile home lot that is vacated shall not be considered a discontinuance or abandonment of a nonconformity.

E) Pre-Existing Small Lots.

1) Even though not conforming to the minimum lot size requirements, any pre-existing lot that meets the following requirements may be developed for the purposes permitted in the district in which it is located:
   a) It is legally subdivided;
   b) It is not less than one-eighth acre in area;
   c) It has a minimum width or depth dimension of forty feet;
   d) It is in individual and separate and non-affiliated ownership from surrounding properties; and
   e) It is in existence on the date of enactment of these Regulations.

2) If such lot subsequently comes under common ownership with one or more contiguous lots, the non-conforming lot shall be deemed merged with the contiguous lot. However, a non-conforming lot shall not be deemed merged and may be separately conveyed if all the following apply:
   a) The lots are conveyed in their preexisting, non-conforming configuration; and
   b) On the effective date of these Regulations, each lot had been developed with a water supply and wastewater disposal system; and
   c) At the time of transfer, each water supply and wastewater system is functioning in an acceptable manner.

Section 6.6: Parking

A) Off-Street Parking. For every new building, or any building altered, extended or changed in use, there shall be minimum off-street parking spaces provided as follows (this requirement does not affect the use of on-street parking spaces):

1) Single Household Dwelling, Two Household Dwellings, Accessory Dwelling Units, and Camps:	One space for every dwelling unit
2) Multi-Household Dwellings:	One and a third spaces for each dwelling unit, rounded up to the next whole number
3) Business Services, Personal and Professional:	One space for every three hundred square feet of office space

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4) Lodging Establishments:	One space plus one space for every guest room
5) Places of Public Assembly:	One space for every four seats, or if no seating is provided, one space for every two hundred square feet of floor area
6) Retail Establishment:	One space for each vehicle used in the business, plus one space for every two hundred fifty square feet of floor area
7) Restaurants	One space for every four seats
8) Recreation, Outdoor:	As required by the DRB
9) Light Industry:	One space for every two hundred fifty square feet of floor area
10) Other	As required by the DRB

B) Special Requirements. Under conditional use review, the DRB may require additional off-street parking and loading spaces for any use if they find the minimum number to create more than an occasional on-street parking problem. Similarly, the parking requirements for any use may be relaxed if the board finds that the particular use will not create more than an occasional on-street parking problem.

C) Combined Parking Space. Parking spaces for any number of separate uses may be combined in one lot, but the required space assigned to one use, may not be assigned to another use at the same time, except for uses with compatible parking needs with the approval of the DRB. An example of compatible parking needs is a church which requires parking on Sundays and a professional office operating during business hours Monday through Friday.

D) Off-Premise Parking. With the approval of the DRB, parking space may be provided on other property if such space lies within three hundred feet of the entrance to the applicant's place of business.

E) Screening. The DRB may require that parking lots be suitably screened in accordance with Section 6.6. Where a non-residential use abuts a residential use, the parking or loading space shall not be closer than twenty feet to the residential property.

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F) Landscaping. The DRB may require parking lot islands to define circulation and break up large parking lots in accordance with Section 6 5.

A) Siting of Off-Street Parking in the Village I District. In the Village I District, off-street parking lots shall not be located between the principal structure and the street, but rather to the side or rear. Where this is not possible due to physical site constraints, the DRB may consider combined parking spaces, off-premise parking spaces, or may waive this requirement.

B) Existing Non-Conforming Parking. Pursuant to §4428 of the Act, an existing non-conforming parking space shall count toward the parking requirements of an existing residential building if new residential dwelling units are added to the building.

Section 6.7: Performance Standards

The following standards of performance must be met and maintained by all uses in all Districts. No use of land or structures shall:

1) Emit odors, noise, dust, dirt, glare, noxious smoke or gases or other disturbances which are offensive and uncharacteristic of the area, or which cause damage to any home, business, vegetation or other property, or which endangers the health, safety or welfare of the neighborhood;
2) Present an unreasonable risk as to fire, explosion, or hazard to any adjacent property or vehicular traffic;
3) Cause sewage or other harmful wastes to be discharged into any water course or into any disposal facility beyond its proper capacity. All local, state and federal health standards shall be complied with; and
4) No principal structure or accessory dwelling unit shall be erected without permanent foundations and permanent siding unless permitted as a dwelling that is camping vehicle under Section 7.2 .
   a. A pole barn construction shall be regarded as having a permanent foundation.

Section 6.8: Roads, Driveways and Access Requirements

A) Applicability. Roads and driveways shall comply with the applicable standards in this section.

1) **Driveways (private)**. All private accesses serving 1 or 2 lots shall be considered driveways. The interest of the owner of each lot served by a common or shared driveway shall be in the deed of each lot created.

2) **Roads (public or private)**. All accesses serving three or more lots shall be considered roads. All roads shall be private unless otherwise accepted as public roads by the Selectboard. The interest of the owner of each lot served by a private road shall be protected in the deed of each lot created.

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B) Driveway Requirements.

1) All residential driveways entering onto public roads or streets must obtain a driveway permit from the Selectboard and meet the Selectboard's specifications for grade, culverts, ditching, and visibility. Culvert installation requires approval from the Selectboard or their authorized agent.
2) All driveways shall be located at least fifty feet from a street line intersection for all uses except single or two household dwellings.
3) All light industrial and earth resource extraction uses shall have access to a maintained public road or street and shall have unobstructed visibility of such road or street for three hundred feet in either direction from any driveway access.

C) Road Construction Standards. All new public and private roads shall comply with the VTrans A-76 Standards.

D) Access to Lots without Frontage. No land development may be permitted on lots which do not have frontage on either a public road or public waters, unless the DRB, grants approval of access to such lot or lots by a permanent easement or right-of-way of record of at least twenty feet in width (see 24 V.S.A. 4412 (3)). The DRB shall consider the intended use of the property, safety, traffic, and road and site conditions in granting, conditioning, or denying approval. According to 6.9(B)(3) above, light industrial and earth resource extraction uses are not eligible for such easement or right-of-way.

Section 6.9: Stormwater Management and Erosion Control

Under conditional use review, the DRB may require that developments incorporate temporary and permanent storm water management and erosion control practices as appropriate for the type and density of proposed development and lot coverage to ensure that the project and subsequent development does not result in soil erosion, the degradation of surface waters and/or hazards to properties within the vicinity. Accordingly:

1) All storm water management systems shall be designed to:
   a) Use natural drainage systems to the extent feasible, and minimize the need for system maintenance;
   b) Maximize on-site infiltration and treatment of storm water, and minimize surface runoff;
   c) Accommodate anticipated flows, including existing surface water runoff and total runoff generated by the proposed development at build-out, including anticipated flows from storm events;
   d) Provide storage areas and treatment to manage flows and protect water quality; and
   e) Avoid damage to adjoining properties and downstream drainage facilities.

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Section 6.11: Signs¶
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A) Applicability. Signs require a zoning permit from the ZA in accordance with this Section. For the purposes of these Regulations, a sign is any display or representation, used or placed as an announcement, direction or advertisement. The word "placed" for the purpose of this definition shall include erected, constructed, fastened or affixed to the ground or a structure, or made visible in any manner whatever. Signs on the interior of a structure and visible through a window are excluded.¶
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1) Types of Signs. There are several types of signs, which include but are not limited to wall signs, projecting signs and free-standing signs (i.e. monument or pole signs) (Figure 6(B)). ¶
a) Wall signs may be placed on the exterior face of a wall, window, awning or any other extension of a building.¶
a) Wall signs may be placed on the exterior face of a wall, window, awning or any other extension of a building.¶
b) Projecting signs may be mounted on the exterior of a building so the sign projects perpendicular to the buildings face. ¶
c) Free-standing signs may be fastened to a monument, pole or other free-standing structure.
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2) Signs Not Requiring a Zoning Permit ... [13]

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2) All areas exposed during construction shall be protected in accordance with standards contained in the Low Risk Site Handbook for Erosion Prevention and Sediment Control published by the Vermont Department of Environmental Conservation, Agency of Natural Resources, including any updated versions of this publication.

3) The DRB may require the submission of stormwater management and/or erosion control plans, prepared by a licensed professional, for all phases of development. Such plans shall incorporate accepted management practices as recommended by the state in the Vermont Storm water Management Manual and the Low Risk Site Handbook for Erosion Prevention and Sediment Control, and identify the person(s) or organization responsible for system maintenance.

4) The DRB may require project phasing to minimize the extent of soil disturbance and erosion during each phase of development.

Section 6.10: Installation & Operation of Hydronic Heaters

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The installation in any district of an outdoor wood fired hydronic heater (hydronic heaters) shall require a permit. These are also known as “outdoor wood boilers”.

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In Village I and Village II installations of any hydronic heater must be certified to meet current Federal EPA Certifications, and comply with the setback and stack height requirements under sections 2-204 of Vermont Air Pollution Control Regulations.

In other residential districts, installation of hydronic heaters must meet the certification requirements of the 2006 EPA emission standards for hydronic heaters.

All hydronic heaters must be operated in strict accordance with manufacturer’s instructions and fuel requirements.

The operator/owner shall bear the burden of proving that appropriate certifications are met.

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Article 7: Specific Standards

Section 7.1: Accessory Dwelling Units

A) Accessory dwelling units shall comply with the following standards:
1) The property shall have sufficient wastewater capacity (State approved);
2) The accessory dwelling unit shall not exceed 30 percent of the total habitable floor area of the single household dwelling or 900 sq. ft., whichever is larger; and
3) Applicable setback, coverage, and parking requirements specified in these Regulations shall be met.

Section 7.2: Camping Vehicles and Campgrounds

A) Camping Vehicles. Any camping vehicle used for living quarters and sited so as not to be readily movable shall be deemed a dwelling and shall be subject to all Zoning Regulations applicable to dwellings.

B) Campgrounds. New campgrounds, and any addition or alteration to an existing campground are subject to the following regulations:
1) They shall provide individual camping vehicle or tent spaces.
2) They shall maintain a strip of land at least fifty feet wide as a landscaped area abutting all campground property lines. No camping vehicle, tent, utility or service building may be placed within this buffer area. The DRB may reduce or eliminate this landscaped area provision, if such a modification or waiver will make it possible to preserve a scenic view from the campground, providing that privacy for adjacent property owners can be maintained.
3) Applications for campgrounds of four or more campsites shall include a copy of the state wastewater permit.
4) Collector roads within the campground shall meet the following minimum widths:
   a) one way roads - twelve feet.
   b) two way roads - twenty four feet.

Section 7.3: Earth Resource Extraction

Earth Resource Extraction. This section applies to Earth Resource Extraction as defined in Article 9.

1) Specific Exceptions. This Section shall not apply to the removal of natural resources from a farm operation, nursery, or cemetery to the extent that such removal is necessary to the operation of the same.

2) Application Requirements. In addition to conditional use application requirements, earth resource extraction proposals shall be prepared by a Vermont Licensed Engineer and include:
a) The depth of excavation;
b) Existing grade and proposed grade created by removal or addition of material;

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c) Proximity to roads and adjacent properties;
d) The average amount of earth resource to be extracted on a monthly or annual basis;
e) The hours of operation and seasons of use;
f) The expected duration of operation;
g) The number of truck trips per day traveling to/from the extraction site;
h) An erosion and sediment control plan to be followed while the extraction operation is active; and
i) A reclamation plan that addresses grading, seeding, mulching, planting, fencing, drainage, and other measures.

3) Review Standards. The DRB shall find that the plan does not cause any undue adverse effect to health or property based on the conditional use review standards and the following additional standards:

a) The operation shall not have an adverse effect upon the use of adjacent property or town roads due to noise, dust, or vibration.
   i) Within the required setback areas, the natural vegetation shall be retained, and supplementary planting or other screening may be required in order to buffer impacts from the operation.
   ii) No power-activated sorting or crushing machinery or equipment shall be located within three hundred feet of any street or other property line, and all such machinery shall be equipped with satisfactory dust control devices.
b) The operation shall not create traffic hazards or excessive congestion or physical damage to public highways and expected routes of truck traffic.
c) All surface drainage affected by excavation operations shall be controlled by the owner to prevent erosion debris and other loose materials from filling any drainage course, street, or private property.
d) Suitable fencing or other appropriate safety precautions may be required around extraction sites, sedimentation ponds, and spoil or equipment storage areas.
e) Explosives may be used only per a plan approved by the DRB.
f) The operation shall prepare a site rehabilitation plan that when followed will reclaim the site by removing all debris, leveling all cut slopes and soil banks and grading to an even low angle, and establishing a firm cover of grass or other vegetation sufficient to prevent erosion. The DRB may require the posting of a bond to assure such rehabilitation.

Section 7.4: Family Child Care Home or Facility

A) In accordance with § 4412 of the Act, a family child care home serving no more than six full-time children and four part-time children shall be considered to constitute a permitted single-household residential use of property (i.e. Once a zoning permit for a single-household residential use of property has been obtained, no permit is required for such a family child care home or facility on that

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property, although any new structures or structural alterations that would otherwise normally require a permit still require a permit).

B) Family child care homes or facilities that serve more than six full-time and four part-time children shall be considered Business Services, Personal and Professional under these Regulations.

Section 7.5: Group Homes

A) In accordance with § 4412 of the Act, a residential care home or group home, shall be considered by right, to constitute a permitted single-household residential use of property (i.e. Once a zoning permit for a single-household residential use of property has been obtained, no permit is required for such a group home on that property, although any new structures or structural alterations that would otherwise normally require a permit still require a permit).

B) Licensed or registered group homes serving more than eight persons who have a handicap or disability shall be considered Care Facilities under these Regulations.

Section 7.6: Home Occupation and Home Business

A) In accordance with § 4412 of the Act, no provision of these Regulations shall infringe upon the right of any resident to use a minor part of the residence or use an accessory structure for an occupation which is customary in residential areas and which does not change the character of the residential area.

B) Home Occupation. A Home Occupation must meet all of the following standards:

1) There are not employees or helpers other than members of the household.
2) The Home Occupation is not visible from outside the home.
3) The Home Occupation does not generate significant additional traffic.
4) The Home Occupation has no more than one sign that does not exceed four square feet in size and does not exceed six feet in height above ground level (see Section 7.16).
5) The Home Occupation has no external storage of materials or equipment.
6) The Home Occupation produces no objectionable noise, smoke, vibration, dust or odors discernible on any adjoining property.
7) The Home Occupation does not otherwise have an undue adverse effect upon the character of the area.

C) Home Business. A Home Business may be allowed provided following standards are met:

1) The Home Business shall be carried on by members of the household living on the premises plus no more than three non-household full-time equivalent employees.
2) The Home Business shall occupy a minor portion of the dwelling or an accessory structure.

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3) There shall be no exterior displays, except that one unlit sign not exceeding eight square feet per side is allowed (see Section 7.16).
4) No traffic shall be generated in a volume that alters the essential character of the neighborhood or substantially impairs the use of adjacent property. There shall not be more than an estimated average of ten vehicles per day associated with the activities of the Home Business.
5) Excessive noise, smoke, vibration, dust, glare, odors, electrical interference, or heat that is detectable at the boundaries of the property shall not be generated.
6) Where new parking is proposed, it shall be provided off-street and shall be located in side or rear yards outside setback areas. However, existing residential parking areas may be utilized.
7) Exterior storage of materials used in the home business shall be minimal, not visible from the street, road, or adjacent properties, and shall not be allowed in setback areas.
8) There shall be no potential risk to public health from the Home Business such as toxic emissions or on-site disposal of hazardous waste.

Section 7.7: Mobile Homes, Manufactured Homes and Other Prefabricated Housing

In accordance with § 4412 of the Act, mobile homes, manufactured homes and other prefabricated housing shall be permitted in any district on the same terms and conditions as conventional housing, provided that they are anchored to a concrete pad or permanent foundation and a durable skirt is installed around the base, consistent with the appearance of a home.

Section 7.8: Mobile Home Parks

No provision of these Regulations shall be construed to prevent Mobile Home Parks. New Mobile Parks and any addition or alteration to an existing Mobile Home Park shall be subject to conditional use review and the following standards:

1) The maximum density of any Mobile Home Park shall not exceed the total shown in Table 7.1.

Table 7.1 Allowed Density of Mobile Home Park

District	Maximum Allowed Density
Village 1 & Village 2	1 dwelling unit/5,000 square feet
Rural Residential	1dwelling unit/2 acres

2) Mobile Home Parks shall maintain a strip of land at least fifty feet wide as a landscaped area abutting all Mobile Home Park property lines. No Mobile Home unit, office, utility or service building may be placed within this buffer area. The DRB may reduce or eliminate this landscaped area requirement if such a modification or waiver will make it possible to preserve a scenic view from the Mobile Home Park, provided that privacy for adjacent property owners can be maintained.

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Deleted: C) Home Businesses with Conditional Use Review. A Home Business not meeting all the standards above may be approved by the DRB under conditional use review. The DRB shall not approve more than three (3) non-household family full-time equivalent employees and shall find that the Home Business complies with the conditional use review standards in Section 5.1.¶

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3) The minimum Mobile Home lot size shall be 1 acre unless all lots are provided with public or common sewage disposal, in which case the minimum Mobile Home lot size is as shown in table 7.2.

Table 7.2 Minimum Lot Size by District	
District	Maximum Allowed Density
Village 1 & Village 2	10,000 square feet
Rural Residential	0.5 acres

4) Each lot in a Mobile Home Park shall have at least fifty feet of frontage on a Mobile Home Park road. Said roads shall be constructed to the standards of Section 6.8.
5) A non-porous pad, at least four inches thick shall be provided for each Mobile Home lot. Each Mobile Home shall be set back at least ten feet from the edge of the road right-of-way.
6) Sewage disposal, water supply and garbage facilities shall comply with state regulations.

Section 7.9: Public Facilities

A) In accordance with §4413 of the Act, public facilities may only be regulated with respect to location, size, height, building bulk, courts, setbacks, density of buildings, off-street parking and loading facilities, traffic, noise, lighting and landscaping or screening and only to the extent that regulations do not have the effect of interfering with the intended functional use.

B) Review Standards. The following standards shall be considered in reviewing Public Facilities:
1) Unsightly or incompatible land uses, such as substations, parking lots and refuse areas, shall be screened with landscape materials suitable to withstand weather conditions, compatible with the soil conditions (See also Section 6.6).
2) Adequate circulation, parking and loading facilities shall be provided with particular consideration to visibility at intersections, traffic flow and control, pedestrian safety, and access in case of an emergency.
3) To protect the privacy of adjoining property owners, additional yard space or setback from the property lines, other than what is already required in the District, may be required.
4) The density, size, height or bulk of buildings may be increased or decreased as needed, to ensure compatibility with established patterns of land use.

Section 7.10: Salvage Yards and Open Storage of Vehicles and Junk

A) Salvage Yards. Salvage yards are subject to the following standards:
1) The salvage yard shall hold a certificate of approval for the location of the salvage yard from the Selectboard 24 V.S.A. Chapter 61, §§2251-2257; and

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Deleted: 1) Churches and other places of worship, convents and parish houses;¶
2) Public or private hospitals;¶
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3) Public or private schools and other educational institutions certified by the department of education;¶
4) Public utility power generating plants and transmission lines;¶
4) Public utility power generating plants and transmission lines;¶
5) State or community owned institutions;¶
6) Regional solid waste management facilities certified under 10 V.S.A. Chapter 159; and¶
7) Hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. §6606a.¶
8) Emergency shelters as defined by 24 V.S.A. § 4303. ¶ ... [19]

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2) The salvage yard shall a certificate of registration issued by the State of Vermont to operate, establish, or maintain a salvage yard at the location proposed.

B) Open Storage of Vehicles and Junk. In all Zoning Districts, junk and junk motor vehicles shall be stored in an enclosed structure or in an area concealed from view from adjacent property or public right-of-way.

Section 7.11: Wireless Telecommunications Facilities

New or expanded wireless telecommunications facilities that are not subject to 30 V.S.A. Section 248, including but not limited to towers and accessory structures, are subject to the provisions of this Section. In conformance with 24 V.S.A. §4412(9), the DRB may permit new or expanded telecommunications facilities if the DRB finds that the facility will impose not more than a de minimus impact on the conditional use standards in Section 5.1 and the criteria in (F) below.

A) The following requires a Certificate of Public Good from the Public Utility Commission under 30 V.S.A. Section 248, which preempts these Regulations:

1) Placement of wireless telecommunications facilities on electric transmission or generation facilities; and
2) Single application to construct or install three or more telecommunications facilities, each at least 50 feet above ground level, within three years as part of a network.

B) No Zoning Permit shall be required for the following:

1) Antennae with an aggregate area of not more than eight square feet on the largest face and which are on masts that extend not more than twelve feet above the specific roof area to which they are attached and are not located on historic landmarks and structures.
2) Antenna structures less than twenty feet in height with a primary function to transmit or receive communication signals for commercial, industrial, municipal, county, or state purposes.
3) Telecommunication facilities that are used exclusively for municipal radio dispatch service or emergency radio dispatch service and which do not exceed 100 feet in height.

C) Amateur radio, citizens band radio, AM or FM radio, or broadcast television service towers that exceed the requirements in (B) above but do not exceed 100 feet in height are exempt from the provisions of this Section, but require a zoning permit as an accessory structure.

D) Supplemental Application Requirements. In addition to the application requirements required for conditional use review a wireless telecommunication facility permit application shall also include:

1) A location map showing the general area within a 2 mile radius of the facility.

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2) A vicinity map showing the entire vicinity within a 2,500 foot radius of the facility, including the location of all existing and proposed towers, topography, public and private roads and driveways, buildings, structures, utilities, water bodies, wetlands, 50 foot contour lines, landscape features, historic sites, and significant wildlife habitats. It shall indicate the property lines of the proposed facility site lot and all easements or rights-of- way needed for access from a public way to the facility.

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3) Elevations and proposed site plans of the facility showing all facades and indicating all exterior materials and colors of towers, buildings and equipment, as well as all landscaping, utility wires, guy wires and screening. (All plans except the vicinity map shall be drawn at a minimum scale of 1 inch = 50 feet.)
4) In the case of a site that is forested, the approximate average elevation of the existing vegetation within 50 feet of any tower base.
5) A report from a qualified Vermont Licensed Engineer that:
   a) Describes any tower's design and elevation.
   b) Documents the elevation above grade for all proposed mounting positions for antennas to be mounted on a tower and the minimum distances between antennas.
   c) Describes a tower's capacity, including the number, elevation, and types of antennas that the tower is proposed to accommodate.
   d) In the case of new facilities, demonstrates that existing towers and structures within five miles of the site cannot reasonably be modified to provide adequate coverage and adequate capacity to the community.
   e) Describes potential changes or additions to existing structures or towers that would enable them to provide adequate coverage.
   f) Describes the output frequency, number of channels, and the power output per channel for each antenna. As an alternative, a coverage map may be provided.
   g) Demonstrates the facility's compliance with the standards set forth in these Regulations or other applicable standards.
   h) Provides proof that at the proposed facility site the applicant will be in compliance with all FCC Regulations, standards and requirements, and includes a statement that the applicant commits to continue to maintain compliance with all FCC Regulations, standards and requirements for radio frequency radiation (RFR).
   i) Includes such other information as determined by the DRB to evaluate the application.
6) A letter of intent committing the facility owner and its successors to permit shared use of any tower if the additional users agree to meet reasonable terms and conditions for shared use, including compliance with all applicable FCC Regulations, standards and requirements and the provisions of these Regulations and all other applicable laws.
7) In the case of an application for additional antennas or other equipment to be installed on an existing facility, a copy of the executed contract with the owner of the existing structure.

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8) To the extent required by the National Environmental Policy Act (NEPA) and as administered by the FCC, a complete Environmental Assessment (EA) draft or final report describing the probable impacts of the facility, or a written statement by the applicant that an EA is not required for the facility.

E) Construction Standards. Telecommunications facilities shall conform to the following construction standards:

1) The facility will not be built on speculation. If the applicant is not a telecommunication service provider, the applicant shall provide a copy of a contract or letter of intent showing that a telecommunication service provider is legally obligated to locate a wireless telecommunication facility on lands owned or leased by the applicant.
2) The facility will not project more than 20 feet above the average elevation of the tree line measured within 100 feet of the highest vertical element of the wireless telecommunication facility, unless the proposed elevation is reasonably necessary to provide adequate telecommunication service capacity or coverage to Montgomery, or to accomplish co-location.
3) All telecommunication facilities shall comply with the setback provisions of the districts in which facilities are located. Notwithstanding the above, in order to ensure public safety, the minimum distance of any wireless telecommunication facility to any property line, dwelling, or occupied structure shall be no less than the height of the tower, including antennas or other vertical appurtenances. This setback shall be referred to as a fall zone. In the event that an existing structure such as a barn silo, church steeple, or utility pole is proposed as a mounting for a wireless telecommunication facility, a fall zone setback may not be required.

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4) The facility will not be illuminated by artificial means and will not display any lights or signs except for such lights and signs as required by Federal Aviation Administration, federal or state law, or these Regulations.
5) The DRB may require the applicant to provide a bond, or other form of financial guarantee acceptable to the DRB, to cover the cost of removal of the facility, should the facility be abandoned or cease to operate.
6) The applicant demonstrates that the facility will be in compliance with all Federal Communications Commission (FCC) standards and requirements regarding radio frequency radiation. The owner of a wireless telecommunication facility shall, on a yearly basis, file a certificate to the ZA showing that it is in compliance with all FCC standards and requirements regarding radio frequency radiation, and that adequate insurance has been obtained for the facility.
7) The facility will be properly identified with appropriate warnings indicating the presence of radio frequency radiation.
8) The proposed equipment is installed on an existing wireless telecommunication facility, unless it is demonstrated by the applicant that such co-location is not structurally or spatially possible.
9) The facility provides reasonable opportunity for the installation and operation of other telecommunications equipment (co-location).
10) Unless otherwise approved by the DRB, an abandoned or unused wireless telecommunication facility shall be removed within 2 years of abandonment or

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cessation of use. The applicant may apply to the DRB for an extension for removal. If the facility is not removed, or an extension granted, within 2 years of abandonment or cessation of use, the DRB may cause the facility to be removed. The costs of removal shall be assessed against the facility owner.

11) Unused portions of a wireless telecommunication facility shall be removed within 1 year of the time that such portion is no longer used. Replacement of portions of a facility previously removed shall require a new permit.

F) Additional Conditional Use Criteria. In addition to the conditional use standards in Section 5.1 and the construction standards in (E) above, the DRB shall approve an application for a wireless telecommunications facility when it finds that the application does not impose more than a de minimus impact on the following criteria:

1) The facility will not unreasonably interfere with the view from any public park, natural scenic vista, historic building or district, or major view corridor.
2) The facility will not have an undue adverse aesthetic impact. In determining this, the DRB shall consider the following factors:
   a) The results of a balloon test, if conducted.
   b) The extent to which the proposed towers and equipment have been designed to blend into the surrounding environment through the use of screening, camouflage, architectural design, and/or imitation of natural features.
   c) The extent to which access roads have been designed to follow the contour of the land and will be constructed within forest or forest fringe areas and not open fields.
   d) The duration and frequency with which the facility will be viewed from a public road or from public property.
   e) The degree to which the facility will be screened by existing vegetation, topography, or existing structures.
   f) Background features in the line of sight to the facility that obscure or make the facility more conspicuous.
   g) The distance of the facility from the point of view and the proportion of the facility that is above the skyline.
      i) The sensitivity or unique value of a particular view affected by the facility.
      ii) Any significant disruption of a viewshed that provides context to an important historic or scenic resource.
3) The facility will not generate undue noise.

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Section 7.12: Multi-Household Dwelling (3-4 units)

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A) **Applicability.** The following standards apply to all multi-household dwellings of 3 to 4 dwelling units.

B) **Parking.**
1) All parking shall be located behind the building, underneath the building, or in an enclosed accessory structure such as a garage.
2) All outdoor parking areas shall include a 5 foot landscaped buffer.

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3) **Waiver Provision.** Where locating parking behind the building is not possible due to physical site constraints, the Development Review Board may allow parking located on the side of the lot.

C) **Screening.**

1) All waste storage shall be located on the side or back of the building and shall be screened from the roadway. Appropriate screening consists of either evergreen landscaping at a height of at least 6 feet or an opaque privacy fence.

D) **Maximum Lot Coverage.** The maximum lot coverage shall be 60% of the lot. Lot coverage includes all impervious surfaces including buildings, parking areas and driveways/access roads.

1) The maximum lot coverage standard shall not apply to the re-development of existing structures where there is no change in building footprint and no increase in total impervious surfaces.

Section 7.13: Adaptive Re-Use Multi-Household Dwellings (5-6 Units)

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A) **Purpose.** The allowance for the adaptive reuse of existing structures for 5 to 6 dwelling units is intended to encourage the reuse, restoration, and rehabilitation of existing structures within the Town of Montgomery.

B) **Standards.** Adaptive Re-Use Multi-Household Dwellings (5-6 units) shall be no less than 50 years old as of the date of a complete application and shall meet the standards of 7.12(B)-(D) as well as conditional use review.

C) **Application Requirements**. In addition to application requirements for conditional use review, the application for an Adaptive Re-Use Multi-Household Dwelling (5-6 units) shall include proof that the structure is at least 50 years old and a plot plan showing elevation and the existing view and proposed renovations for all walls that are proposed to have alterations, including new or altered windows or doors.

D) The adaptive re-use of an existing structure for other uses, including a Multi-Household Dwelling (3-4 units), is not subject to this section but is subject to the requirements in these Regulations that apply to the proposed use.

Section 7.14: Fences

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Fences shall comply with the following standards.

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Review standards for fences:

1) Side and rear yard fences may be constructed on property lines.
2) Front yard fences shall not be constructed within the public right-of-way.

3) Fences shall be constructed of materials that will not cause injury to persons coming in contact with them (agricultural fences are exempt).
4) Front yard fence height shall be no more than 4½ feet above average grade.
5) Front yard fences shall be of open type construction such as wire, chain link, wood rail, iron, or wood picket with at least 50% open spacing (for example, 2" picket with 2" open space between pickets, 4" picket with 4" open space between pickets, etc.).

Section 7.15: Ponds

A) Applicability. The following standards apply to all ponds of 6,000 cubic feet or greater in size. Ponds under 6,000 cubic feet shall not require a permit but must meet setbacks.

B) Application Requirements. In addition to application requirements for a zoning permit, applications for ponds shall include the following mapped information:
1) All neighboring property uses;
2) All structures on the adjacent properties – to include, buildings, springs, septic systems, wells, driveways, roads, etc.;
3) Hydrologic connectivity to any stream, wetland, or wet area that may be hydrologically affected by the pond;
4) The spillway for the pond; and
5) For any pond involving the impoundment of water through the creation of an embankment, berm, or other structure that exceeds the natural grade of the site and contains greater than 200,000 cubic feet of water - a written certification that the pond has been designed by a state licensed professional engineer.

C) Review Standards. A pond of greater than 6,000 cubic square feet may be approved as a conditional use, subject to the following standards:
1) The proposed pond poses no danger to neighboring properties, roads, bridges and culverts.
2) Any pond that will impound, or be capable of impounding in excess of 500,000 cubic feet of water has applied for a permit from the Vermont Department of Environmental Conservation in accordance with the requirements of 10 V.S.A. Chapter 43. It shall be a condition of the Zoning Permit that this permit be obtained and filed with the Town.
3) If the project necessitates any work in a stream and if a stream alteration permit or other approval is required from the Vermont Department of Environmental Conservation in accordance with 10 VSA Chapter 41, such permit or approval has been applied for. It shall be a condition of the Zoning Permit that such permit or approval be obtained and filed with the Town.

Section 7.16: Signs

A) Applicability. For the purposes of these Regulations,

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Deleted: a sign is any display or representation, used or placed as an announcement, direction or advertisement. The word "placed" for the purpose of this definition shall include erected, constructed, fastened or affixed to the ground or a structure, or made visible in any manner whatever. Signs on the interior of a structure and visible through a window are excluded….

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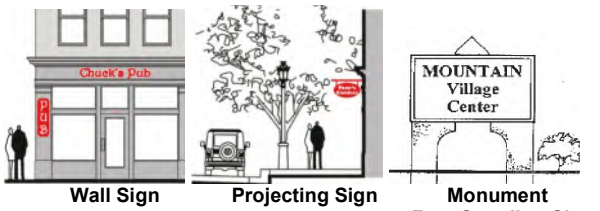
1) **Types of Signs**. There are several types of signs, which include but are not limited to wall signs, projecting signs and free-standing signs (i.e. monument or pole signs) (Figure 6(B)).
   a) Wall signs may be placed on the exterior face of a wall, window, awning or any other extension of a building.
   b) Projecting signs may be mounted on the exterior of a building so the sign projects perpendicular to the buildings face.
   c) Free-standing signs may be fastened to a monument, pole or other free-standing structure.

Figure 7(A)
Examples of Sign Types



Wall Sign **Projecting Sign** **Monument Free-Standing Sign**

2) **Signs Not Requiring a Zoning Permit**.
   a) Signs for residential uses not exceeding four square feet in size and not exceeding six feet in height above ground level, which only state the name and address of the occupants.
   b) Farm signs.
   c) Historic markers not exceeding four square feet in size and not exceeding six feet in height above ground level.
   d) On-site directional, safety, or parking signs.
   e) Signs erected by a public school, the Town of Montgomery, the State of Vermont or the United States Government, including official business directional signs permitted under 10 V.S.A. Chapter 21, §486.
   f) Bulletin boards on the premises of any church, school, or similar public structure provided they do not exceed twenty-four square feet in size and ten feet in height.
   g) Temporary real estate or construction signs provided they do not exceed twenty-four square feet in size and eight feet in height and are removed promptly when the property has been sold, leased or developed.
   h) Signs or flags indicating that a business is open and/or the hours of operation,

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provided such signs or flags are:
i) Limited to one per use (one for hours of operation and one open/closed sign, or one for both);
ii) Are located on the premises of the use for which the sign is advertising; and
iii) Do not exceed fifteen square feet for a flag and four square feet for a sign.

3) Signs Specifically Prohibited in all Zoning Districts.
a) Advertising billboards 10 V.S.A. Chapter 21.
b) Flashing, oscillating, or revolving signs, unless necessary for public safety and welfare.
c) Roof signs.
d) Free standing signs in excess of twenty feet in height.

B) Number and Size of Signs Permitted per Use

	Number	Maximum Area
Home Business	1	8 square feet
Commercial Uses	2	20 square feet
Public Facilities and Uses	1	20 square feet
Other	As permitted by the DRB	

The following standards shall apply when calculating total permissible sign area:
1) Pre-existing signs shall be included in the calculation of sign area.
2) One sign face will be considered as the sign area for double-sided signs and signs designed to be viewed from two directions in which the two single faces are at not more than a thirty degree angle from each other.
3) For a sign painted on or applied to a building, structure, or window, the area shall be that of the smallest rectangle or simple geometric shape enclosing all the copy and/or graphics of the sign (Figure 6(C)).

Figure 7(B)

C) Review Standards.
1) All signs requiring a permit shall comply with the following standards:
a) Signs are exempt from the setback standards in Section 4.3.
b) Signs shall be located on the premises for which the sign is intended to announce, advertise or provide direction.
c) Signs must be kept in good repair.
d) Signs shall be designed and located so that they will:
i) Not impair public safety;
ii) Not restrict clear vision between a sidewalk and a street;
iii) Not be confused with traffic signs or signals;
iv) Not prevent free access to any door, window or fire escape; and

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v) Withstand a wind pressure load of at least thirty lbs. per square foot.

e) Signs may be illuminated provided it is by steady lights that do not reflect onto other properties, nor impair a driver's vision.

f) However, free-standing signs shall be set back at least ten feet from the edge of the traveled portion of the public road, and at least ten feet from any other lot line.

2) Projecting signs shall:

a) Not extend within a highway right-of-way.

b) Not extend more than four feet from the building wall;

c) Not be less than ten feet above a public walking area;

d) Not be greater than six square feet in area.

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Article 8: Hazard Area Regulations

Section 8.1: Statutory Authorization and Effect

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

Section 8.2: Purpose

A) Purpose. It is the purpose of this article to:

1) Minimize and prevent the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flooding-related inundation and erosion hazards.

2) Ensure that the selection, design, creation, and use of development in flood hazard areas and river corridors is reasonably safe, accomplished in a manner that minimizes or eliminates the potential for loss and damage to life and property due to flooding-related inundation and erosion hazards, and does not impair stream equilibrium, floodplain services, or the river corridor.

3) Manage all flood hazard areas designated pursuant to 10 V.S.A. §§ 751 and 753.

4) Make the Town of Montgomery, its citizens, and businesses eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds, as may be available.

Section 8.3: Administration

A) These standards shall apply to all development in the Town of Montgomery located within the Flood Hazard Area Overlay District and River Corridor Area Overlay. The Flood Hazard Area Overlay District and River Corridor Area Overlay overlay other existing zoning districts. All other requirements of the underlying district shall apply in addition to the provisions herein, unless otherwise indicated.

1) **River Corridor Overlay District.** The River Corridors as published by the Vermont Agency of Natural Resources (including the Statewide River Corridors and refinements to that data based on field-based assessments which are hereby adopted by reference) and/or a fifty foot setback from the top of steam bank, or slope, from all rivers and streams in Montgomery with a drainage area

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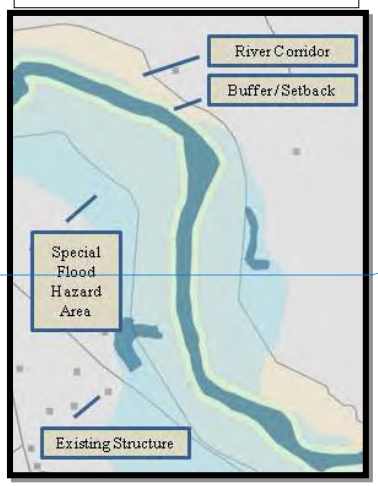
greater than 0.5 square miles in size as included in the Vermont Hydrography Dataset (VHD). If the fifty (50) foot setback area is greater in size than the mapped River Corridor area, the fifty (50) foot setback area shall take precedence. Data regarding the size of drainage areas for all rivers and streams in Montgomery is available from the Vermont Agency of Natural of Resources and available from the Montgomery Zoning Administrator.

2) **Flood Hazard Area Overlay District.** The Flood Hazard Area Overlay District is composed of the Special Flood Hazard Area identified in and on the most current flood insurance studies and maps published by the Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), and National Flood Insurance Program (NFIP), as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. § 753, which are hereby adopted by reference and declared to be part of these Regulations.

Figure 9.1 – Special Flood Hazard Area and River



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B) **Interpretation.** The information presented on any maps, or contained in any studies, adopted by reference, is presumed accurate. However, if uncertainty exists regarding the River Corridor or Special Flood Hazard Area boundary the following procedure shall be followed:

1) **River Corridor.** If uncertainty exists with respect to the boundaries of the River Corridor, the location of the boundary shall be determined by the Zoning Administrator. If the applicant disagrees with the determination made by the Zoning Administrator, a letter of determination from the Vermont Agency of Natural Resources shall constitute proof. When the Agency of Natural Resources receives a request for a letter of determination, Agency of Natural Resources evaluates the site and existing data to see if a change to the river corridor delineation is justified, necessitating a river corridor map update. An Agency of Natural Resources letter of determination will either confirm the existing river corridor delineation or will result in an update to the river corridor delineation for the area in question. If a map update is justified, an updated map will be provided with the letter of determination.[3]

2) **Special Flood Hazard Area.** If uncertainty exists with respect to the boundaries of the Special Flood Hazard Area or the floodway, the location of the boundary

[3] River Corridor map updates are further explained in the Flood Hazard Area & River Corridor Protection Procedure: http://dec.vermont.gov/sites/dec/files/documents/DEC_FHARCP_Procedure.pdf

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shall be determined by the Zoning Administrator. If the applicant disagrees with the determination made by the Zoning Administrator, a Letter of Map Amendment from FEMA shall constitute proof that the property is not located within the Special Flood Hazard Area.

C) Special Flood Hazard Areas - Base Flood Elevations and Floodway Limits.

1) Where available (i.e. zones A1-A30, AE, & AH), the base flood elevations and floodway limits (or data from which a community can designate regulatory floodway limits) provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps shall be used to administer and enforce the provisions of these Regulations.

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2) In Special Flood Hazard Areas where base flood elevations and floodway limits have not been provided by the National Flood Insurance Program (i.e. Zone A) in the Flood Insurance Study and accompanying maps, it shall be the responsibility of the applicant to develop the base flood elevation at the site using data available from state or federal agencies or other sources.

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

E) **Warning of Disclaimer of Liability**. This article does not imply that land outside of the areas covered by this article will be free from flood or erosion damages. This article shall not create liability on the part of the Town of Montgomery, or any municipal official or employee thereof, for any flood or erosion damages that result from reliance on these Regulations, or any administrative decision lawfully made hereunder.

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F) **Exempted Development**. The following types of development are exempt from review under the standards of this Article within the Flood Hazard Area Overlay District and the River Corridor Overlay District:

1) The removal of a building or other improvement in whole or in part, so long as the ground elevations under and adjacent to the removed structure remain unchanged. Please be aware that for damaged structures where FEMA mitigation funds may be used, the damaged structure may be required to remain in place until funds are granted.

2) Routine maintenance of existing buildings in the usual course of business required or undertaken to conserve the original condition, while compensating for normal wear and tear. Routine maintenance includes actions necessary for retaining or restoring a piece of equipment, machine, or system to the specified

operable condition to achieve its maximum useful life and does not include expansions or improvements to development.

3) Interior improvements to existing buildings that cost less than five-hundred dollars.

4) Maintenance of existing sidewalks, roads, parking areas, or stormwater drainage; this does not include expansions.

5) Maintenance of existing bridges, culverts, and channel stabilization activities; this does not include expansions.

6) Streambank armoring and stabilization, retaining walls, and abutment work that do not reduce the cross-sectional flow area of the river or stream channel and have coverage under a Stream Alteration Permit, if required, under 10 V.S.A. Chapter 41 and the rules adopted thereunder.

7) The following activities are exempt from municipal regulation, but may require a permit under the State's "Vermont Flood Hazard Area and River Corridor Rule" (Environmental Protection Rule, Chapter 29):
   a) State-owned and -operated institutions and facilities.
   b) Forestry operations and silvicultural (forestry) activities conducted in accordance with the Vermont Department of Forests and Parks Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont or other accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation.
   c) Agricultural activities conducted in accordance with the Vermont Agency of Agriculture Food and Market's Required Agricultural Practices (RAPs).
   d) Public utility power generating plants and transmission facilities regulated under 30 V.S.A. § 248.
   e) Telecommunications facilities regulated under 30 V.S.A. § 248a.

8) Planting projects which do not include any construction or grading activities in accordance with 24 V.S.A. § 4424(c).

Section 8.4: Application Requirements in Flood Hazard Area Overlay District and River Corridor Overlay District

A) **Application Submission Requirements** All applications for development in the Flood Hazard Area Overlay District and River Corridor Overlay District shall include:

1) **Site Plan**. A site plan that depicts the proposed development, all water bodies, all district boundaries, the shortest horizontal distance from the proposed development to the top of bank of any river, any existing and proposed

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drainage, any proposed fill, pre- and post-development grades, and the elevation of the proposed lowest floor as referenced to the same vertical datum as the elevation on the current Flood Insurance Rate Maps;

2) **Project Review Sheet or Permit Navigator**. A completed Vermont Agency of Natural Resources Project Review Sheet or completed Permit Navigator form.

B) **Supplemental Application Requirements.** Some applications may require additional information based on the location and type of the development. The following information shall be developed and provided with an application, as required below:

1) **Base Flood Elevation (BFE).** BFE information is required for:
   a) Replacement, substantially improved, or substantially damaged structures located within any Flood Hazard Overlay District, including Zone A, where no BFEs have been provided;
   b) Projects requiring elevation or dry-floodproofing above BFE;
   c) Additions to existing historic structures; and
   d) Any accessory structure proposed to be built in accordance with Section 8.6 and having building utility systems that will need to be protected from flood waters through elevation above the BFE.

2) **Floodway Data**. The following information is required for development proposed to be located in the floodway. All floodway data shall be certified by a registered professional engineer. All submitted proposals shall include electronic input/output files mapping showing cross-section locations and the following information:
   a) Hydraulic calculations demonstrating no rise in BFE or velocity for proposed new or expanded encroachments within the floodway.
   b) In accordance with 44 C.F.R. § 60.3(c)(10), where BFE data has been provided by FEMA, but no floodway areas have been designated, the applicant shall provide a floodway delineation that demonstrates that the proposed development, when combined with all existing and anticipated future development, will not increase the water surface elevation of the base flood by more than one foot at any point within the community.

3) **Compensatory Flood Storage.** The following information is required for applications that require compensatory flood storage pursuant to Section 8.6:
   a) Designs shall provide equivalent storage volumes during peak flows up to and including the base flood discharge. This No Adverse Impact (NAI) volumetric analysis and supporting data shall be certified by a registered professional engineer.
   b) If it appears that the design may create an undue adverse impact to adjacent landowners or structures, a hydraulic analysis may be required to verify that a proposed development will not increase flood elevations or velocities of

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

4) **River Corridor Assessment.** The following information is required for applications proposing development within the river corridor:
   a) Information clearly demonstrating how the proposed development meets the infill or shadowing requirements in Section 8.6; or
   b) A narrative and supporting technical information from a qualified consultant that demonstrates how the proposal meets the River Corridor Performance Standard in Section 8.6; or
   c) Evidence of an approved major or minor map update issued by ANR in accordance with the process outlined in the DEC Flood Hazard Area & River Corridor Protection Procedure, finding the proposed development is not located within the River Corridor. Please note that ANR may require the applicant to provide technical data from a qualified consultant to justify a map update.

5) **Waivers.** Upon written request from the applicant, the Development Review Board may waive specific application requirements when the data or information is not needed to comply with these Regulations. A determination to waive the compensatory storage requirement shall include written concurrence from the ANR regional floodplain manager that project will have only a minimal effect on floodwater storage.

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Section 8.5: Development Review Process in Flood Hazard Area Overlay District and River Corridor Overlay District

A) **Referral.**

1) Upon receipt of a complete application for new construction or a substantial improvement, the Zoning Administrator shall submit a copy of the application and supporting information to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, in accordance with 24 V.S.A. § 4424. A zoning permit may be issued only following receipt of comments from the Agency, or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner. The Zoning Administrator and Development Review Board shall consider all comments from ANR. Any application requiring conditional use, site plan or variance review shall be referred to the Development Review Board in accordance with 24 V.S.A. § 4460.

2) If the applicant is seeking a permit for the alteration or relocation of a watercourse, copies of the application shall also be submitted to the adjacent communities, the River Management Engineer at the Vermont Agency of Natural Resources, and the Army Corps of Engineers. Copies of such notice shall be provided to the State National Flood Insurance Program (NFIP) Coordinator at

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the Vermont Agency of Natural Resources, Department of Environmental Conservation. A permit may be issued only following receipt of comments from the Vermont Agency of Natural Resources, or the expiration of 30 days from the date the application was mailed to the Vermont Agency of Natural Resources, whichever is sooner.

B) **Review Process.**

1) **Administrative Review.** The following types of development within the Flood Hazard Area Overlay District and River Corridor Area Overlay District may be reviewed and approved administratively by the Zoning Administrator:
   a) Changes from a permitted land use to another permitted land use provided that any other changes to the site may also be administratively reviewed.
   b) Above grade development which has not been elevated by the placement of fill, that is two feet above base flood elevation and documented with field-surveyed topographic information certified by a registered professional engineer or licensed land surveyor.
   c) Open fencing and signs elevated on poles or posts that create minimal resistance to the movement of floodwater.
   d) Municipal transportation infrastructure improvements designed and constructed by the Vermont Agency of Transportation that have written confirmation from the ANR Regional Floodplain Manager that the project is designed to meet or exceed the applicable standards in this bylaw.
   e) River and floodplain restoration projects, including dam removal, that restore natural and beneficial floodplain functions and include written confirmation from the ANR Regional Floodplain Manager that the project is designed to meet or exceed the applicable standards in this bylaw.
   f) Improvements or repairs of damage to structures that do not expand the existing footprint and do not meet the definition of “substantial improvement” or “substantial damage.”
   g) Accessory structures less than 500 square feet in size (except those located in the Floodway).
   h) Building utilities.
   i) Recreational vehicles.

2) **Development Review.** All other development in the Flood Hazard Overlay District and River Corridor Overlay District shall require conditional review (Section 5.1) by the Development Review Board.

C) **Public Notice and Hearings.**

1) Prior to the issuance of a zoning permit, proposals needing Development Review Board approval shall meet the public hearing requirements in Section 2.4.

D) **Decisions.**

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1) The Zoning Administrator or Development Review Board shall consider comments from the ANR when making a decision on an application.

2) Decisions on applications that require Development Review Board review shall be made in accordance with Section 2.5.

E) **Zoning Permit.** A zoning permit for development in the Flood Hazard Overlay District or River Corridor Overlay District shall be issued by the Zoning Administrator only in accordance with the requirements of Section 2.2, and the following provisions:

1) Within 30 days of receipt of a complete application, including all application materials and fees, the Zoning Administrator shall act to either issue or deny a permit in writing, or to refer the application to the Development Review Board or to ANR for consideration, as required by Section 9.5(A). If the Zoning Administrator fails to act with regard to a complete application for a permit within the 30-day period, a permit shall be deemed issued on the 31st day, unless the permit is for new construction or substantial improvement, in which case a permit shall not be issued until the Zoning Administrator has complied with the requirements of Section 9.5(A).

2) No zoning permit shall be issued by the Zoning Administrator for any use or structure which requires the approval of the Development Review Board until such approval has been obtained. For permit applications that must be referred to a state agency for review, no permit shall be issued until a response has been received from the State, or the expiration of 30 days following the submission of the application to the State, whichever is sooner.

Section 8.6: Development Review Standards in Flood Hazard Area Overlay District and River Corridor Overlay District

A) **Development Review in Special Flood Hazard Area (SFHA).** The criteria below are the minimum standards for development in the Special Flood Hazard Area. If the floodway or flood fringe is not specified, the standard shall apply to the entire Special Flood Hazard Area. Where more than one district is involved, the most restrictive standard shall take precedence.

1) **Development in the Floodway**. Within the floodway, the following standards apply:
   a) New encroachments, including structures, are prohibited within the floodway, except for the following, which also shall comply with subsection (b) below:
      i) Changes to existing structures where the footprint is proposed to expand horizontally into the floodway less than 500 square feet;

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ii) New encroachments relating to bridges, culverts, roads, stabilization projects, public utilities, functionally dependent uses, and river or floodplain restoration projects; and

iii) New encroachments relating to health and safety measures, such as replacement of pre-existing on-site septic and water supply systems, if no other practicable alternative is available;

b) For all proposed new encroachments and above-grade development, a hydraulic analysis is required to be provided for review. The analysis should be performed in accordance with standard engineering practice, by a registered professional engineer, certifying that the proposed development will:

i) Not result in any increase in flood levels during the occurrence of the base flood;

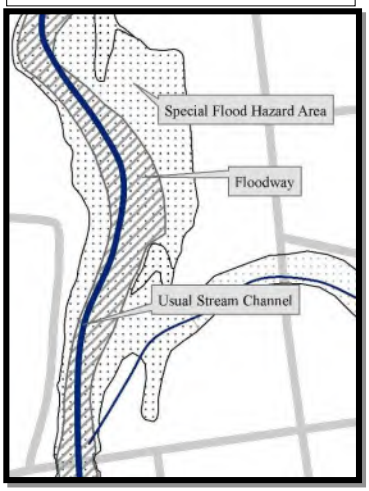
ii) Not increase base flood velocities; and;

iii) Not increase any risk to surrounding properties, facilities, or structures from erosion or flooding.

c) For development that is either below grade or will not result in any change in grade, the hydrologic & hydraulic analyses may be waived, where the applicant will provide pre and post-development elevations demonstrating that there will be no change in grade, and that the development will be adequately protected from scour.

d) For any new encroachment that is proposed within the floodway sub-district where a hydraulic analysis is required, the applicant may provide a FEMA Conditional Letter of Map Revision (CLOMR) in lieu of a hydraulic analysis, to demonstrate that the proposed activity will not have an adverse impact.

Figure 8.2 – Floodway and Special Flood Hazard Area



2) **No Adverse Impact (NAI) Standard within the Flood Fringe.** Within the flood fringe, the following standards apply:

a) **Compensatory Flood Storage**. New development or redevelopment shall not decrease flood storage capacity. Therefore, except as noted in subsection (b) (Compensatory Flood Storage Requirement Exceptions) below, development that displaces floodwater storage in the flood fringe shall provide compensatory storage to offset the impacts of the proposal. This is required when the development will cause an increase, or will contribute incrementally,

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to an increase in the horizontal extent and level of flood waters during peak flows up to and including the base flood discharge.

i) Volumetric analyses[4] and supporting data, demonstrating compensatory storage to offset the impacts of the proposal, shall be provided by the applicant and certified by a registered professional engineer.

ii) An applicant may submit a hydraulic analysis that demonstrates that a project will not increase flood elevations and velocities on floodwaters in lieu of a NAI volumetric analysis.

iii) Compensatory flood storage designs shall not materially impact adjacent landowners or structures.

iv) If the design may create an undue adverse impact to adjacent landowners or structures, a hydraulic analysis shall be required to verify that a proposed development will not increase base flood elevations and velocities. Hydraulic analyses and supporting data shall be provided by the applicant and certified by a registered professional engineer.

b) Compensatory Flood Storage Requirement Exceptions.

i) The NAI compensatory storage requirement may be waived for proposed designs that have no more than a minimal effect on floodwater storage and will not result in diverting floodwaters onto an adjacent property or structure. Examples of designs that have a minimal effect on floodwater storage include an open foundation design; utility work that is largely or completely located below grade; minor above ground improvements such as fences or poles that minimally displace or divert floodwaters; and development that will not result in any change to the predevelopment ground elevations. A determination to waive the NAI compensatory storage requirement shall include written concurrence from the ANR regional floodplain manager, that the project will have only a minimal effect on floodwater storage.

ii) For remediation of properties with contaminated soils, such as Brownfields sites, the NAI compensatory storage requirement may be waived, if hydraulic analysis demonstrates that the remediation will not increase flood elevations and velocities. Hydraulic analyses and supporting data shall be provided by the applicant and certified by a registered professional engineer.

iii) The NAI compensatory storage requirement may be waived for a replacement structure if:

I. There is no increase in the structure's footprint, or

II. An open foundation design is used. Examples include using compliant flood vents or openings, or elevating the structure on post, piers, or pilings with no structural foundation walls below the design flood elevation. The NAI compensatory storage requirement may be waived for associated transportation and utility networks and replacement on-

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

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site septic system proposals, if the applicant demonstrates that the placement of fill cannot be mitigated.

3) **The Special Flood Hazard Area.** Within the entire Special Flood Hazard Area, the following standards apply:

a) All development shall be:
   i) Reasonably safe from flooding;
   ii) Designed (or modified) and adequately anchored to prevent flotation, collapse, release, or lateral movement of the structure;
   iii) Constructed with materials resistant to flood damage;
   iv) Constructed by methods and practices that minimize flood damage;
   v) Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
   vi) Adequately drained to reduce exposure to flood hazards; and
   vii) Required to elevate or floodproof any fuel storage tanks to at least two feet above the base flood elevation. This can be achieved by:
      I) Elevating the fuel storage tank a minimum of two feet above the BFE and securely anchoring the tank to prevent flotation. The tank shall be located on the land-ward or downstream side of the building and all inlets, fill openings, line connections, and vents shall be elevated to two feet above the BFE. Any structure or platform used to elevate the tank shall be designed to withstand anticipated flood loads and forces;
      II) In places where elevation of the fuel storage tank is not possible due to the location of existing fuel hookup/fuel lines into an existing building:
         A. The tank shall be securely anchored to prevent floatation while protecting it from flood forces and debris. Any structure or platform used to anchor and protect the tank shall be designed to withstand anticipated flood forces and debris. The tank vent pipe/valve shall be located at a minimum two feet above the BFE; or
         B. Storage tanks may be placed underground, if securely anchored and certified by a qualified professional and are protected from flood forces such as scour, erosion, velocity flow, and buoyancy (uplift) force.

b) For any new structure, replacement structure, substantially improved structure, or structure that has experienced substantial damage, outdoor utilities (electrical, heating, ventilation, plumbing, and air conditioning equipment) and other service facilities (such as sewer, gas, and water systems), shall be located on the landward or downstream side of the building and/or behind structural elements, and located and constructed to minimize or eliminate flood damage.

c) In Zones AE and A1 – A30 where floodway limits have not been determined, development shall not be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated encroachment, will not increase the base flood

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elevation more than one foot at any point within the community. The demonstration shall be supported by technical data that conforms to standard hydraulic engineering principles and certified by a registered professional engineer.

d) For new, replacement or substantially improved structures, or for structures that have incurred substantial damage, fully enclosed areas below grade on all sides (including below grade crawlspaces and basements) are prohibited.

e) Recreational vehicles, equipment and boat trailers, portable toilets, construction trailers, and other travel trailers shall:

i) Be currently registered, licensed and ready for highway use; or

ii) Be on site for fewer than 180 consecutive days; or

iii) Meet the all other requirements applicable to structures.

f) Water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.

g) Sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

h) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

i) The flood carrying capacity within any altered or relocated portion of any watercourse shall be maintained, any alteration or relocation shall not result in any decrease of stream stability.

j) Bridges, culverts and channel management activities, which by their nature shall be placed in or over the watercourse, shall have a Stream Alteration permit from the Agency of Natural Resources, if required.

k) Subdivisions shall be accessible by dry land access outside of the Flood Hazard Area Overlay District.

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l) **Structural Standards.** All structures in the Special Flood Hazard Area shall meet the following standards:

i) New structures, existing structures to be substantially improved or replaced, or that have incurred substantial damage shall be located such that the lowest floor is at least two feet above base flood elevation. This shall be documented in the proposed and as-built condition with a FEMA Elevation Certificate.

ii) New non-residential structures, and non-residential structures to be substantially improved, replaced, or that have incurred substantial damage shall:

I) Meet the standards of subsection (A)(3)(l) above; or have the lowest floor, including basement, together with attendant utility and sanitary facilities, designed so that two feet above the base flood elevation the structure is dry floodproofed, meaning watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

II) A permit for dry floodproofing shall not be issued until a registered professional engineer or architect has reviewed the structural design,

specifications, and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection;

III) Dry floodproofing measures used to meet the above floodproofing standard shall work without the use of human intervention at the time of flooding. Exceptions to this standard are when the facility is adequately staffed at all hours with people trained and able to deploy the facility's floodproofing measures, or if the structure is located in a floodplain that has a National Weather Service flood forecast stream gauge that provides adequate advanced warning of potential flooding for the deployment of the floodproofing system.

iii) New structures, or existing structures to be substantially improved or replaced, or that have incurred substantial damage in Zone AO shall have the lowest floor, including basement, elevated above the highest adjacent grade, at least two feet above the depth number specified on the community's FIRM, or at least three feet if no depth number is specified.

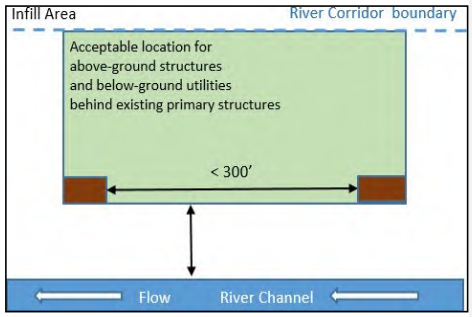
iv) Fully enclosed areas that are above grade, below the lowest floor, below BFE, and subject to flooding, shall:

I) Be solely used for parking of vehicles, storage, or building access, and such a condition shall clearly be stated on any permits; and

II) Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs shall be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria: A minimum of two openings on two walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above adjacent grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters; and

III) Include a signed non-conversion agreement from the owner of the structure with the permit application stating that the enclosed area below the BFE will not be converted to another use not listed above in Section 9.6(A)(3)(I)(vi)(I) and that the community would have the ability to inspect the exterior and interior of the enclosed area in compliance with the standards laid out in the non-conversion agreement.

Figure 8.3 – In-fill Development



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Deleted: <#>Critical facilities that are to be replaced, substantially improved, or meet the definition of substantial damage shall be constructed so that the lowest floor, including basement, shall be elevated or dry-floodproofed at least one foot above the elevation of the 0.2% annual flood height (500-year floodplain), or three feet above base flood elevation, whichever is higher. A critical facility shall have at least one access road connected to land outside the 0.2% annual chance floodplain that is capable of accommodating emergency services vehicles. The top of the access road shall be no lower than six inches below the elevation of the 0.2% annual chance flood event.¶
<#>For historic structures that would meet the definition of substantial improvement or substantial damage if not for their historic structure designation, the improved or repaired building shall meet the following mitigation performance standards for areas below the base flood elevation:¶
<#>For historic structures that would meet the definition of substantial improvement or substantial damage if not for their historic structure designation, the improved or repaired building shall meet the following mitigation performance standards for areas below the base flood elevation:¶
<#>Any future damage to enclosures below the lowest floor shall not result in damage to the foundation, utility connections, or elevated portions of the building or nearby structures;¶
<#>Utility connections (e.g., electricity, water, sewer, natural gas) shall be protected from inundation and scour or be easily repaired;¶
<#>Utility connections (e.g., electricity, water, sewer, natural gas) shall be protected from inundation and scour or be easily repaired;¶
<#>The building foundation shall be structurally sound and reinforced to withstand a base flood event;¶
<#>The structure's historic designation shall not be precluded;¶
<#>The likelihood of flood waters entering the structure during the base flood is reduced; and¶
<#>There shall be no expansion of uses below base flood elevation except for parking, storage, building access, or, in the case of non-residential buildings, where the space is dry floodproofed.¶

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v) A small accessory structure of 500 square feet or less need not be elevated to the base flood elevation, provided the structure is placed on the building site so as to offer the minimum resistance to the flow of floodwaters and shall meet the criteria in subsection (A)(3)(a) above.

B) **Development Review in the River Corridor.** The criteria below are the minimum standards for development in the River Corridor. Where more than one district is involved, the most restrictive standard shall take precedence.

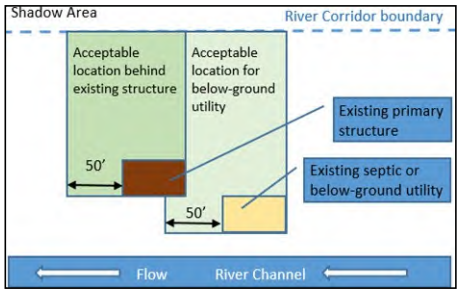
1) Development within designated centers shall be allowed within the river corridor if the applicant can demonstrate that the proposed development will not be any closer to the river than pre-existing adjacent development.

2) Development outside of designated centers shall meet the following criteria:

a) **In-Fill Between Existing Development:** Development must be located no closer to the channel than the adjacent existing primary structures, within a gap that is no more than 300 feet (see Figure 8.3), or

b) **Down River Shadow:** An addition to an existing habitable structure, or an accessory structure that is adjacent to an existing structure, shall be located in the shadow area directly behind and further from the channel than the existing structure, or within 50 feet to the downstream side and no closer to the top of bank. Below-ground utilities may also be placed within the same shadow dimensions of an existing below-ground system (see Figure 8.4).

Figure 8.4 – Shadow Area Development Standard



3) River Corridor Performance Standard[5]

a) Proposals that do not meet the infill or shadowing criteria in must demonstrate to the Development Review Board the development will:

i) not be placed on land with a history of fluvial erosion damage or be imminently threatened by fluvial erosion;

ii) not cause the river reach to depart from or further depart from the channel width, depth, meander pattern, and slope associated with natural stream processes and equilibrium conditions; and

[5] Depending on community settlement patterns and development plans, some communities may consider removing the river corridor performance standard to create a more restrictive bylaw that is easier to administer

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iii) not result in an immediate need or anticipated future need for stream channelization solely as a result of the proposed development, that would increase flood elevations and velocities or alter the sediment regime triggering channel adjustments and erosion in adjacent and downstream locations.

b) Proposals that meet the infill or shadowing criteria in Section 8.6 are presumed to meet the River Corridor Performance Standard. However, The Development Review Board may require an applicant to demonstrate that a proposal meets the River Corridor Performance Standard if there is a concern that the proposed development is at particular risk from fluvial erosion or may increase fluvial erosion, based on location or past flood damage.

c) The Development Review Board may request or consider additional information to determine if the proposal meets the River Corridor Performance Standard, including:

i) a description of why the shadowing and infill criteria in Section 8.6 cannot be met;

ii) data and analysis from a consultant qualified in the evaluation of river dynamics and erosion hazards;

iii) Comments provided by the DEC Regional Floodplain Manager on whether the proposal meets the River Corridor Performance Standard.

C) **Development in Both the Special Flood Hazard Area (SFHA) and River Corridor.** Where development is located in both the Special Flood Hazard Area and the River Corridor, and shall meet the standards of both areas, the most restrictive development standard shall take precedence.

D) **Prohibited Development.** Except as exempted in this article, the following development is prohibited:

1) **Special Flood Hazard District.**

a) Fully enclosed areas below grade on all sides, including below grade crawlspaces and basements.

b) New critical facilities.

c) New encroachments in the Floodway, including accessory structures, except for minor improvements[6] to existing structures or relating to bridges, culverts, roads, stabilization projects, public utilities, river and/or floodplain restoration projects, or health and safety measures.

d) Storage of any materials and salvage yards.

2) **River Corridor.**

a) New primary structures that do not meet the standards in Section 8.6(B)

[6] Minor improvements are those that would not affect base flood elevations, consistent with the provisions of FEMA P-480; Desk Reference for Local Officials: https://www.fema.gov/pdf/floodplain/nfip_sg_unit_5.pdf

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b) New critical facilities.
c) Storage of any materials and salvage yards.

Section 8.7: Standards For Review of Non-conforming Structures

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A) A non-conforming structure in the Flood Hazard Area Overlay District or River Corridor Overlay District that has been substantially damaged or destroyed may be reconstructed in its original location only if it is rebuilt to comply with all requirements of the National Flood Insurance Program (if located in the Special Flood Hazard Area) and these Regulations;

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B) Non-conforming structures and uses shall be considered abandoned where the structures or uses are discontinued for more than 5 years. An abandoned structure shall not be permitted for re-occupancy unless brought into compliance with these Regulations. An abandoned use shall not be permitted unless brought into compliance with these Regulations.

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Section 8.8: Variances in the Flood Hazard Area Overlay District and River Corridor Overlay District

A) Variances may be granted in writing by the Development Review Board only in accordance with all the criteria in 24 V.S.A. § 4469 after a public hearing noticed in accordance with Section 2.4. If the proposed development is located within any Flood Hazard Overlay District, the proposal shall comply with 44 C.F.R. § 60.6.

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

Section 8.9: Violations

A) This article shall be enforced under the requirements of Section 2.7. A copy of the notice of violation shall be sent to the State NFIP Coordinator.

B) If all appeals have been resolved, but a violation remains, the Zoning Administrator shall submit a declaration to the Administrator of the NFIP requesting a denial of flood insurance. Section 1316 of the National Flood Insurance Act of 1968, as amended.

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Section 8.10: Definitions

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

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B) **Definitions.** Definitions in this section apply only to the land development subject to the standards in this article. The following are Article 9 definitions:

Area of Special Flood Hazard: is synonymous in meaning with the term “special flood hazard area” for the purposes of these Regulations.

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Associated Transportation and Utility Networks: means those transportation and utility networks connected to a bridge, culvert, or utility for the purpose of crossing a river or stream and do not include transportation or utility networks within the river corridor that merely run parallel to a river or stream.

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

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

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

BFE: see “Base Flood Elevation.”

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

Compensatory Storage: means a volume not previously used for flood storage and which shall be incrementally equal to the theoretical volume of flood water at each elevation, up to and including the base flood elevation, which would be displaced by the proposed project. Such compensatory volume shall have an unrestricted hydraulic connection to the same waterway or water body. Further, with respect to waterways, such compensatory volume shall be provided within the same reach of the river, stream, or creek. These do not include state transportation networks or power generation and transmission utility networks subject to the Public Utility Commission jurisdiction, as

those are exempt from municipal regulation and are regulated under the State Flood Hazard Area & River Corridor Rule; http://dec.vermont.gov/sites/dec/files/documents/wsmd-fha-and-rc-rule-adopted-2014-10-24.pdf

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

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

Critical Facilities: means facilities that are vital to public health and safety, including police stations, fire and rescue facilities, hospitals, shelters, schools, nursing homes, water supply and waste treatment facilities.

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

Development: means any human-made change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

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

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

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

Flood: means (a) a general and temporary condition of partial or complete inundation of normally dry land areas from: the overflow of inland or tidal waters; the unusual and

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

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Flood Fringe: means the portion of the special flood hazard area that is outside of the floodway but still inundated by the base flood (the flood having a one percent chance of being equaled or exceeded in any given year – 100-year floodplain).

Flood Hazard: means those hazards related to damage from flood-related inundation or erosion.

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

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

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

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

Floodproofing: means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

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

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

Functionally Dependent Use: means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water.

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

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

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

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

Lowest Floor: means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 C.F.R. § 60.3.

Manufactured home (or Mobile home): means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

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

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

New Construction: means structures for which the start of construction commenced on or after the effective date of these Regulations and includes any subsequent improvements to such structures.

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

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

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

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

Public Water Access: means a public access to a water of the State and, except for toilet facilities, shall not include structures as defined in these Regulations.

Recreational Vehicle: means a vehicle which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to

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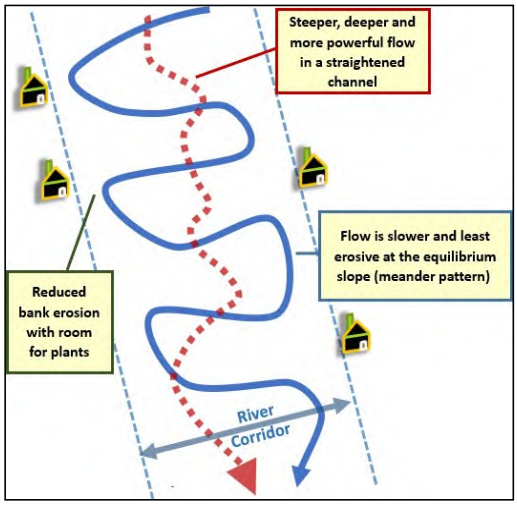
be self-propelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

Redevelopment: means construction, installation, modification, renovation, or rehabilitation of land, interests in land, buildings, structures, facilities, or other development in a previously developed area. The term includes substantial improvements and repairs to substantially damaged buildings.

Replacement Structure: means a new building placed in the same footprint as the pre-existing building and does not include a change in use.

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

Figure 9.5 – River Corridor



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

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

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Start of Construction: for purposes of floodplain management, determines the effective map or bylaw that regulated development in the special flood hazard area. The "start of construction" includes substantial improvement, and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footing, piers, or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

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

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

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

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Substantial Improvement: means any repair, reconstruction, rehabilitation, addition, or other improvement of a structure after the date of adoption of these Regulations, the cost of which, over three years. For further guidance, see FEMA P-758, Substantial Improvement/Substantial Damage Desk Reference: https://www.fema.gov/media-library/assets/documents/18562 or over the period of a common plan of development, cumulatively equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage," regardless of the actual repair work performed. The term does not, however, include either: (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been previously identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (b) Any alteration of an "historic structure," provided that the alteration will not preclude the structure's continued designation as an "historic structure."

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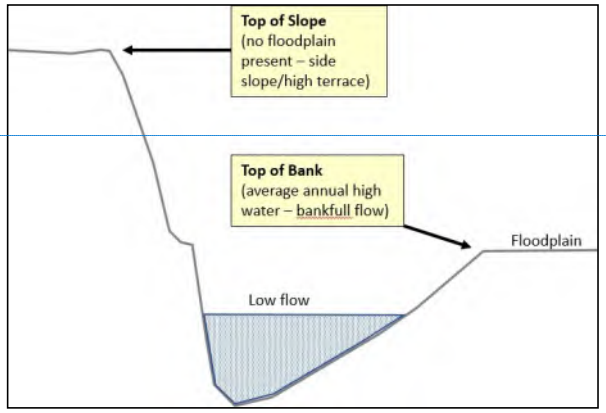
Figure 9.6 – Top of Bank and Top of Slope



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

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

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

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

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

Article 9: Definitions

The following terms, when used in these Regulations, shall have the following meanings, unless otherwise indicated.

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Accessory Dwelling Unit: A distinct unit, is clearly subordinate to a single-household dwelling and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation.

Accessory Structure: A structure, which is incidental and subordinate to the principal structure and is located on the same lot.

Accessory Use: A use, which is incidental and subordinate to a principal use located on the same lot.

Accessory On-Farm Business: An activity on a farm, the revenues of which may exceed the revenues of the farming operation, and comprises one or both of the following:

1) The storage, preparation, processing, and sale of qualifying products, provided that the qualifying products are produced on a farm; the sale of products that name, describe, or promote the farm or accessory on-farm business, including merchandise or apparel that features the farm or accessory on-farm business; or the sale of bread or baked goods.

2) Educational, recreational, or social events that feature agricultural practices or qualifying products, or both. Such events may include tours of the farm, farm stays, tastings and meals featuring qualifying products, and classes or exhibits in the preparation, processing, or harvesting of qualifying products. As used in this subdivision (II), "farm stay" means a paid, overnight guest accommodation on a farm for the purpose of participating in educational, recreational, or social activities on the farm that feature agricultural practices or qualifying products, or both. A farm stay includes the option for guests to participate in such activities.

Agribusiness: Any individual, partnership, corporation, or organization primarily supplying services or goods, (such as equipment, feeds, livestock or supplies), to producers of marketable agricultural products, including greenhouses, nurseries, farm co-operatives and the like.

Agricultural Use: Required agricultural practices as defined by 6 V.S.A. chapter 215, subchapter 2.

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

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Deleted: A use or building customarily incidental and subordinate to the principal use or building, and located on the same lot.¶

Deleted: (a) The cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; or (b) the raising, feeding or management of livestock, poultry, fish or bees; or (c) the operation of green houses; or (d) the production of maple syrup; or (e) the on-site storage, preparation and sale of agriculture products principally produced on the farm; or (f) the on-site production of fuel or power from agricultural products or wastes produced on the farm; or (g) the raising, feeding, or management of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training, and the management of equines No municipal permit for an agricultural use shall be required.…

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Base Flood Elevation (BFE): the elevation of the water surface elevation resulting from a flood that has a 1 percent chance of equaling or exceeding that level in any given year. On the FIRM the elevation is usually in feet, in relation to the National Geodetic Vertical Datum of 1929, the North American Vertical Datum of 1988, or other datum referenced in the Flood Insurance Study report, or the average depth of the base flood, usually in feet, above the ground surface. ¶

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Building: A structure designed, built or used as a shelter for persons, animals, or property. Buildings shall include lunch wagons, travel trailers, mobile homes, etc. when sited in such a manner that they are not readily movable.

Business Service:
a. Personal: Includes banks, consultants, dry cleaners, home retailers and wholesalers, Laundromats, photographic studios, shoe repairing, and similar businesses that provide a personal service to the general public.
b. Professional: Includes barber shops, beauty parlor, dentist, doctor, financial advisor, insurance agency, lawyer, real estate agency, and similar businesses requiring a license to operate that provide a professional service to the general public.

Camp: A hut, shed or similar primitive structure used to shelter people from the weather for hunting or vacation, the occupancy of which neither exceeds 3 consecutive months per calendar year nor exceeds a total of 102 days per calendar year, that has no interior plumbing except for one sink with water. Primitive camps may contain a composting or incinerating toilet. Limited to 900 square feet or less and no more than 20 feet in height.

Campground: A place or business providing tenting or camping vehicle accommodations for commercial purposes, including travel trailer parks and the like.

Camp Site: An area that is occupied or made available to be occupied for vacation or recreational purposes by a camping unit, such as a yurt, tepee, lean-to, recreational vehicle, or no more than two tents.

Camping Vehicle: A travel trailer, tent trailer, motor home, camper trailer, truck camper or any other device or conveyance so constructed as to permit its ready transport on public highways, and designed as temporary living/sleeping quarters. A camping vehicle is in no way included under the Mobile Home definition.

Care Facility: Buildings used as a clinic, rest home, nursing home, convalescent home, or a home for the aged.

Change of Use: Any use that substantially differs from the previous use of a building or land; a change that has the potential to increase the use beyond that currently permitted; or a change of use classification, e.g. "retail" to "restaurant."

Clinic: Office buildings used by members of the medical profession for diagnosis and outpatient treatment of human ailments.

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Deleted: Any area of a building having its floor below ground level on all sides. ¶

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Bed and Breakfast: A single family dwelling unit in which the resident owner or permanent occupant provides short-term lodging and meals to transient paying guests.

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Channel: Means an area that contains continuously or periodic flowing water that is confined by banks and a streambed.¶

Club: Buildings or use catering exclusively to members and their guests for recreational, educational, civic, religious, fraternal, or other non-profit purposes.

Commercial Use: includes all uses shown in Table 4(A) under commercial uses.

Data Center: A facility used for storage, management, processing and/or transmission of digital data that typically contains computers, network equipment, systems, servers, appliances, and other accessory components necessary for digital data operations operated by a single entity for data processing as the primary use or for the shared use of entities engaged in other primary uses for their data center uses. All data center structures on a site shall be aggregated to calculate the total scale of the use and the "footprint" of a data center may be of a standalone building or of a portion of a building containing other uses.

A facility that meets this definition but is 1,000 square feet or less shall not definitionally be a data center but shall be a Business Services, Personal and Professional.

Development: The construction, substantial improvement, replacement or relocation or any change in the use of any structure, or land, or extension of use of land. See also definitions of "Substantial Improvement", "Land Development", and "Change of Use" herein.

Dwelling Unit: Buildings or part thereof designed and used as living quarters for one household. The terms "dwelling", "single household dwelling", "two-household dwelling", or "accessory dwelling unit" shall not include a motel, hotel, boarding house, tourist home or similar structure or use.

Dwelling, Accessory Unit: See definition of accessory dwelling unit.

Dwelling, Adaptive Re-Use Multi-Household: Building adapted to be designed and used as living quarters by five to six households living independently of each other.

Dwelling, Single Household: Building designed and used as living quarters by one household.

Dwelling, Two Household: Building designed and used as living quarters by two households living independently of each other. Excludes single household dwellings with attached accessory dwelling units.

Dwelling, Multi-Household: Building designed and used as living quarters by three or four households living independently of each other.

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Deleted: Includes office space, retail store, auto service station, equipment sales and services, light industry and like uses. Also, buil

Deleted: Also, buildings with five (5) or more rental units, such as multi-family dwellings, rooming houses, dorms, ski lodges etc.…

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Earth Resource Extraction: means the commercial extraction of minerals, including solids such as sand and gravel, liquids such as water, and gases such as natural gas. It may also include preparation activities such as crushing and washing customarily part of earth resource extraction activities.

Essential Public Services: Includes the construction or installation, (by public utilities, municipal or other governmental agencies or private groups), of local consumer electric and telephone distribution lines, facilities for fire, police, highway and health services to the Town, or other similar equipment and accessories necessary for the furnishing of essential services.

Excavation: Any substantial breaking of ground and extraction or movement of earth or rock, or any alteration of existing drainage patterns which substantially affects adjacent properties. Common agricultural tillage, yard care, gardening and excavations in cemeteries shall be exempt from these Regulations.

Fill: Any placed material such as loam, rock, or stone that changes the natural grade, increases the elevation, or diminishes the flood storage capacity at a site. Junk cars, buildings materials etc. shall not be considered fill.

Finished Grade: Completed surfaces of ground, lawns, walks, paved areas and roads brought to grades as shown on plans relating thereto.

Family Child Care Home or Facility: means a home or facility where the owner or operator is to be licensed or registered by the state for childcare.

Frontage: The distance between the two (2) sidelines of any lot, measured along the property line that borders "borders on the legal access to the lot (i.e. public road, private road, access by permanent easement or right-of-way).

Front Yard: That portion of the lot containing a driveway, if any, and lying between a public road or right-of-way, and a structure.

Fuel Service Station: Sales of fuel to end user to include convenience stores.

Group Home: means residential care home or group home to be operated under State licensing or registration, serving not more than eight persons who have a disability as defined in 9 V.S.A. § 4501, or a recovery residence serving not more than eight persons

Home Business: Accessory Use of an accessory structure or minor portion of a dwelling for a business which does not substantially alter the character of the neighborhood and is not a home occupation (see Section 7.6(b)).

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

Deleted: Flood proofing: Any combination of structural and non-structural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures and their contents.¶

Floodway: The channel of a river or other watercourse and the adjacent land areas which must be reserved in order to discharge the base flood waters without cumulatively increasing the water surface elevation more than one foot. ¶
¶

Floodway: The channel of a river or other watercourse and the adjacent land areas which must be reserved in order to discharge the base flood waters without cumulatively increasing the water surface elevation more than one foot. ¶
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Fluvial Erosion: Erosion caused by streams and rivers. Fluvial erosion can be catastrophic when a flood event causes a rapid adjustment of the stream channel size and/or location.¶

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Home Occupation: Accessory Use, conducted within a dwelling or accessory structure by the residents thereof, to use a minor portion of a dwelling for an occupation that is customary in residential areas and does not have an undue adverse effect upon the character of the residential area in which the dwelling is located 24 V.S.A. §4412(4)

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

Hydronic Heaters (Outdoor): An outdoor wood boiler that heats a liquid which circulates to a structure for radiant heating. Also known as "outdoor wood boilers."

Interested Person: A party who may legally appeal to the DRB or Vermont Environmental Division of the Superior Court, as prescribed by §4465 (b) of the Act, generally including any of the following:

a. the party owning title to the subject property, or the designated agent of said party.
b. a person owning or occupying property in the immediate neighborhood who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed.
c. any twenty persons who may be a combination of residents, voters or real property owners in the Town who file a petition with the DRB
d. the Selectboard of the Town, or any adjoining town.
e. any department and administrative subdivision of this state owning property or any interest in property within the municipality and the agency of commerce and community affairs.

Junk: Old or scrap copper, brass, iron, steel and other nonferrous material, including but not limited to rope, rags, batteries, glass, rubber, waste, trash or any discarded, dismantled, wrecked, scrapped or ruined motor vehicles or parts thereof.

Land Development: The division of a lot of land into two or more lots, 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. (§4303 (10)).

Light Industry: The processing, warehousing, or fabrication of certain materials and products where no process involved produces noise, vibration, odor, air pollution, fire hazard or noxious emission that disturbs or endanger neighboring properties. Included are manufacture of apparel, printed materials, electrical components, or home appliances and similar industries.

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Industrial Uses: Industrial uses shall include both manufacturing and warehousing; specifically those activities involving the processing, fabrication, and/or temporary storage of materials and products.…

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Letter of Map Amendment (LOMA): A letter issued by FEMA officially removing a structure or lot from the flood hazard zone based on information provided by a certified engineer or surveyor. This is used where structures or lots are located above the BFE and have been inadvertently included in the mapped special flood hazard area.¶

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Lodging Establishment: A building or buildings in which overnight accommodations are regularly provided to the transient, traveling, or vacationing public and which is required to hold a lodging establishment license with the State. Examples include hotels, motels, inns, motor lodges, and bed and breakfasts.

Lot: A lot of land which may consist of:

a. a single lot of record.
b. a portion of a lot of record.
c. a combination of complete lots of record and/or portions of lots of record.
d. a lot of land described by metes and bounds.

Lot Frontage: The boundary length of a lot on a maintained public road or other approved access.

Lot of Record: Any lot which individually, or as a part of a subdivision, has been recorded under the proper procedural steps in the office of the Town Clerk.

Manufactured Home: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle". A sectional prefabricated house shall not be considered a mobile home.

Mobile Home Park: A lot of land, under single or common ownership or control, which is used, or is to be used, to accommodate two or more mobile homes.

Motor Vehicle Sales and Service: An establishment providing sales and or major servicing of automobiles, trucks, farm and construction equipment, and other motorized vehicles, including dealerships, body shops, vehicle and equipment repair shops, mobile home and camping vehicle sales and service establishments and the like.

New Construction: Means structures for which the *start of construction* commenced on or after the effective date of the floodplain management regulation adopted by the community and includes any subsequent improvements to such structures.

Non-conforming Lot: Lots or lots that do not conform to the present regulations covering dimensional requirements but were in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a lot or lot improperly authorized as a result of error by the administrative officer.

Non-conforming Structure: means a structure or part of a structure that does not conform to the present regulations but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws and

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Deleted: A building or buildings containing rooms which are rented for commercial purposes, such as sleeping units for transients, each sleeping unit consisting of at least a bedroom and use of a bathroom. Included are hotels, motels, tourist courts, cabins, motor lodges, "bed and breakfast", and the like.…

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Lowest Floor: The lowest floor of the lowest enclosed area, including basement, except an unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 CFR 60.3. …

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Mean Sea Level: The National Geodetic Vertical Datum to which BFEs on the FIRM are referenced.¶

Mixed Use: Buildings or land where there are two or more uses which are permitted in the district. Mixed uses may include two or more different commercial uses, commercial and resident ... [23]

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regulations, including a structure improperly authorized as a result of error by the administrative officer.

Non-conforming Use: Use of land that does not conform to the present regulations but did conform to all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws and regulations, including a use improperly authorized as a result of error by the administrative officer.

Office: Space in buildings where the business of a commercial or professional service is transacted.

Parking Space: Off-street space used for the temporary location of one licensed motor vehicle, which is nine feet wide and eighteen feet long or larger for accessible spaces, not including access driveways, and having direct access to a street, right-of-way or alley

Planned Unit Development: One or more lots, tracts, or lots of land to be developed as a single entity, the plan for which may propose any authorized combination of density or intensity transfers or increases, as well as the mixing of land uses.

Plat: A development plan map prepared for filing in the land records in accordance with 27 V.S.A. §1403 or any subsequent revisions thereof.

Plot Plan: A development plan map, showing at an appropriate and consistent scale, all existing physical and man-made features, all property easement and right-of-way lines, all proposed structure locations and land use alterations, and any other information as may be required to determine compliance with the provisions of these Regulations.

Primary Residence: The dwelling unit in which a person resides as their legal residence for more than one half of a year and registers as their address for tax and government identification purposes.

Principal Structure: A structure in which is conducted the principal use(s) of the lot.

Principal Use: A use directly involved with the primary purpose of ownership on a particular lot.

Public Facilities: Uses listed under § 4413(a)(1) including: state- or community-owned and -operated institutions and facilities, public and private schools and other educational institutions certified by the Agency of Education; churches and other places of worship, convents, and parish houses; public and private hospitals; regional solid waste management facilities certified under 10 V.S.A. chapter 159; hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. § 6606a; emergency shelters; and hotels and motels converted to permanently affordable housing developments.

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Deleted: This plan, as authorized, may deviate from bylaw requirements that are otherwise applicable to the area in which it is located with respect to lot size, bulk, or type of dwelling or building, use, density, intensity, lot coverage, parking, required common open space, or other standards. (See also §4417 of the Act.)…

Deleted: Zoning

Deleted: Building/Use

Deleted: or use directly involved with the primary purpose of ownership on a particular lot, which together with its accessory structures/uses, constitutes all structures and uses of said lot.…

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Recreation, Indoor: Recreation that occurs indoors including but not limited to Includes bowling alleys, gymnasiums, hobby workshops, pool halls, skating rinks, swimming pools, theaters.

Recreation, Outdoor: Recreation that occurs outdoors including but not limited to archery, skeet, or trap ranges, beaches, golf courses, golf driving ranges, parks, recreation stadiums, riding stables, skating rinks, ski resorts, swimming pools, tennis courts. Fishing, hunting and trail networks and similar forms of low impact forms of recreation are exempt from these Regulations.

Recreational Vehicles: A vehicle which is built on a single chassis and has four hundred (400) square feet or less when measured at the largest horizontal projections, is designed to be self-propelled or permanently towable by a light duty truck, and is designed as temporary living quarters for recreational, camping, travel or seasonal use and not as a permanent dwelling.

Religious Institution: Structure or facility dedicated to religious practice.

Residential Use: Includes all uses shown in table 4(A) under residential uses.

Resident-Occupied Dwelling Unit: A dwelling unit occupied by an individual as their primary residence.

Restaurant: Includes bars, diners, lounges, nightclubs, free-standing food service stands and similar establishments where food is served.

Retail Establishment: Includes enclosed stores for the sale of retail goods, personal service shops, free-standing retail stand and shall exclude any drive-up service, gasoline service and motor vehicle repair service, new and used car sales and service, trailer and mobile home sales and service.

Salvage Yard: Buildings or land used for the collection, storage, or sale of junk, or for the collection, wrecking, dismantling, storage, salvage or sale of machinery or vehicles which are not inspected and not in operating condition. Four or more such vehicles constitute a salvage yard. Vehicles used in farm operation are exempt.

Setback: The nearest distance between the edge of property lines and public or private road right-of-ways and a structure, including all features of the structure.

Sign: Any display or representation, used or placed as an announcement, direction or advertisement. The word "placed" for the purpose of this definition shall include erected, constructed, fastened or affixed to the ground or a structure, or made visible in any manner whatever. Signs on the interior of a structure and visible through a window are excluded.

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Deleted: Includes the erection, construction and alteration of facilities or nature of use by any municipal, state or federal government, public utility or other quasi-public institution, of public buildings, electric transmission lines, recreation facilities, water supply and sewage treatment facilities, including public and private schools and other educational institutions certified by the VT Department of Education….

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Deleted: single-family, two-family, and multi-family dwellings….

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River Corridor: As determined on the most current River Corridor Map published by the Vermont ANR which are hereby adopted by reference and declared to be part of these regulations.¶

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Deleted: : Any display or representation used or placed as an announcement, direction or advertisement. The word "placed" for the purpose of this definition shall include erected, constructed, fastened or affixed to the ground or a structure. Signs on the interior of a structure and visible through a window are excluded….

Short-Term Rental: A furnished house, condominium, or other dwelling room or self-contained dwelling unit, or a portion thereof, rented to the transient, traveling, or vacationing public for a period of fewer than 30 consecutive days and for more than 14 days per calendar year, but excluding the following: 1) a lodging establishment or 2) the rental of two or fewer individual bedrooms or other portions of dwelling units to the transient, traveling, or vacationing public in a resident-occupied dwelling unit.

State: State of Vermont.

Street: A public highway for vehicular traffic which affords the principal means of access to properties.

Street Frontage: Lot lines which abut a public highway.

Structure: An assembly of materials for occupancy or use, including, but not limited to, a mobile home or trailer, billboard, sign, tennis court, swimming pool, satellite dish, and a wall or fence."

Structure Height: Vertical distance, measured from the average elevation of the proposed finished grade at the base of the structure, to the highest point of the roof for flat, hip, and mansard roofs, and to the average height between eaves and ridge for other types of roofs.

Use: The specific purpose for which land or a building is arranged, designed, or intended, or for which either land or a building is used, or intended to be used or occupied.

Yard: Space on a lot not occupied with a structure. Porches, whether enclosed or open, and decks, shall be considered as part of the main building and shall not project into a required yard. The required yard distances shall be determined in the same manner as the setback. (See also "setback" definition herein.)

Index of Acronyms:

AMP	Accepted Management Practices
ANR	Agency of Natural Resources
BFE	Base Flood Elevation
BMP	Best Management Practices
CFR	Code of Federal Regulations
DEC	Department of Environmental Conservation

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Social Services: Day care center, medical clinic, convalescent home, and similar human service/health care facilities, and group or community care homesf. (See also definitions of "Club" and "Dwelling" herein.)....

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Special Flood Hazard Area (SFHA): The land in the flood plain, subject to a one (1) percent or greater chance of flooding in any given year.¶

Start of Construction: The "start of construction" includes substantial improvement, and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footing, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the fi ... [24]

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Substantial Damage: Damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged conditions would equal or exceed 50 percent of the market value of the structure before the damage occurred. ¶
¶ ... [25]

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Violation: The failure of a structure or other development to be fully compliant with these regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR 60.3 is presumed to be ... [26]

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1	**DRB**	Development Review Board
2	**FCC**	Federal Communications Commission
3	**FEMA**	Federal Emergency Management Agency
4	**FHA**	Flood Hazard Area
5	**FIRM**	Flood Insurance Rate Map
6	**HAOD**	Hazard Area Overlay District
7	**HAR**	Hazard Area Review
8	**LOMA**	Letter of Map Amendment
9	**MPC**	Montgomery Planning Commission
10	**NFIP**	National Flood Insurance Program
11	**PUD**	Planned Unit Development
12	**RFP**	Radio Frequency Radiation
13	**RAP**	Required Agricultural Practice
14	**SFHA**	Special Flood Hazard Area
15	**ZA**	Zoning Administrator

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Re-worded to align with other standards which focus on the requirements of the use not the applicant.

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