

Town of Bennington, Vermont Land Use & Development Regulations



Last Amended on April 26, 2021
Adopted on February 23, 2004

Prepared by the
Bennington Planning Commission

with the assistance of:



Bennington County Regional Commission

Funded in part by:
Vermont Agency of Commerce and Community Development Municipal Planning Grant Program

BENNINGTON LAND USE & DEVELOPMENT REGULATIONS

Table of Contents

Article 1. Authority & Purpose

Section 1.1	Enactment.....	Page 1
Section 1.2	Purpose.....	Page 1
Section 1.3	Application & Interpretation	Page 1
Section 1.4	Effective Date.....	Page 2
Section 1.5	Amendment	Page 2
Section 1.6	Severability	Page 2

Article 2. Establishment of Zoning Districts & District Standards

Section 2.1	Establishment of Zoning Districts.....	Page 4
Section 2.2	Official Zoning Map.....	Page 5
Section 2.3	Interpretation of Zoning District Boundaries	Page 5
Section 2.4	Application of District Standards	Page 6
Section 2.5	District Objectives, Uses and Standards.....	Page 6

Town Center Districts & Form-Based Design Areas

Table 2.1	Town Center Districts – Land Use Permissions.....	Page 7
	<i>Town Center includes: Downtown (D), Mixed Use #1 (MU-1), Mixed Use #2 (MU-2), Mixed Residential #1 (MR-1), and Village Residential (VR) Districts</i>	
Table 2.2	Town Center Districts – Special Use Standards.....	Page 8
Table 2.3	Town Center Districts – Use Categories	Page 10
Table 2.4	Historic Central Bennington Design Review District	Page 11
Table 2.5	Downtown Form-Based-Design (DD) Area.....	Page 14
Table 2.6	Mixed Use Form-Based-Design (MD) Area.....	Page 18
Table 2.7	Residential Form-Based-Design (RD) Area.....	Page 22

Commercial, Industrial, & Institutional Districts

Table 2.8	Institutional & Professional (IP) District.....	Page 26
Table 2.9	Industrial (I) District.....	Page 28
Table 2.10	Planned Commercial (PC) District.....	Page 30
Table 2.11	Planned Airport (PA) District	Page 41

Residential Districts

Table 2.12	Mixed Residential #2 (MR-2) District	Page 42
Table 2.13	Rural Residential (RR) District.....	Page 44

Open Land & Resource Conservation Districts

Table 2.14	Rural Conservation (RC) District.....	Page 46
Table 2.15	Agricultural (A) District.....	Page 52
Table 2.16	Forest (F) District.....	Page 54
Table 2.17	Public Open Space (POS) District	Page 56
Table 2.18	Flood Hazard Overlay (FHO) District.....	Page 57
Table 2.19	Airport Approach Overlay (AAO) District	Page 65
Table 2.20	Route 7A Corridor Overlay (CO) District.....	Page 66
Table 2.21	Fluvial Erosion Hazard Area (FEH) Overlay (CO) District.....	Page 67

Article 3. General Regulations

Section 3.1	Applicability	Page 69
Section 3.2	Abandonment & Demolition of Structures	Page 69
Section 3.3	Access Management & Frontage Requirements	Page 71
Section 3.4	Conversion & Change of Use.....	Page 73
Section 3.5	Equal Treatment of Housing	Page 73
Section 3.6	Existing Small Lots	Page 73
Section 3.7	Height Regulations	Page 74
Section 3.8	Lot & Yard Requirements	Page 74
Section 3.9	Noncomplying Structures & Nonconforming Uses	Page 75
Section 3.10	Parking & Loading Requirements	Page 76
Section 3.11	Performance Standards.....	Page 81
Section 3.12	Steep Slopes	Page 83
Section 3.13	Storage of Junk Vehicles, Scrap, Waste, and Hazardous Materials	Page 83
Section 3.14	Surface Water Protection	Page 83

Article 4. Specific Use Standards

Section 4.1	Applicability	Page 85
Section 4.2	Accessory Apartments.....	Page 85
Section 4.3	Accessory Uses & Structures	Page 86
Section 4.4	Adaptive Re-Use of Historic Structures	Page 86
Section 4.5	Adult Oriented Businesses	Page 87
Section 4.6	Campers & Recreational Vehicles	Page 88
Section 4.7	Recreational Vehicle Parks	Page 89
Section 4.8	Extraction of Earth Resources	Page 90
Section 4.9	Farm (Agricultural) Retail.....	Page 91
Section 4.10	Gas Stations/Motor Vehicle Service	Page 92
Section 4.11	Golf Courses.....	Page 94
Section 4.12	Group Homes	Page 95
Section 4.13	Home Occupation.....	Page 95
Section 4.14	Junk Yards.....	Page 96
Section 4.15	Kennels & Veterinary Clinics	Page 98
Section 4.16	Mixed Uses.....	Page 98
Section 4.17	Mobile Home Parks.....	Page 98
Section 4.18	Public Facilities	Page 100
Section 4.19	Telecommunications Facilities.....	Page 100
Section 4.20	Temporary Uses & Structures	Page 104
Section 4.21	Bus Shelters.....	Page 105
Section 4.22	Large Scale Retail	Page 105

Article 5. Development Review

Section 5.1	Applicability.....	Page 107
Section 5.2	Review Process	Page 107
Section 5.3	Review Standards.....	Page 110

Article 6. Subdivision Review

Section 6.1 Applicability Page 118
Section 6.2 Administrative Review of Boundary Adjustments Page 120
Section 6.3 Sketch Plan Review Page 120
Section 6.4 Preliminary Plan Review Page 120
Section 6.5 Final Plan Approval Page 121
Section 6.6 Plat Recording Requirements Page 124
Section 6.7 Certificate of Compliance Page 124
Section 6.8 Revision to an Approved Plat Page 125

Article 7. Subdivision Standards

Section 7.1 Application of Standards Page 126
Section 7.2 General Standards Page 126
Section 7.3 Protection of Natural/Fragile Features Page 127
Section 7.4 Preservation of Rural Character Page 128
Section 7.5 Urban Settlement Patterns Page 130
Section 7.6 Community Services, Facilities Page 131
Section 7.7 Water Supply & Wastewater Disposal Page 131
Section 7.8 Roads & Pedestrian Access Page 132
Section 7.9 Stormwater Management & Erosion Control Page 137
Section 7.10 Utilities Page 137
Section 7.11 Open Space & Common Land Page 138
Section 7.12 Signs Page 139

Article 8. Planned Residential & Planned Unit Development (PRDs & PUDs)

Section 8.1 Purpose Page 140
Section 8.2 Coordination with Other Review Processes Page 140
Section 8.3 Planned Residential Developments (PRDs) Page 140
Section 8.4 Planned Unit Developments (PUDs) Page 142
Section 8.5 Open Space & Common Land for PRDs & PUDs Page 144

Article 9. Administration & Enforcement

Section 9.1 Municipal Land Use Permits & Approvals Page 145
Section 9.2 Exemptions Page 145
Section 9.3 Zoning Permits Page 147
Section 9.4 Certificates of Completion & Compliance Page 148
Section 9.5 Appeals Page 149
Section 9.6 Variances Page 150
Section 9.7 Violations & Enforcement Page 151
Section 9.8 Municipal Administrative Requirements Page 151

Article 10. Definitions

Section 10.1 Terms & Usage Page 154
Section 10.2 Definitions Page 154

Zoning Maps

- Map 1 Entire Town Zoning Districts
- Map 2 Town Center Zoning Districts
- Map 3 Town Center Form-Based-Design Areas
- Map 4 Historic Bennington Design Review District
- Map 5 Planned Commercial Design Review District
- Map 6 Airport Approach Zone
- Map 7 Fluvial Erosion Hazard Areas

Bennington Planning Commission:	Michael McDonough, Chair, Charles Copp, Nicholas Lasoff, Robert Ebert, Ken Swierad
Planning Director:	Daniel Monks
Bennington Select Board:	Jeannie Jenkins, Chair, Jeanne Conner, Vice- Chair, Jim Carroll, Sarah Perrin, Bruce Lee-Clark, Gary Corey, Tom Haley
Town Manager:	Stuart Hurd

ARTICLE 1. AUTHORITY & PURPOSE

Section 1.1 Enactment

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

Section 1.2 Purpose

It is the purpose of these regulations to:

- **implement the *Bennington Town Plan* as most recently amended; including:**
- encourage the appropriate and efficient use of all lands in the Town of Bennington in a manner which promotes public health, safety, and general welfare;
- provide methods for the prevention, minimization and future elimination of such land use problems as may presently exist or which may be foreseen;
- provide for orderly community growth, and facilitate the adequate and efficient provision of public facilities and services;
- further the goals and purposes established in the Act; and
- integrate all administrative and regulatory provisions of the Town’s zoning and subdivision regulations, as authorized by the Act into a single set of land use regulations.

Section 1.3 Application & Interpretation

(A) The application of these regulations is subject to all subchapters of the Act as most recently amended. In accordance with the Act and except as hereinafter provided, no land development or subdivision of land shall commence within the Town of Bennington except in conformance with these regulations. Land development, as defined in Article 10, shall not include customary maintenance activities. Any land development or subdivision of land not specifically authorized under these regulations, unless otherwise exempted under the Act or Section 9.2 of these regulations, shall be deemed to be prohibited.

(B) In their application and interpretation, the provisions of these regulations shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience, and general welfare. Nothing in these regulations shall exempt any applicant for a permit from full compliance with all other state and municipal laws.

(C) These regulations are not intended to repeal, abrogate, annul or in any way impair or interfere with any permit or municipal approval previously issued. Where these regulations impose a greater restriction upon the use of a structure or land than is required by any other statute, ordinance, rule, regulation, permit, easement, or agreement, private or public, then the provisions of these regulations shall control.

Land Development: the construction, demolition, reconstruction, conversion, structural alteration, relocation or enlargement of any building or structure, or of any mining, excavation, or landfill, any change in use of any building or other structure, or land or extension of use of lands, including construction and/or installation of roads, utilities and site improvements.

Subdivision of Land: the division of any parcel of land into two or more parcels for the purposes of sale, conveyance, lease, or development. The term “subdivision” includes resubdivision and the adjustment of boundaries between two or more existing parcels.

Article 1. Authority & Purpose

Section 1.4 Effective Date

(A) In accordance with the Act, these regulations and any amendments thereto shall take effect 21 days after the date of their adoption by the Town of Bennington.

(B) The zoning regulations, zoning map, subdivision regulations for the Town of Bennington in effect prior to the adoption of these regulations are hereby repealed as of the effective date of these regulations.

Section 1.5 Amendment

(A) These regulations, including the boundaries of zoning districts established herein, may be amended from time to time, following public hearing, in accordance with requirements and procedures established in the Act.

Section 1.6 Severability

The provisions of these regulations are severable. If any section or provision of these regulations or the application thereof is found to be unconstitutional or otherwise invalid by a court of competent jurisdiction, such decision shall not affect the validity or application of the remaining provisions of these regulations.

TABLE 1.1 MUNICIPAL PERMITS & APPROVALS			
Permit/Approval	Required for	Issued by	See
Land Development			
Zoning Permit	All land development, as defined in Article 10, including conversions and changes of use, unless specifically exempted from these regulations under Section 9.2	Administrative Officer	Section 9.3
Design Approval	All development within the Historic Central Bennington Design Review District, Downtown Form-Based-Design Area, Mixed Use Form-Based Design Area, Residential Form-Based Design Area, Planned Commercial District, and Rural Conservation District as established in Article 2.	Development Review Board	Tables 2.4, 2.5, 2.6, 2.7, 2.10 and 2.14
Development Review Board Approval	All uses classified as requiring Board approval within a specific zoning district(s), all uses within the flood hazard area overlay district, or as otherwise specified in these regulations	Development Review Board	Article 5; Table 2.18
Planned Unit or Planned Residential Development (PUD, PRD) Approval	Subdivisions of land which incorporate modifications to the provisions of these regulations as specified for PUDs and PRDs- to be approved simultaneously with approval of a subdivision plan	Development Review Board	Article 8
Access/Frontage Approval	Development without frontage on a maintained public road or public waters	Development Review Board	Section 3.3
Variance Approval	Requests on appeal for a variance from the provisions of these regulations	Development Review Board	Section 9.6
Certificate of Completion	Use of a dwelling, structure or site constructed or developed after the effective date of these regulations for which a zoning permit has been issued	Administrative Officer	Section 9.4

Article 1. Authority & Purpose

TABLE 1.1 MUNICIPAL PERMITS & APPROVALS (CONTINUED)			
Permit/Approval	Required for	Issued by	See
Subdivision of Land			
Subdivision Approval	All subdivisions of land, as defined in Article 10, including boundary or lot line adjustments	Development Review Board	Article 6 & 7
Sketch Plan Approval	All applications for subdivision approval	Development Review Board	Section 6.3
Preliminary Plan Approval	All applications for major subdivisions [the creation of five or more lots]	Development Review Board	Section 6.4
Final Plan/Plat Approval	All applications for the subdivision of land	Development Review Board	Section 6.5
Plat Recording	All approved subdivisions of land, including boundary or lot line adjustments	Development Review Board	Section 6.6
Certificate of Subdivision Compliance	Improvements required by the Planning Commission in association with subdivision approval, prior to further land development	Administrative Officer	Section 9.4
Other Municipal Approvals			
Access (Curb-cut) Approval	All development requiring access onto municipal highways; road design, upgrades, acceptance	Highway Superintendent	Town Policy
Sign Permit (in addition to zoning approvals)	Construction or alteration of any sign	Administrative Officer	Sign Ordinance
Municipal water or wastewater allocation or connection	Municipal wastewater treatment system and Municipal Water system connections	Water/Sewer Superintendent	Town Policy
Building Permit	Any and all construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or structure (inc. decks and sheds) and any change of use of a building or structure	Building Inspector	Building Code
Demolition Permit (in addition to zoning approvals)	Any demolition or relocation of a building	Building Inspector	Building Code

ARTICLE 2. ESTABLISHMENT OF ZONING DISTRICTS & DISTRICT STANDARDS

Section 2.1 Establishment of Zoning Districts

(A) For the purposes of these regulations, the Town Bennington, not including the Village of North Bennington or the Village of Old Bennington, is divided into the following zoning districts, as described in the accompanying tables (Tables 2.1 - 2.21) and depicted on the official zoning map, to be designated by the abbreviations set forth below:

Town Center Districts and Form-Based-Design Areas:

Downtown District (<i>formerly Central Business District</i>)	(D) (<i>formerly CB</i>)
Mixed Use District #1 (<i>formerly Office & Apartment District</i>)	(MU-1) (<i>formerly OA</i>)
Mixed Use District #2 (<i>formerly Urban Mixed Use, Village Industrial, Village Commercial Districts</i>)	(MU-2) (<i>formerly UMU, VI, VC</i>)
Village Residential District	(VR)
Mixed Residential District #1 (<i>formerly Mixed Residential</i>)	(MR-1) (<i>formerly MR</i>)
Downtown Form-Based-Design Area	(DD)
Mixed Use Form-Based-Design Area	(MD)
Residential Form-Based-Design Area	(RD)

Commercial, Industrial & Institutional Districts:

Institutional & Professional District	(IP)
Planned Commercial District	(PC)
Industrial District	(I)
Planned Airport District	(PA)

Residential Districts:

Mixed Residential District #2	(MR-2) (<i>formerly MR</i>)
Rural Residential District	(RR)

Open Land & Resource Conservation Districts:

Rural Conservation District	(RCON)
Agricultural District	(A)
Forest District	(F)
Public Open Space District	(POS)

Overlay Districts:

Historic Bennington Design Review District	(HDR)
Flood Hazard Overlay District	(FHO)
Airport Approach Overlay District	(AAO)
Route 7A Corridor Overlay District	(CO)
Fluvial Erosion Hazard Area Overlay District	(FEH)

NOTE: The Village of North Bennington and the Village of Old Bennington each has established its own zoning which will continue under the administrative control of each village.

Section 2.2 Official Zoning Map

(A) The location and boundaries of said zoning districts, form-based-design areas, and overlays are established as shown on the official “Town of Bennington Official Zoning Map,” and the National Flood Insurance Program maps for the Town of Bennington, which are hereby adopted by reference as part of these regulations. The official zoning map and overlay shall be located in the Town Clerk’s office and shall be the final authority as to the current zoning status of land and waters in the town and village.

(B) The official zoning map, including form-based-design areas and overlays, shall be identified by the signature of the Chair of the Legislative Body, as attested to by the Town Clerk.

(C) No changes of any nature shall be made on the official map or overlays except in conformance with zoning amendment procedures and requirements set forth in the Act.

Section 2.3 Interpretation of Zoning District Boundaries

(A) Where uncertainty exists as to the location of a district boundary shown on the official zoning map and/or overlay, the following rules shall apply:

- (1) Boundaries indicated as approximately following property boundaries or platted lot lines shall be construed to follow such lot lines.
- (2) Boundaries indicated as approximately following the center lines of streams or rivers shall be construed to follow such center lines; where opposite sides of a lake, pond, swamp or water body lie in different districts, the boundary shall be deemed to be the center thereof.
- (3) Boundaries indicated as approximately following the center lines of road, transportation and utility rights-of-way shall be construed to follow such center lines.
- (4) Boundaries indicated as following elevation contours shall be construed to follow such contours.
- (5) Boundaries indicated as parallel to or extensions of features under subsections (1)-(4) shall be so construed. Boundaries indicated as lines perpendicular to lines or features described in subsections (1)-(4) shall be construed to proceed at right angles from such lines or features. Distances not specifically indicated shall be determined by the scale of the map.
- (6) Where available (i.e., in Zones 1- A30, AE and AH) the base flood elevations and floodway limits provided by the National Flood Insurance Program (NFIP) in the Flood Insurance Study and accompanying maps shall be used to administer and enforce the flood hazard area overlay district provisions of this bylaw. In areas where base flood elevations and floodway limits have not been provided by the NFIP (i.e., Zone A), base flood elevations and floodway information available from state or federal agencies or other sources shall be obtained and reasonably used to administer and enforce flood hazard area overlay provisions.
- (7) The abandonment or relocation of a right-of-way or roadway, or the change in a line or feature which references a district boundary line, after the effective date of these regulations, shall not affect the location of such boundary line, except as otherwise noted under Subsection (C).

(B) When the Administrative Officer cannot definitely determine the location of a district boundary by the scale or dimensions given on the official zoning map and associated overlays or by the above rules, the Planning Commission and/or the appropriate state official (e.g., flood hazard administrator) may be consulted prior to making the final determination. A determination by the Administrative Officer

regarding the location of a district boundary may be appealed to the Development Review Board under Section 9.5.

(C) In the case of lots lying in more than one district, the provisions of any district may be applied for a distance of not over thirty feet into any other adjacent district.

Section 2.4 Application of District Standards

(A) The standards for each district shall apply uniformly to each class of use and/or structure, unless otherwise specified in these regulations. All uses and structures must comply with all prescribed standards for the district in which they are located as set forth in Tables 2.1 - 2.21, and as defined in Article 10, unless otherwise permitted under Planned Residential Development (PRD) or Planned Unit Development (PUD) pursuant to Article 8. Non-conforming uses and non-complying structures shall be regulated in accordance with Section 3.9.

(B) Overlay district standards shall be applied concurrently with the standards for underlying districts. Where overlay districts impose more restrictive standards on the use of a structure or land, the standards of the overlay district shall apply.

(C) Prescribed uses for each district are classified as **“allowed with the approval of the Administrative Officer,”** to be reviewed in accordance with Section 9.3, or **“allowed with the approval of the Development Review Board”** to be reviewed in accordance with Section Article 5. **Accessory structures and uses**, including parking areas serving another use, may be permitted by the Administrative Officer in accordance with Section 9.3 unless the use or structure is accessory to a use that requires Development Review Board approval in accordance with Article 5, in which case the accessory use or structure shall also be subject to Board approval under Article 5.

(D) Any use not permitted by these regulations, unless specifically exempted under Section 9.2, shall be deemed to be prohibited.

(E) Any list of prohibited uses and/or processes in any section of these regulations shall not be deemed to be an exhaustive list but is included for the purposes of clarity and emphasis, and to illustrate, by example, some of the uses frequently proposed that are deemed undesirable and incompatible and are thus prohibited.

Section 2.5 District Objectives, Uses and Standards

The following tables (2.1 - 2.21) set forth the stated purpose, allowable uses and specific standards for each zoning district.

**Table 2.1
TOWN CENTER DISTRICTS -- LAND USE PERMISSIONS**

(A) Purpose: This section summarizes the use permissions for five land use districts in the town center. Additional standards and limitations for these districts are detailed in Table 2.2 A-F. Town Center districts are subject to design standards for three Form-Based-Design (FBD) areas per sections 2.5 - 2.7.

(B) Summary Matrix:

Land Uses by District For specific uses considered under the use categories listed below, see Table 2.3	Downtown (D)	Mixed Use #1 (MU-1)	Mixed Use #2 (MU-2)	Mixed Residential #1 (MR-1)	Village Residential (VR)
Residential					
Multifamily	ZA +	ZA	ZA	ZA	N
Single Family & Two Family	N	ZA	ZA	ZA	ZA
Commercial					
Food, Drink, & Entertainment	ZA	ZA +	ZA +	N	N
Gas Station/Motor Vehicle Services	N	N	ZA +	N	N
Lodging	ZA	ZA +	ZA +	ZA +	ZA +
Personal & Professional Services	ZA +	ZA +	ZA +	N	N
Residential Care Facilities	DRB +	DRB	DRB	DRB	N
Retail	ZA +	ZA +	ZA +	ZA +	N
Social Service & Correctional Residences	N	N	ZA +	N	N
Public & Institutional					
Educational Facilities	ZA	ZA	DRB	ZA +	N
Government & Civic Services	ZA	DRB +	ZA +	N	N
Place of Worship	ZA	ZA	ZA	ZA	N
Public Parking & Transit Facilities	ZA	N	N	N	N
Manufacturing					
	ZA	DRB	DRB	N	N
Form-Based Design (FBD) Areas:	Downtown	Mixed Use		Residential	

(C) Supplemental Standards that apply throughout the Town Center Districts and FBD Areas:

- (1) **Mixed Uses:** Any permitted uses may be combined as mixed uses.
- (2) **Form-Based Standards:** Development must comply with corresponding FBD standards in Sections 2.5 through 2.7.
- (3) **Design Review:** Development in the Historic Central Bennington Design Review District shall be reviewed in accordance with the standards and procedures set forth in Table 2.4.
- (4) **Performance Standards:** All uses and structures must comply with Section 3.11 Performance Standards.
- (5) **Accessory Structures and Uses:** All accessory structures and/or uses are considered under primary use.
- (6) **Drive-Throughs:** Drive-throughs are not permitted except where noted.
- (7) **Electric Vehicle (EV) Charging Stations:** EV charging stations accessory to a permitted use are allowed.
- (8) **Green and Recreation Spaces:** Parks, pathways, and outdoor recreation facilities are permitted by right.
- (9) **Uses Not Addressed Above:** Any use not listed above is prohibited. For specific uses grouped under the use categories listed above, see Table 2.3. The ZA will make a determination as to whether a proposed use may be deemed a permitted use. The ZA's determination is appealable to the DRB.
- (10) **General Standards and Specific Use Standards:** All uses and development shall comply with other applicable standards of these regulations, including General Regulations under Article 3 and Specific Use Standards under Article 4.

**Table 2.2
TOWN CENTER DISTRICTS – SPECIAL USE STANDARDS**

(A) Purpose: This section provides additional use standards and limitations for the town center districts. Use categories not listed below do not have detailed land use standards. To see a full list of the specific uses grouped under the use categories listed below, see Table 2.3.

(B) Downtown:

Use	Special Use Requirements for the Downtown District
Residential	
Multifamily	Ground-floor dwelling units are not permitted to front on the following streets: South, North, West Main, and East Main. Ground-floor dwelling units in rear must be set back at least 25' from the front façade.
Commercial	
Personal & Professional Services	Excludes kennels. Drive-through facilities are permitted at banks. Retail self-storage shall not front on the following streets: South, North, West Main, and East Main. Retail self-storage spaces in rear must be set back at least 25' from the front, ground-floor façade.
Residential Care Facilities	More than half of first floor shall be reserved for other permitted uses.
Retail	All retail uses permitted. Drive-through facilities are permitted at pharmacies for the purpose of collecting products prescribed by a medical professional. Warehouses shall not front on the following streets: South, North, West Main, and East Main. Warehouse spaces in rear must be set back at least 25' from the front, ground-floor façade.

(C) Mixed Use #1:

Use	Special Use Requirements for the Mixed Use #1 District
Commercial	
Food, Drink, & Entertainment	Permitted uses limited to restaurant and bars. Locations restricted to lots fronting on Main St.
Lodging	Hotels/motels are restricted to lots fronting on Main Street.
Personal & Professional Services	Permitted uses limited to medical clinic, office (professional, business), personal business establishment, and research & development facility.
Retail	Permitted uses limited to neighborhood market.
Public & Institutional	
Government & Civic Services	Excludes municipal and state offices. Public facilities are limited to facilities that are open and accessible to the general public. Locations limited to lots fronting on Main Street and/or South Street. Civic centers are allowed on lots fronting on Main Street only.

Table 2.2 (continued)
TOWN CENTER DISTRICTS – SPECIAL USE STANDARDS

(D) **Mixed Use #2:**

Use	Special Use Requirements for Mixed Use #2 District
Commercial	
Food, Drink, & Entertainment	Restaurants and bars are not permitted in buildings fronting on Gage Street, Pratt Street, or Division Street.
Gas Stations and Motor Vehicle Services	Permitted on lots fronting on North Street and Main Street only. Any new gas/service station must be at least 900 feet away from the nearest gas/service station, as measured from the property boundaries. Canopies are not permitted.
Lodging	Hotels are not permitted in buildings fronting on Gage Street, Pratt Street, or Division Street.
Personal & Professional Services	Excludes hospitals and kennels. Drive-through facilities are permitted at banks in buildings fronting on North Street and Main Street.
Retail	Permitted on lots fronting on Main Street and North Street and in historic structures elsewhere in the Mixed Use #2 District. All retail uses are limited to 10,000 square feet of floor area per store. Drive-through facilities are permitted at pharmacies for the purpose of collecting products prescribed by a medical professional.
Social Services & Correctional Residences	Excludes correctional home/furlough house and secure care facility. Shelter home/temporary shelters are permitted on lots fronting on Benmont Avenue, North Street, and East Main Street only.
Public & Institutional	
Government and Civic Services	Permitted uses limited to civic centers, with locations restricted to lots fronting on Benmont Avenue.

(E) **Mixed Residential #1**

Use	Special Use Requirements for Mixed Residential District #1
Commercial	
Lodging	Permitted uses limited to bed and breakfasts.
Retail	Permitted uses limited to neighborhood market.
Public & Institutional	
Educational Facilities	Permitted uses limited to day care facility and educational facility/school.

(F) **Village Residential**

Use	Special Use Requirements for Village Residential District
Commercial	
Lodging	Permitted uses limited to bed and breakfasts.

**Table 2.3
TOWN CENTER DISTRICTS – USE CATEGORIES**

(A) Purpose: This table identifies the specific uses that are consolidated under the four regulated Town Center Land Use Categories: Residential, Commercial, Public & Institutional, and Manufacturing. Article 10, Definitions, provides full descriptions of the uses in each category. Any use not listed is prohibited. The ZA will make a determination as to whether a proposed use may be deemed a permitted use. The ZA's determination is appealable to the DRB.

(B) Town Center Use Categories:

Land Use Category	Included Uses
Residential	
Multifamily	Shall be Dwelling, Multi-Family
Single Family & Two Family	Shall be Dwelling, Single (One) Family and Dwelling, Two Family
Commercial	
Food, Drink & Entertainment	Shall be Recreation Indoor, Restaurant/Bar, Night Club, Private Club, Theater
Gas Station/Motor Vehicle Services	Shall be Car Wash, Gas Station/Service Station, Motor Vehicle Sales, and Motor Vehicle Service, Taxi Garage, Trucking/Shipping Terminal
Lodging	Shall be Bed & Breakfast, Hotel/Motel
Personal & Professional Services	Shall be Bank, Dry Cleaner, Funeral Home, Hospital, Kennel, Medical Clinic, Office (Professional, Business), Personal Service Establishment, Research & Development Facility, Retail Self-Storage, Veterinary Clinic
Residential Care Facilities	Shall be Assisted Living Residence, Community Care Facility, Elderly Housing
Retail	Shall be Artist Studio/Gallery, Gift/Craft Shop, Neighborhood Market, Retail Establishment, Retail Large-Scale, Warehouse
Social Service and Correctional Residences	Shall be Correctional Home/Furlough House, Secure Care Facility, Shelter Home/Temporary Shelter
Public & Institutional	
Educational Facilities	Shall be College/University, Cultural Facility, Day Care Facility, Educational Facility/School
Government & Civic Services	Shall be Civic Center, Community Center, Post Office, Public Facility
Place of Worship	Shall be Place of Worship
Public Parking & Transit Facilities	Shall be Public Parking Facility, Transit Facility
Manufacturing	
Manufacturing	Shall be Light Manufacturing, Manufacturing

Table 2.4
HISTORIC CENTRAL BENNINGTON DESIGN REVIEW DISTRICT

(A) **Purpose:** The purpose of this District is to protect historic resources within a defined area of downtown Bennington, and to encourage new construction which will reinforce the best qualities of the existing character within Bennington's core through both traditional and innovative design approaches. A detailed report entitled Time and Place in Bennington, A Handbook for the Central Bennington Historic District, 1990 (hereinafter "Time and Place") recommended the establishment of this District, and provides detailed guidelines for development within the District.

(B) **Allowed Uses:** As in the underlying Districts. All such uses require Development Review Board approval in accordance with the following standards and procedures.

(C) **Development Review Board Approval:**

- (1) Within this overlay district, a "design plan" shall be reviewed and approved by the Development Review Board, before:
 - a. Construction of a building.
 - b. Addition to or alteration of the exterior of a building which increases or decreases the square footage of the building, whether enclosed or not.
 - c. Alteration of the exterior wall of a building by tearing down or removing any portion thereof, or, by filling in, sealing, boarding up, closing or enclosing any portion of an existing window, door space, porch, or breezeway thereon.
 - d. Alteration of the appearance of a building, including alteration of the roof line or chimney, and including construction or alteration of exterior signs.
 - e. Addition, removal, or change of materials to or from the exterior walls, including windows, or roof of a building where the materials so added or exposed are of a kind or type different from those existing. Color changes to an exterior wall or roof will be subject to review only if the color is distinctly different from the range of historical colors illustrated in reference books on file at the Zoning Administrator's office, and adopted by the Development Review Board.
- (2) Within this overlay district, review and approval of a design plan by the Development Review Board is not required for:
 - a. Any interior alterations or changes that do not affect, change, or add to the exterior of the structure.
 - b. A change in use or type of occupancy except as otherwise provided.
 - c. Routine maintenance or repair of any structure, as long as the maintenance or repair does not result in any change of design, type of material, or appearance of the structure or its appurtenances.
 - d. Color changes to an exterior wall or roof, which new color is included in the range of historical colors illustrated in reference books on file in the Zoning Administrator's Office, and adopted by the Development Review Board.
 - e. Minor changes. Review may be waived by the Zoning Administrator, for any changes which do not affect the historic character of the property, following consultation with the Application Review Panel, or if there is no Application Review Panel, the Chair of the Development Review Board. The Zoning Administrator shall make a written finding that the proposal does not affect the historic character of the property, and shall post a notice of the decision in the same manner as a zoning permit. In such cases, Section 2.4 (D) and (E) shall not apply.
- (3) Any proposed demolition of a building or structure within this overlay district shall be reviewed and approved under Section 3.2.

(D) **Application Requirements:**

- (1) Applicants for design review, as provided in subsection (C), shall submit to the Administrative Officer an application and supporting documentation which includes the following information:
 - a. the name and address of the applicant;
 - b. a map or drawing showing the location of the project;

Table 2.4 (continued)
HISTORIC CENTRAL BENNINGTON DESIGN REVIEW DISTRICT

- c. a site development plan containing the information described in Table 5.1 if the project involves changes to the site as well as to the building(s) or if the proposed use or development is subject to Development Review Board approval under subsection 5.1 (A).
 - d. photos and/or elevations of the existing building;
 - e. proposed building elevations showing door and window types, shutters, and other exterior details;
 - f. description of materials to be used on the exterior of any structure, including colors;
 - g. photographs and/or drawings of existing buildings on adjacent or nearby properties to illustrate the existing streetscape; and
 - h. narrative description of the project.
- (2) For a minor change to the exterior of a structure, the Administrative Officer may waive one or more of the application requirements listed above, and the Development Review Board may approve such minor changes to the exterior of a structure without submission of full design plans, provided that the Administrative Officer and the Development Review Board are satisfied that the application materials submitted are clear and complete relative to such minor change.
- (3) Applicants for Design Review shall submit their application to the Historic Preservation Commission for review and comment at least ten (10) days prior to the Board's hearing regarding the application. The Board shall consider comments submitted by the Historic Preservation Commission.

(E) Development Review Board Procedure:

- (1) Upon receipt of a complete application, the Administrative Officer shall note the date of filing thereon and transmit the application within fifteen (15) working days to the Board. The Board shall review the application for conformance with the standards set forth in subsection (F), and shall act to approve, approve with conditions, or disapprove the application within 60 days of the date on which the application is received, and shall issue a written decision, to include findings, any conditions, and provisions for appeal. Failure of the Board to act within 60 days of receipt of the completed application shall be deemed approval. In approving a project with conditions, the Board may require specific modifications to the project design to ensure conformance with the District.
- (2) Applications requiring Development Review Board approval under Article 5 of these regulations shall be reviewed in accordance with the review procedures set forth in Section 5.2. The Board shall review the Design Plan submitted under subsection (D) concurrently with the application submitted under Section 5.2, although the Board may issue separate written decisions addressing the Board's findings and conditions under the separate review processes.
- (3) The Development Review Board's decision and a copy of any approved design plan, signed by the Chair of the Board (or Vice-chair if the Chair is not available), shall be maintained in the Town records. No significant changes from the approved plans shall be made during construction without an amendment to those plans applied for and approved in accordance with the above procedures.

(F) Design Standards: Before granting Design Plan approval, approval of a demolition under Section 3.2, or approval of a site development plan under Article 5 within the Historic Central Bennington Design Review District, the Development Review Board shall give consideration to the following:

- (1) Streetscape and Character of the Area:
- a. The compatibility of the proposed exterior design, arrangement, orientation, texture and materials in relation to surrounding existing buildings or structures.
 - b. The scale and general size of the proposed building or structure in relation to existing surroundings, including consideration of such factors as the building's overall height, width, street frontage, number of stories, roof type, facade openings, and architectural details.
 - c. The appropriate portion(s) of the section on "Character and Streetscape" described in *Time and Place in Bennington: A Handbook for the Central Bennington Historic District* (1990), pages 8 through 38, shall be used as a guideline in this evaluation.

Table 2.4 (continued)
HISTORIC CENTRAL BENNINGTON DESIGN REVIEW DISTRICT

- (2) Architectural Features: Where existing buildings within the District are to be altered or expanded, the architectural features of the Design Plan shall be considered in relation to the Secretary of the Interior's Standards for Rehabilitation, and the appropriate portion(s) of the Preservation Guidelines in *Time and Place*, pages 40 - 69. It is not intended that the details of existing buildings be duplicated precisely, but those features should be regarded as suggestive of the extent, nature, and scale of details that would be appropriate on new building or alterations.
- (3) New Buildings: Where new buildings are proposed within the District, the Design Plan shall be considered in relation to the section, "Preservation Guidelines: New Buildings" in *Time and Place*, pages 70 - 71. A new building should relate to the design, materials and ornamental detail of its historic surroundings.
- (4) Site Development Plans: Where Development Review Board approval is required under Article 5 of these regulations, the design plan shall be reviewed for the effect on the historical character of the streetscape as identified in *Time and Place*, by proposed modifications to:
 - a. site organization including the relationship of buildings, structures and other site features, to each other and to bordering properties;
 - b. parking areas, driveways, walkways, yards, fencing and landscaping; and
 - c. storage and service areas, outside equipment or machinery, utility lines, telephone poles, and similar features.

The Development Review Board may permit the reduction of the minimum front yard requirement within the District where such reduction is required to allow new construction to maintain a similar setback to adjoining existing historic buildings.

- (5) Streetscape Amenities. In addition to the standards set forth in subsection (4), projects requiring Development Review Board approval under Article 5 of these regulations should also incorporate streetscape amenities into the overall site design. Such amenities include, but are not limited to:
 - a. public open space (e.g., courtyards, pocket parks, plazas);
 - b. connections to public sidewalks (including mid-block connections);
 - c. appropriate pedestrian scale lighting;
 - d. street furniture.
- (6) Diversity of Design: These regulations recognize the value of the diversity of design solutions based on a wide variety of architectural styles and design philosophies, without imposing a particular aesthetic value or prohibiting the introduction of new forms into the built environment, provided these are consistent with the intent of this overlay district. To the extent that any proposal for construction or alteration within the District does not conform to the specifics of the guidelines in *Time and Place*, the applicant shall demonstrate to the satisfaction of the Development Review Board that the proposal does not result in undue, adverse impacts on the historic, diverse, and pedestrian-scaled character of the district.

Table 2.5
DOWNTOWN FORM-BASED-DESIGN AREA (DD)

(A) **Purpose:** The purpose of the Downtown Form-Based-Design Area (DD) is to reinforce the dense, vibrant, and walkable development pattern of the mixed-use commercial center. This Downtown design area is characterized by multi-story buildings with façades that include engaging street entrances and transparent windows to capture the eyes of passers-by; building frontages set close to the street with minimal or no interruptions between buildings; a wide public street realm welcoming to pedestrians, cyclists, and motor vehicles; an integrated network of sidewalks, alleys, and parking area access points that allow the public to move swiftly and safely throughout the downtown; parking available on-street, behind buildings, and in well-landscaped, shared public lots and structures; and an abundance of amenities such as sidewalks, shade trees, pocket parks, benches, and waste receptacles.

Area Principles and Characteristics

Figure 2.5.1 Bird's Eye View



Note: The representation above is intended to provide an overview of this form-based area and is illustrative only.

(B) Area Principles and Characteristics Include:

(1) High-density, pedestrian-oriented development

- a. Multi-story, multi-use buildings
- b. Publicly-accessible ground floor uses that enhance street vitality, such as retail
- c. Connectivity throughout the town center for pedestrians by way of sidewalks and other pathways **(A)**

(2) Varied building architecture and character

- a. Diverse building types and materials, mixing traditional and modern design elements harmoniously
- b. Development in the Historic Central Bennington Design Review District shall be reviewed in accordance with standards and procedures in Table 2.4

(3) Dynamic and engaging sidewalks and storefronts

- a. Inviting building façades with pedestrian-scale adornments and architectural details. Sidewalk-facing entrances. Sidewalk activity enhanced by ground floor occupancies **(B)**
- b. Amenities for pedestrians and cyclists **(C)**
- c. Minimal number and width of curb cuts

(4) Public-private collaboration for parks and green spaces

- a. Vacant areas repurposed as public green spaces, such as pocket parks, and invigorated through art installations **(D)**
- b. Lush and diverse tree canopy lining all streets. Existing trees incorporated into new site development

(5) Active rooftops and multi-story dynamism

- a. Active uses of building rooftops **(E)**
- b. Environmental sustainability through accommodation of renewable energy and/or green roof elements **(F)**
- c. Balconies and awnings extend into the street ROW
- d. All utilities underground for new construction

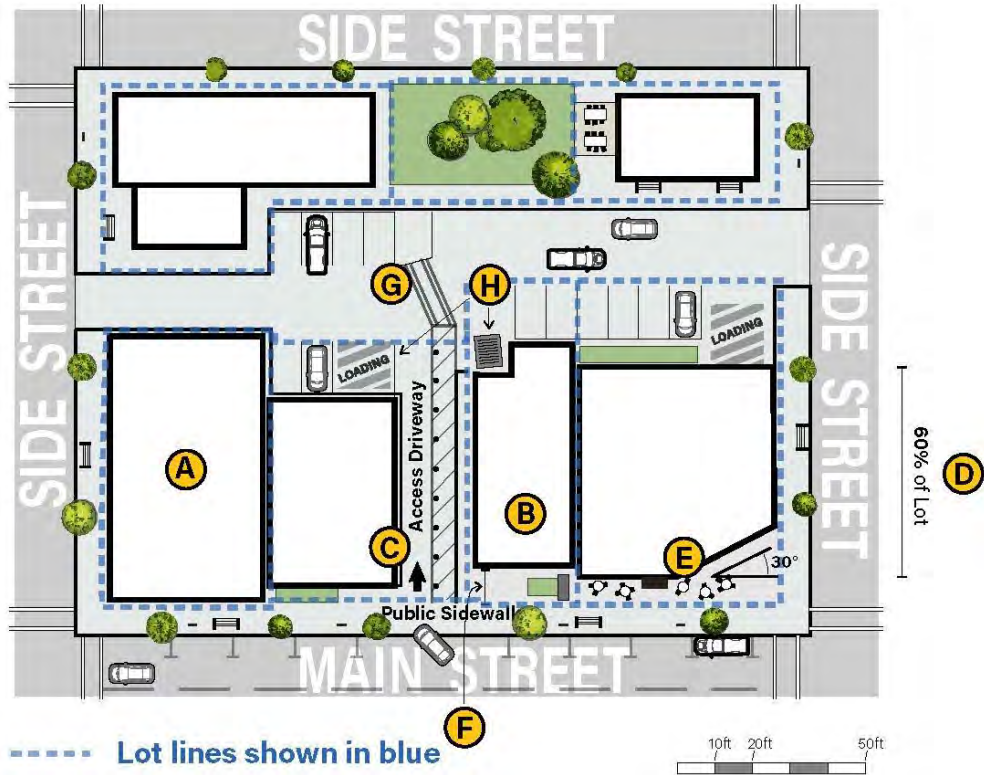
(6) Green stormwater management

- a. Green infrastructure for managing stormwater and reducing impervious surface. Installations may include rain gardens, bioswales and permeable paving **(G)**
- b. Areas of impervious surface shall be compact and are encouraged to follow Vermont Low Impact Development (LID) principles. Reference "Model LID/GSI Stormwater Management Bylaw" resource for more information.

Table 2.5 (continued)
DOWNTOWN FORM-BASED-DESIGN AREA (DD)

Building and Parking Placement

Figure 2.5.2 Plan View



(C) Building and Parking Placement:

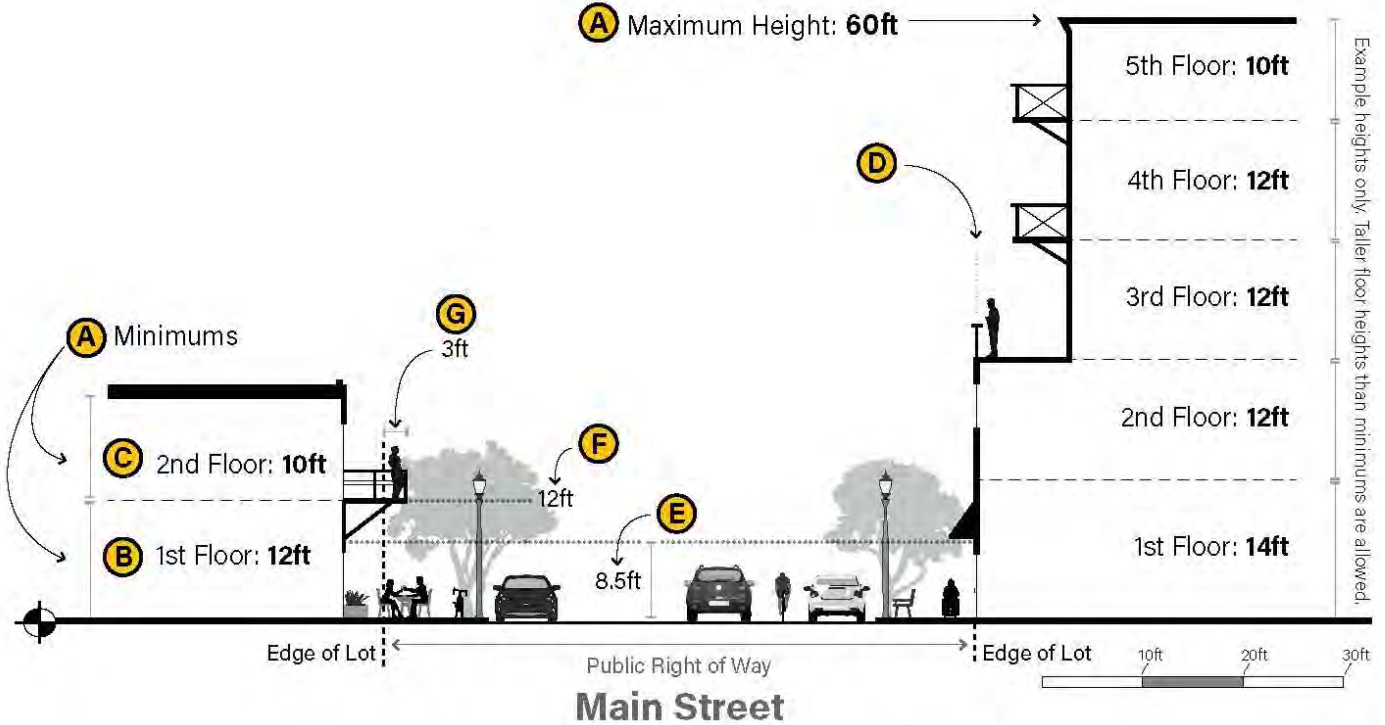
(1) Building Lots		
a. Min. lot size	no min.	
b. Maximum bldg. coverage	100%	(A)
(2) Building Frontage		
a. Min. lot frontage – Main St.	100%	(B)
<i>Allowance may be made for alley/driveway access, subject to approval.</i>		
b. Min. lot frontage – All other streets	60%	(D)
c. Place as much of the building width at the front of the lot as possible to maximize front façade exposure to the public.		
d. The front façade, or any portion thereof, shall be no more than 30° off the parallel to the street.		
(3) Setbacks		
a. Front setback	0' min. / 15' max.	(F)
b. Side setback	0' min.	
c. Rear setback	0' min.	
(4) Front Yards		
a. Corner lots are considered to have two front yards and two side yards.		
b. Front yards shall consist of approved public spaces: landscaped areas, porches or plazas.		
c. All landscaped areas must conform to Section 5.3.		

(5) Parking	
a. Min. parking requirement	no min.
b. Main St. access driveway width	20' max. width
<i>Access driveways allow one-way traffic only from Main St. All driveways must provide at least 5' for a pedestrian walkway.</i>	
c. Main St. access drive separation	250' on center (o.c.) min.
d. Main St. pedestrian accessway separation	max. of 150' o.c.
<i>Existing driveways without pedestrian safety amenities are not considered pedestrian accessways.</i>	
e. Parking is restricted to the rear of buildings. Parking may be permitted to the side of buildings and along lot lines on side streets only. Parking areas may not front directly on Main St.	
f. Parking areas should be accessed by a vehicle primarily from a side street or alley. When necessary, a vehicular access drive from the front lot line may be permitted.	
g. Vehicle and pedestrian cross-access between parking areas must be provided.	
h. All parking and loading areas must conform to Section 3.10, except for parking minimum requirements.	
i. Loading docks, service areas and trash facilities shall be located at the rear of buildings. Shared use of these areas is encouraged.	
j. For bicycle parking, one rack per development or one rack per five vehicle parking spaces, whichever is greater, is required. These areas shall be covered or enclosed whenever possible and sited near the main building entrance.	

Table 2.5 (continued)
DOWNTOWN FORM-BASED-DESIGN AREA (DD)

Building Form

Figure 2.5.3 Section View



(D) Building Form:

(1) Height

- a. Principal buildings min. of 2 functional stories / 60' max. (A)
- b. Ground floor height 12' min. (B)
- c. Upper floor height 10' min. (C)
- d. Neither the first nor the second story shall be further than 15' from the front lot line. (D)

(2) Encroachments

- a. Awning height* min. 8.5' off the ground (E)
- b. Balcony height* min. 12' off the ground (F)
- c. *Note: For both awnings and balconies, no structural member shall be lower than 8.5 ft off the ground over the public ROW. (E)
- d. Balconies and awnings may project a max. of 3' into the public right of way (ROW). (G)
- e. Signs must comply with the municipal sign ordinance.

(3) Public Realm Compliance

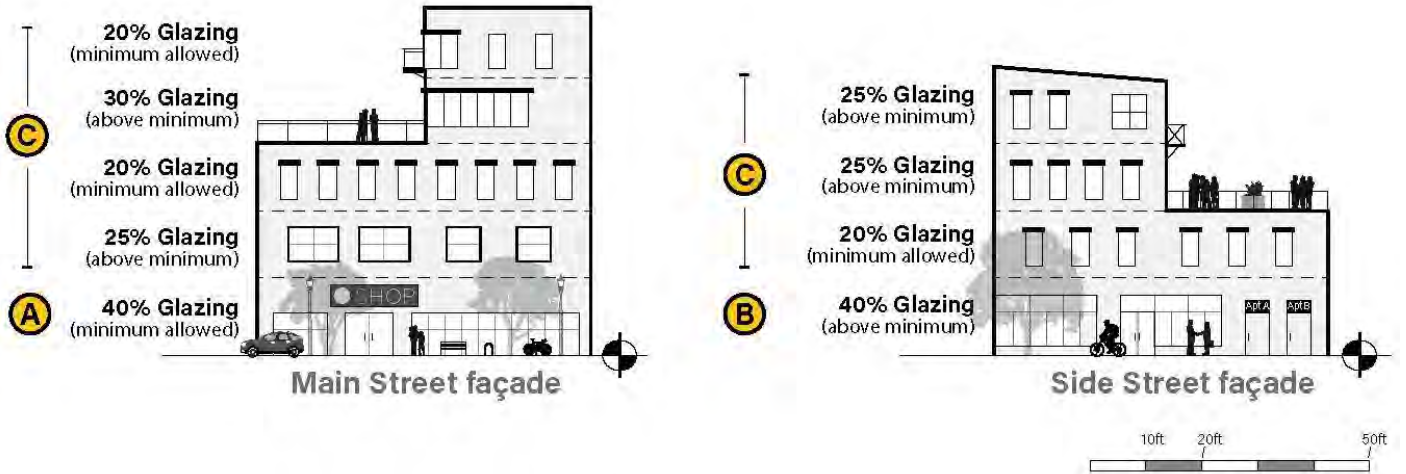
For new development or substantial expansion of existing site/structure, developers may be required to install improvements/amenities, approved by the municipality, in the ROW in accordance with the following municipal standards:

- a. Sidewalks shall be provided in the ROW along all streets and be concrete and/or masonry pavers.
- b. Street trees shall be planted at an average spacing of 25' to 30' o.c.
- c. Street furniture shall include (a) a bench for every 100' of frontage, (b) at least one bike rack (inverted U or post and ring style) per development, and (c) trash receptacles.

Table 2.5 (continued)
DOWNTOWN FORM-BASED-DESIGN AREA (DD)

Building Form (continued)

Figure 2.5.4 Façade View



(D) Building Form (continued):

(4) Building Entry

- a. Building entrance spacing max. of 100' apart
- b. Any occupancy with Main St. frontage must have its primary entrance on Main St. The primary entrance shall be clearly identifiable from the street.
- c. Ground floors may have individual entries along a side street in addition to a primary front street entrance.
- d. Upper floors shall be accessible by common entry from the street.

(5) Glazing

Required façade coverage with transparent windows

- a. Ground floor front 40% min. façade coverage (A)
- b. Ground floor side 20% min. façade coverage (B)
- c. Upper story front and side 20% min. façade coverage (C)

(6) Miscellaneous

- a. Upper stories must be designed and built to be functional, meaning they must be structurally capable of being occupied as commercial or residential space. Basements and attics shall not count as a story.

Table 2.6
MIXED USE FORM-BASED-DESIGN AREA (MD)

(A) **Purpose:** The purpose of the Mixed Use Form-Based-Design Area (MD) is to provide a transitional zone between the high-density, commercial heart of the town center and surrounding residential neighborhoods. The Mixed Use design area encompasses the principal travel corridors entering the town center so the area's buildings, streets, and open spaces shall be designed to accommodate the flow of pedestrians, cyclists, public transit, and motor vehicles safely and efficiently. Small setbacks and large building coverages reinforce the existing settlement pattern featuring historical industrial buildings nestled among a diversity of developments ranging from single-family dwellings to multi-story, mixed-use buildings.

Area Principles and Characteristics

Figure 2.6.1 Bird's Eye View



Note: The representation above is intended to provide an overview of this form-based area and is illustrative only.

(B) Area Principles and Characteristics Include:

(1) Medium- to high-density development

- a. Multi-story buildings that accommodate multiple uses predominate
- b. Buildings are sited close to the street to frame the ROW and prioritize accessibility to pedestrian traffic **(A)**

(2) Complete Streets

- a. Pedestrians, cyclists, public transit, and motor vehicles flow harmoniously and efficiently through the main travel corridors of the town center **(B)**
- b. Safety is promoted by minimal curb cuts, narrow travel lane widths, low permitted traffic speeds, and dedicated infrastructure for cyclists and pedestrians

(3) Mixed uses and adaptive reuse

- a. Existing buildings adapted to provide housing together with professional, manufacturing, and commercial uses
- b. New development takes advantage of infill opportunities
- c. Vacant lots developed or repurposed as public green spaces feature public art and other amenities **(C)**
- b. Development in the Historic Central Bennington Design Review District shall be reviewed in accordance with standards and procedures in Table 2.4

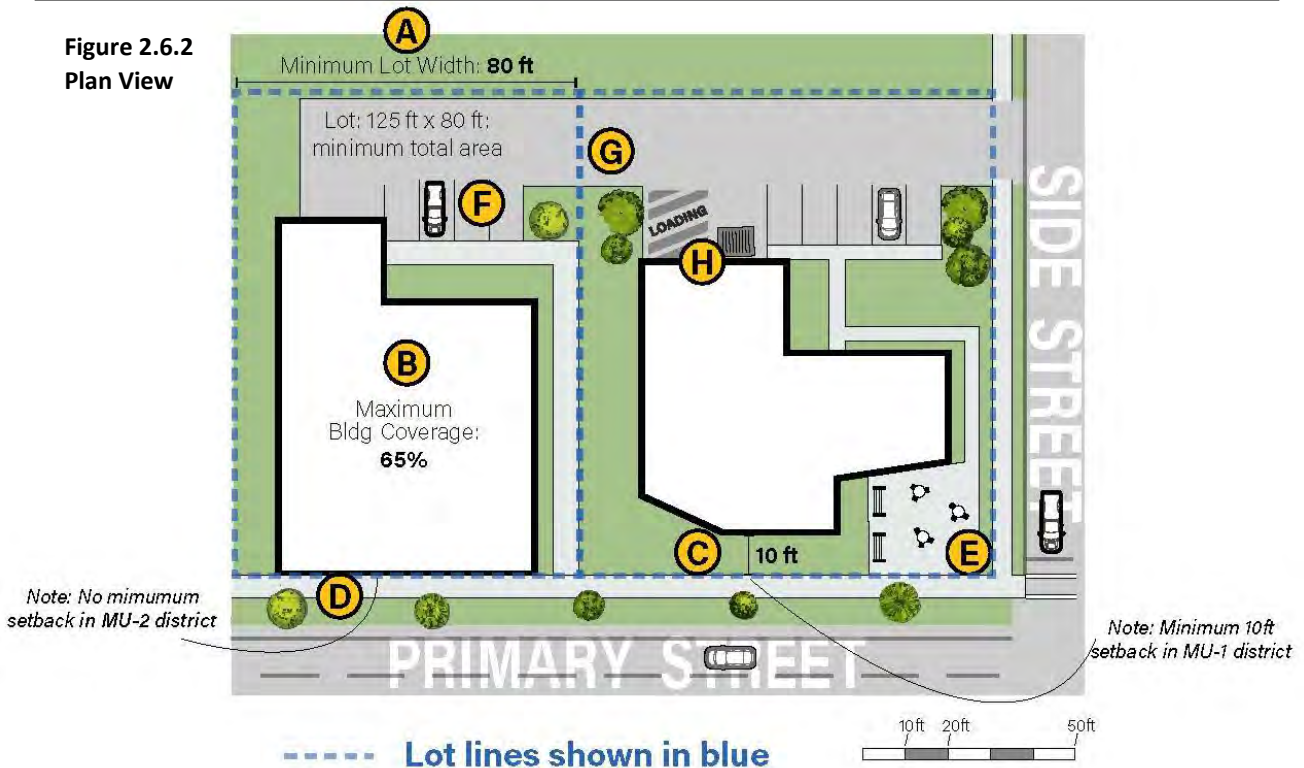
(4) Gateway to downtown

- a. As gateways to the downtown, primary travel corridors shall incorporate shade trees, sidewalks, and lamp posts into their design. Existing trees shall be incorporated into new site development **(D)**
- b. Site designs minimize impervious surfaces and incorporate green infrastructure to manage stormwater
- c. All utilities underground for new construction

Table 2.6 (continued)
MIXED USE FORM-BASED-DESIGN AREA (MD)

Building and Parking Placement

Figure 2.6.2
Plan View



(C) Building and Parking Placement:

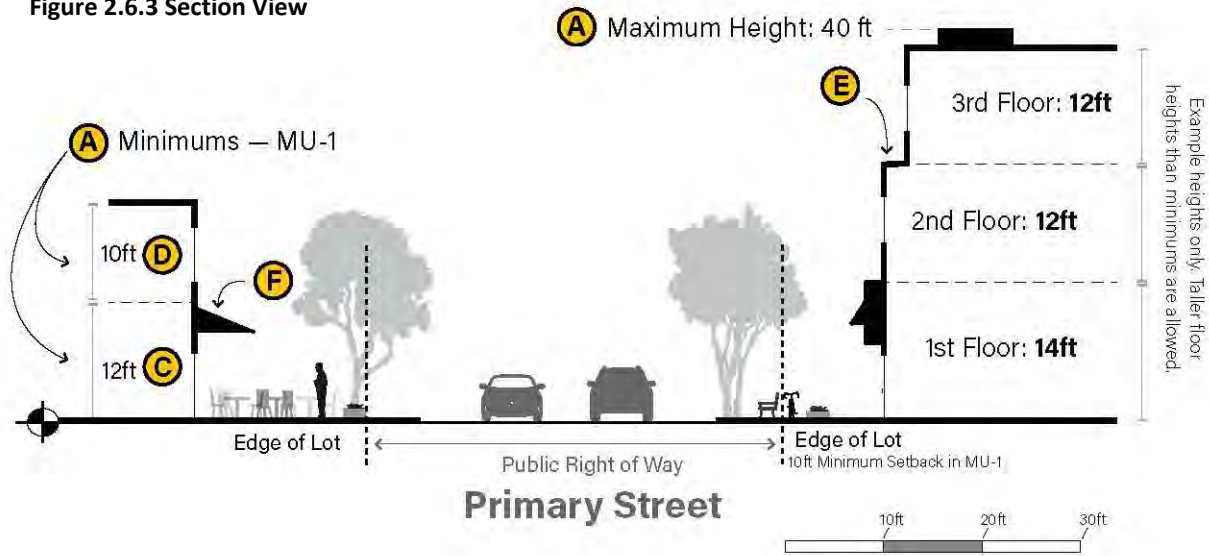
(1) Building Lots		
a. Min. lot size	10,000 sq.ft.	A
b. Min. lot width	80'	A
c. Maximum bldg. coverage	65%	B
(2) Building Frontage		
a.	Place as much of the building width at the front of the lot as possible to maximize front façade exposure to the public.	
(3) Setbacks		
a. Front setback – MU-1	10' min. / 25' max.	C
MU-2	0' min. / 25' max.	D
b. Side setback	10' min.	
c. Rear setback	10' min.	
(4) Front Yards		
a.	Corner lots are considered to have two front yards and two side yards.	
b.	Front yards shall consist of approved public or private spaces: landscaped areas, porches, or plazas. Outdoor storage, parking and loading areas shall not be located in front yards. E	
c.	All landscaped areas must conform to Section 5.3.	
(5) Parking		
a. Min. parking requirement	no min.	
<i>Residences require one space per dwelling unit.</i>		
b.	Parking is restricted to the rear yards and side yards of buildings. All parking, loading, and service areas shall be screened from public roads. F	
c.	Vehicle and pedestrian cross-access between parking areas must be provided for adjacent commercial uses. G	

(5) Parking (continued)	
d.	All parking and loading areas must conform to Section 3.10, except for parking minimum requirements.
e.	Loading docks, service areas and trash facilities shall be located at the rear of buildings. Shared use of these areas is encouraged. H
f.	Driveways and their intersections with streets shall be located and designed in accordance with Section 3.3.
g.	Garages shall not face the street unless they are set back at least 2 ft. from the front line of the primary building. Garages may be flush with the front line of the primary building when either (a) a front porch exists, or (b) the garage is a drive-under garage.
h.	For bicycle parking, one rack per development or one rack per five vehicle parking spaces, whichever is greater, is required. These areas shall be covered or enclosed whenever possible and sited near the main building entrance.
(6) Miscellaneous	
a.	Gas stations and motor vehicle service providers must conform to Section 4.10.
b.	No gas station shall be constructed within 900' of another gas station, as measured from the nearest property boundaries. Gas station canopies shall be consistent with the station architecture design. Pumps shall be placed near the rear of the lot, and the convenience store shall be placed in front near the front lot line.
c.	All uses other than dwellings shall provide a year-round screen adjacent to residential uses in accordance with screening requirements in Section 5.3(B)7(i through k).

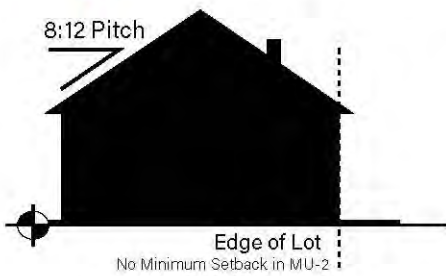
Table 2.6 (continued)
MIXED USE FORM-BASED-DESIGN AREA (MD)

Building Form

Figure 2.6.3 Section View



(B) Minimum – MU-2



Mixed Use #2 District

Single-story buildings are permitted in the MU-2 District only. Single-story buildings must meet minimum roof pitch standard.

(D) Building Form:

(1) Height

- a. Principal buildings MU-1: 2 functional stories min./40' max. MU-2: 1 story min. / 40' max. **(A)**
- b. In the MU-2, one story buildings shall be designed with a min. roof pitch of 8' over 12', excluding roofs covering open porches, entry ways and accessory structures less than 500 sq. ft. **(B)**
- For uses other than single- and two-family dwellings:*
- c. Ground floor height 12' min. **(C)**
- d. Upper floor height 10' min. **(D)**
- e. First two stories shall be on the same vertical plane. **(E)**

(2) Encroachments

- a. Balconies and awnings shall comply with Downtown form-based-design standards. See Section 2.5(D)2. **(F)**
- b. Signs must comply with the municipal sign ordinance.

(3) Public Realm Compliance

For new development or substantial expansion of existing site/structure, developers may be required to install improvements in the ROW in accordance with the following municipal standards:

- a. Sidewalks shall be provided in the ROW along all streets
- b. Street trees shall be planted at an average spacing of 25' to 30' on center.
- c. Street furniture shall include (a) a bench for every 100' of frontage, (b) at least one bike rack (inverted U or post and ring style) per development, and (c) trash receptacles.

Table 2.6 (continued)
MIXED USE FORM-BASED-DESIGN AREA (MD)

Building Form (continued)

Figure 2.6.4 Façade View



(D) Building Form (continued):

(4) Building Entry

- a. Building entrance spacing max. of 100' apart
- b. Buildings shall front toward and relate to streets, both functionally and visually, and not oriented toward parking lots.
- c. The primary building entry must be placed at the front of the building facing the front lot line and be clearly identifiable from the street. Buildings located on corner lots shall be oriented toward the primary street or include a corner entrance.
- d. A pedestrian walkway shall connect the primary building entry to the sidewalk.
- e. Ground floor units may have individual entries along a side street in addition to the primary front street entrance.
- f. Upper floor units should be accessible by common entry from the street.

(5) Glazing

Required façade coverage with transparent windows

- a. Ground floor front 20% min. façade coverage
- b. Ground floor side 20% min. façade coverage
- c. Upper story front and side 20% min. façade coverage

(6) Miscellaneous

- a. Upper stories must be designed and built to be functional, meaning they must be structurally capable of being occupied as commercial or residential space. Basements and attics shall not count as a story.

Table 2.7
RESIDENTIAL FORM-BASED-DESIGN AREA (RD)

(A) **Purpose:** The purpose of the Residential Form-Based-Design Area (RD) is to accommodate residential and limited commercial infill development consistent with the historic, dense residential character of the area. The Residential design area consists of compact, walkable neighborhoods providing a wide variety of housing options, including accessory apartments and two-family dwellings throughout and multi-family dwellings in some areas, as well as complementary, small-scale commercial and limited institutional uses.

Area Principles and Characteristics

Figure 2.7.1 Bird's Eye View



Note: The representation above is intended to provide an overview of this form-based area and is illustrative only.

(B) Area Principles and Characteristics Include:

(1) Compact, walkable development

- a. Mix of building heights. Small-to-mid-scale lot sizes
- b. Larger setbacks and lower lot bldg. coverages distinguish neighborhoods from other town center areas
- c. Connectivity throughout for pedestrians by way of sidewalks and other pathways (A)

(2) Streets serve a variety of users

- a. Pedestrians, cyclists, and on-street parking safely accommodated (B)
- b. Public ROW used to provide sidewalks, tree plantings, and, where appropriate, pedestrian-scale street lamps

(3) Abundance of landscaped green spaces and trees

- a. Lush and diverse tree canopy lining all streets. Existing trees incorporated into new site development
- b. Mix of private and public green recreation areas

(4) Porches, stoops, and pedestrian paths

- a. Buildings feature pedestrian-oriented elements such as porches and pathways to link private and public realms (A)
- b. Motor vehicle amenities are de-emphasized through bldg. and site design. Garages are not a prominent feature of bldg. façades. Driveway dimensions and curb cuts are minimal

(5) Additional housing provided through infill development

- a. Two-family and multi-family dwellings are built to fit with existing dimensions and densities of the neighborhood (C)
- b. Accessory apartments are located in attached and detached dwelling units (See Section 4.2 Accessory Apts.)

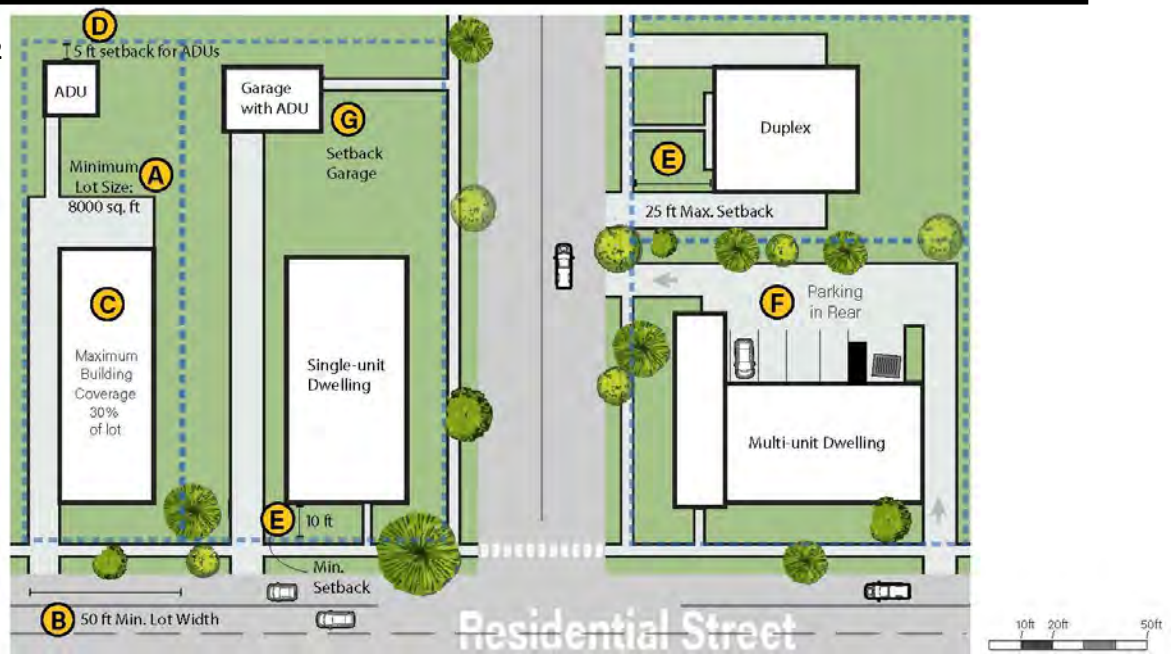
(6) Sustainable design elements

- a. Renewable energy systems are encouraged
- b. Green infrastructure, such as rain gardens, manage stormwater and reduce impervious surface
- c. All utilities underground for new construction

Table 2.7 (continued)
RESIDENTIAL FORM-BASED-DESIGN AREA (RD)

Building and Parking Placement

Figure 2.7.2
Plan View



(C) Building and Parking Placement:

(1) Building Lots

a. Min. lot size	8,000 sq.ft.	(A)
b. Min. lot width	50'	(B)
c. Maximum bldg. coverage	30%	(C)
<i>Accessory apartments (also known as accessory dwelling units, ADUs) are exempt.</i>		
d. Min. lot area per dwelling unit	6,000 sq.ft. (first unit) + 2,000 sq.ft. (addnl.)	(D)

Not applicable to accessory apartments (ADUs).

e. All primary dwellings shall have a footprint, excluding porches, decks, entry stairs, of not less than 20 feet in width and 20 feet in depth.

Not applicable to accessory apartments (ADUs).

(2) Building Frontage

For uses other than single- and two-family dwellings.

a. Place as much of the building width at the front of the lot as possible to maximize front façade exposure to the public.

(3) Setbacks

a. Front setback	10' min. / 25' max.	(E)
b. Side setback	10' min.	
c. Rear setback	10' min.	

*For accessory structures totaling less than 100 sq.ft. footprint, the min. side and rear setback is 5'. **(D)***

(4) Front Yards

- a. Corner lots are considered to have two front yards and two side yards.
- b. Front yards shall be used for landscaping and pedestrian paths and associated pedestrian amenities (e.g., street furniture, pedestrian scale lighting and signs). Outdoor storage, parking and loading areas shall not be located in front yards.
- c. For uses other than single- and two-family dwellings, all landscaped areas must conform to Section 5.3. **(F)**

(5) Parking

- a. All parking and service areas must conform to Section 3.10.
- b. Parking is restricted to the rear yards and side yards of buildings. All parking, loading, and service areas shall be screened from public roads.
- c. Vehicle and pedestrian cross-access between parking areas must be provided for adjacent commercial uses.
- d. Service areas and trash facilities shall be located at the rear of buildings. Shared use of these areas is encouraged.
- e. Driveways and their intersections with streets shall be located and designed in accordance with Section 3.3.
- f. Garages shall not face the street unless they are set back at least 2 ft. from the front line of the primary building. Garages may be flush with the front line of the primary building when either (a) a front porch exists, or (b) the garage is a drive-under garage. **(G)**
- g. For bicycle parking, one rack per development or one rack per five vehicle parking spaces, whichever is greater, is required for multi-family structures. These areas shall be covered or enclosed whenever possible and sited near the main building entrance.

(6) Miscellaneous

- a. All uses other than dwellings shall provide a year-round screen adjacent to residential uses in accordance with screening requirements in Section 5.3(B)7(i through k).
- b. Multi-Family structures shall orient toward the street and may additionally orient toward internal parking lots and/or courtyards.
- c. All new structures that require access to water and wastewater systems must connect to public water and sewer system if within 500 ft. of closest property boundary.

Table 2.7 (continued)
RESIDENTIAL FORM-BASED-DESIGN AREA (RD)

Building Form

Figure 2.7.3 Section View



(D) Building Form:

(1) Height

- a. Principal buildings 35' max. **(A)**
 - b. All dwellings shall have a minimum roof pitch of 5' over 12'. **(B)**
 - c. For uses other than single- and two-family dwellings, one story buildings shall be designed with a min. roof pitch of 8' over 12', excluding roofs covering open porches, entry ways and accessory structures less than 500 sq. ft. **(C)**
- For uses other than single- and two-family dwellings:*
- d. Ground floor height 12' min. **(D)**
 - e. Upper floor height 10' min. **(E)**

(2) Public Realm Compliance

For new development or substantial expansion of existing site/structure, developers may be required to install improvements in the ROW in accordance with the following municipal standards:

- a. Sidewalks shall be provided in the ROW along all streets and on both sides of the street.
- b. Street trees shall be planted at an average spacing of 25' to 30' on center.

Table 2.7 (continued)
RESIDENTIAL FORM-BASED-DESIGN AREA (RD)

Building Form (continued)

Figure 2.7.4 Façade View



(D) Building Form (continued):

(3) Building Entry

- a. Buildings shall front toward and relate to streets, both functionally and visually, and not be oriented toward parking lots.
- b. The primary building entry must be placed at the front of the building facing the front lot line and be clearly identifiable from the street. Buildings located on corner lots shall be oriented toward the primary street.
- c. One or more walkways or sidewalks, separate and distinct from driveways, shall be installed to provide direct pedestrian access from adjacent sidewalks to the building's primary entrance.

(4) Glazing

For uses other than single- and two-family dwellings.

Required façade coverage with transparent windows:

a. Ground floor front	20% min. façade coverage
b. Ground floor side	20% min. façade coverage
c. Upper story front and side	20% min. façade coverage

Table 2.8
INSTITUTIONAL/PROFESSIONAL (IP) DISTRICT

(A) **Purpose:** The purpose of the IP District is to support medical related offices, clinics, institutional facilities, health care related support facilities and educational institutions and facilities. The designation of these special districts in the vicinity of the Southwestern Vermont Medical Center, the Veterans Home, and the Mount Anthony Union High School is to facilitate homogeneous groupings of uses with various types of medical, educational, and long-term care related services and facilities.

(B) **Allowed Uses -- with Zoning Permit:** None - All uses require Development Review Board approval.

(C) **Allowed Uses -- with DRB Approval:** The following uses are allowed with the approval of the Development Review Board in accordance with Article 5.

- | | |
|---|--|
| <ul style="list-style-type: none"> (1) Accessory Apartment (see Section 4.2) (2) Accessory Use/Structure (see Section 4.3) (3) Cemetery (see subsection (E)) (4) College/University (5) Community Care Facility (6) Cultural Facility (7) Day Care Facility (8) Hazardous Waste Management Facilities (see subsection (E)) (9) Home Child Care | <ul style="list-style-type: none"> (10) Home occupation (11) Hospital (12) Medical Clinic (13) Mixed Use (see section 4.16) (14) Multi-Family Dwelling (see subsections (D)&(E)) (15) Public Facility (see subsection (E)) (16) Research & Development Facility (17) School (18) Single-Family Dwelling (19) Two-Family Dwelling |
|---|--|

(D) **Dimensional Standards:**

- | | |
|--|--|
| (1) Lot Area (Minimum) | 15,000 square feet |
| (2) Lot Area Per Dwelling Unit (Minimum) | 10,000 square feet |
| (3) Lot Area Per Elderly Dwelling Unit (Minimum) | 2,000 square feet |
| (4) Lot Area Per Resident of Community Care Facilities (Minimum) | 1,200 square feet in area per resident accommodation |
| (5) Lot Width (Minimum) | 100 feet |
| (6) Front Yard Setback (Minimum) | 25 feet (see Section (E)) |
| (7) Side Yard (Minimum) | 10 feet |
| (8) Rear Yard (Minimum) | 10 feet |
| (9) Setback from Residential Use or District | 50 feet |
| (10) Building Height (Maximum) | 60 feet (see subsection (E), below) |
| (11) Building Coverage (Maximum) | 75% |

Table 2.8 (continued)
INSTITUTIONAL/PROFESSIONAL (IP) DISTRICT

(E) **Supplemental District Standards**

- (1) **Additional Use Standards.** In addition to other standards set forth in these regulations, within the VI District the following standards and restrictions shall apply to the following uses:
 - a. **Dwellings (all).** All dwellings shall have a building footprint, excluding porches, decks and entry stairs, of not less than 20 feet in width and not less than 20 feet in depth, and shall have a minimum roof pitch of 5 over 12.
 - b. **Hazardous Waste Management Facilities** are limited to facilities processing and disposing of biological and/or medical wastes which is permitted in accordance with 10 V.S.A Section 6606a. Such uses are allowed only as accessory uses to Medical Clinics or Hospitals, and shall be located not less than 1,000 feet from any parcel occupied by a school as defined in Article 10.
 - c. **Multi-Family Dwellings,** excluding elderly housing and community care facilities, shall be limited to a maximum of 3 units within any single building or on any parcel. Minimum lot size, maximum density and other dimensional standards for all dwellings shall be as set forth in subsection (D), above.
 - d. **Public Facilities** shall be limited in the IP District to those which do not require frequent access to the general public or those that act as an accessory to another use, such as governmental or not-for-profit organizations providing social or health services to local resident or out-patient populations, or uses that, because of the opportunity for shared facilities with other uses, can serve the wider community, such as emergency services and parks, playgrounds and recreational facilities.
 - e. **Adult Oriented Businesses** are expressly prohibited in the IP District.
- (2) **Dewey Street Preservation Standards.** Buildings located within 150 feet of Dewey Street shall not exceed a height of 30 feet. All such buildings shall be designed with a minimum roof pitch of 8 over 12, excluding roofs covering open porches, entry ways and accessory structures less than 500 square feet, and shall be compatible with, and not stand in contrast to, historic structures fronting upon Dewey Street with regard to building scale, setback, massing, materials, orientation and rhythm of openings (fenestration).
- (3) **Monument Avenue Preservation Standards.** All structures shall be setback a minimum of 50 feet from Monument Avenue. No parking may occur within the 50 feet setback area, which shall be suitably landscaped in accordance with Section 5.3(7). Land encompassed by this setback shall, with the exception of access drives in existence as of the effective date of these regulations and pedestrian paths and sidewalks, be suitably landscaped and maintained as lawn or open space.
- (4) **Parking Restrictions.** No parking is permitted within any setback area defined in subsection (D), and shall be to the rear or side of structures.
- (5) **Performance Standards.** All uses shall comply with the performance standards set forth in Section 3.11, in addition to all other applicable state and federal standards.
- (6) **Water Supply & Sewage Disposal.** All new structures requiring water supply and sewage disposal shall connect to the Bennington municipal wastewater treatment facility and municipal water supply.
- (7) **General Standards and Specific Use Standards:** All uses and development within the IP District shall comply with other applicable standards of these regulations, including General Regulations under Article 3 and Specific Use Standards under Article 4.

Table 2.9
INDUSTRIAL (I) DISTRICT

(A) **Purpose:** The purpose of the Industrial District is to promote the general welfare and the sound economic development of the town, and to encourage the most efficient and productive use of land in areas most appropriate for the location of suitable industrial establishments, in accordance with the Town Plan.

(B) **Allowed Uses -- with Zoning Permit:** None - All uses require Development Review Board approval.

(C) **Allowed Uses -- with DRB Approval:** The following uses are allowed with the approval of the Development Review Board in accordance with Article 6:

- | | |
|--|--|
| <ul style="list-style-type: none"> (1) Accessory Use/Structure (see Section 4.3) (2) Adult-Oriented Business (see Section 4.5) (3) Contractors Yard (Heavy Equipment) (4) Correctional Facility (5) Day Care Facility (6) Hazardous Waste Facility (7) Manufacturing (8) Mixed Use (9) Motor Vehicle Service (see Section 4.10) (10) Petroleum Bulk Storage Facility (11) Professional & Business Office (see subsection (E)) | <ul style="list-style-type: none"> (12) Public Facility (see subsection (E), below) (13) Research & Development Facility (14) Retail Self-Storage (15) Solid Waste Management Facility (16) Taxi Garage (17) Trucking/Shipping Terminal (18) Warehouse (19) Any industrial and/or manufacturing use which the Development Review Board finds to be similar to an allowed use in character, intensity and impact on the surrounding area. |
|--|--|

(D) **Dimensional Standards:**

- | | |
|----------------------------------|---|
| (1) Lot Area (Minimum) | 40,000 square feet |
| (2) Lot Width (Minimum) | 150 feet |
| (3) Front Yard Setback (Minimum) | 75 feet from Route 67A
25 feet from all other roads and highways |
| (4) Side Yard (Minimum) | 10 feet |
| (5) Rear Yard (Minimum) | 10 feet |
| (6) Building Height (Maximum) | 40 feet |
- (7) All structures shall be setback a minimum of 50 feet from any boundary that abuts a residential use or district.

(E) **Supplemental District Standards**

- (1) **Additional Use Standards.** In addition to other standards related to specific uses set forth in these regulations, within the I District the following restrictions also shall apply:
- a. **Professional and Business Offices** are only permitted within an office park approved as a Planned Unit Development (PUD) in accordance with Section 8.4. Office parks may include, but not be limited to, office facilities for publishers, corporate offices, financial service businesses, and other information or knowledge-based service industries. Ancillary or accessory uses serving the employees and businesses of those buildings may include, but are not limited to, conference space, health facilities, child care facilities and cafeteria or other food services provided there is no exterior advertisement of such ancillary or accessory use. Retail or banking facilities serving the premises may be allowed, provided that the floor area for these uses does not exceed 5% of the total gross floor area of the park. Any application under this section shall, in addition to PUD standards under Section 8.4, incorporate a plan for a minimum of 10,000 gross square feet of floor space in the park.
 - b. **Industrial Parks**, including Morse, Bowen and Shields Drive, are subject to Planned Unit development (PUD) approval in accordance with Section 8.4.

Table 2.9 (continued)
INDUSTRIAL (I) DISTRICT

- (2) **Supplemental Review Standards:** In addition to the standards set forth in Article 5, and notwithstanding the dimensional requirements set forth in subsection (D), above, in granting approvals in the I District the Development Review Board shall apply the following standards:
- a. **Front Yard Treatment:** The front yard shall be suitably landscaped and maintained in good appearance. The required front yard may be traversed only by driveways and pedestrian walks. No portion of the required front yard shall be used for storage, parking or for any purposes except as provided below.
 - b. **Building Design.** New buildings shall meet the following standards:
 - i. Long, blank building facades shall be avoided. Methods to avoid this include changes in color and/or texture, fenestration and such architectural details as offsets or projections.
 - ii. Building height and roof lines shall be varied to add visual interest and reduce the scale of large buildings. Parapets, mansard, gable or hip roofs or dormers shall be used to conceal flat roofs and roof top equipment from public view, which shall be integrated and not false components of building mass and function.
 - i. All building facades facing a public street shall include a minimum of one prominent, pedestrian scaled entrance. Entrances shall be identified through the incorporation of features such as porticos, canopies, peaked roof forms, overhangs, arcades, recesses/projections, or other appropriate architectural design elements, which shall be integrated and not false components of building mass and function.
 - b. **Landscaping:** Landscaping shall be designed in accordance with Section 5.3(7). Special consideration shall be given to avoiding or minimizing impacts on surrounding lands and uses. Parking areas shall be screened from off-premise. The Board may require a buffer to be established adjacent to adjoining parcels. Such buffer may be of a width determined necessary by the Board, and shall be landscaped in accordance with the buffer/screening standards set forth in Section 5.3(7). Entrance roads and driveways intersecting with town or state highways shall be designed and landscaped to create attractive entry-ways to the parcel and district.
 - c. **Pedestrian Circulation.** One or more sidewalks or walkways, separate and distinct from driveways, shall be installed to provide direct pedestrian access from adjacent sidewalks and parking areas to the building's primary entrance. Sidewalks may be required to extend to existing sidewalks located in the vicinity of the parcel.
 - d. **Limitations on Drive-through Windows.** Drive-through windows are expressly prohibited within the Industrial District.
- (3) **Additional Use Standards:** In addition to other standards related to specific uses set forth in these regulations, within the I District the following restrictions also shall apply:
- a. **Public Facilities** are limited to those facilities that do not require frequent access by the general public, such as highway maintenance facilities.
- (4) **Access Management:** Access and driveways shall be located and designed in accordance with Section 3.3.
- (5) **Outdoor Storage:** Outdoor storage of equipment and materials shall only occur within designated areas, approved by the Board, which shall be adequately screened from off-premises.
- (6) **Performance Standards.** All uses shall comply with the performance standards set forth in Section 3.11, in addition to all other applicable state and federal standards.
- (7) **General Standards and Specific Use Standards:** All uses and development within the I District shall comply with other applicable standards of these regulations, including General Regulations under Article 3 and Specific Use Standards under Article 4.

Table 2.10
PLANNED COMMERCIAL(PC) DISTRICT

(A) **Purpose:** The purpose of the Planned Commercial District is to promote a mix of commercial uses, in an area with convenient access to major transportation corridors, in a manner that ensures the compatibility of different uses, complements the downtown's function as a regional commercial and employment center, and fosters attractive, well planned and efficient site design.

(B) **Allowed Uses -- with Zoning Permit:** None - All uses require Development Review Board approval.

(C) **Allowed Uses -- with DRB Approval:** The following uses are allowed with the approval of the Development Review Board in accordance with Article 5:

- | | |
|---|--|
| <ul style="list-style-type: none"> (1) Accessory Use/Structure (see section 4.3) (2) Car Wash (3) Correctional Home (4) Day Care Facility (5) Dry Cleaner (6) Financial Institution (see subsection (E)) (7) Funeral Home (8) Gas Station (see Section 4.10) (9) Hotel (10) Medical Clinic (see subsection (E)) (11) Miniature Golf (12) Mixed Use (see section 4.16) (13) Motor Vehicle Sales & Service (see section 4.10 and Section (E)). (14) Multi-Family Dwelling (15) Nightclub (16) Personal Service Establishment (17) Private Club | <ul style="list-style-type: none"> (18) Professional/Business Office (see subsection (E)) (19) Public Facility (see subsection (E)) (20) Restaurant (21) Recreation/Indoor (22) Retail Establishment (23) Retail Self Storage (24) RV Parks (25) Secure Care Facility (see subsection E) (26) Taxi Garage (27) Warehouse (see subsection (E)) (28) Any retail type use not specifically allowed in another district which the Development Review Board finds similar in character, intensity and use to another allowed use within this district. |
|---|--|

(D) **Dimensional Standards:**

- | | |
|---|--|
| <ul style="list-style-type: none"> (1) Lot Area (Minimum) (2) Lot Area Per Family (Minimum) (3) Lot Width (Minimum) (4) Front Yard Setback (Minimum) (5) Side Yard (Minimum) (6) Rear Yard (Minimum) (7) Building Height (Maximum) | <ul style="list-style-type: none"> 40,000 square feet 6,000 square feet for the first unit/2,000 square feet for each additional unit. 150 feet 35 feet 15 feet for commercial uses
30 feet for residential uses 25 feet for commercial uses
50 feet for residential uses 35 feet |
|---|--|

(E) **Supplemental District Standards**

- (1) **Additional Use Standards:** In addition to other standards related to specific uses set forth in these regulations, within the PC District the following restrictions also shall apply:
 - a. **Adult Oriented Businesses** are expressly prohibited in the PC District.
 - b. **Financial Institutions** shall be limited to branch outlets providing direct services to customers and shall not exceed 6,000 square feet of gross floor area.
 - c. **Medical Clinics** shall not exceed 6,000 sq.ft. in gross floor area.

Table 2.10 (continued)
PLANNED COMMERCIAL(PC) DISTRICT

- d. **Motor Vehicle Sales** vehicles for sale may not be displayed in front setback or between area of building and street.
 - e. **Professional/Business Offices** shall not exceed 6,000 square feet of gross floor area.
 - f. **Public Facilities** shall be limited in the PC District to satellite public safety and emergency response facilities.
 - g. **Secure Care Facilities** shall not include correctional facilities.
 - h. **Warehouse** uses, excluding Retail Self Storage, shall be limited to storage facilities serving as an accessory to another use located within the PC District. Trucking terminals and distribution facilities are expressly prohibited.
- (6) **Supplemental Review Standards:** In addition to the standards set forth in Article 5, in granting approvals in the PC District the Development Review Board shall apply the following standards:
- a. **Front Yard Treatment:** The front yard, as measured from the front street line (edge of street right-of-way) to the front setback line, shall be used only for sidewalks and pedestrian amenities, driveways and landscaping and shall not be used for parking, loading or storage. Granite or concrete curbing or other suitable edge treatment shall be installed along the street line to define driveway entrances. The Board shall impose a maximum setback equal to the minimum setback to create or maintain a consistent streetscape, unless waived by the Board due to unusual site conditions.
 - b. **Landscaping:** Landscaping shall be installed in accordance with Section 5.3(7). Special consideration shall be given to softening the visual impact of large expanses of parking. In addition, landscaping plans shall emphasize the planting of shade trees and street trees within front yard areas.
 - c. **Pedestrian Access.** One or more sidewalk or walkway, separate and distinct from driveways, shall be installed to provide direct pedestrian access from adjacent sidewalks and parking areas to the building's primary entrance. If shopping carts are contemplated, sidewalks must be accessible to carts. In addition, a sidewalk constructed to town specifications shall be installed for the length of the property's road frontage (excluding driveway crossings). The Board may require sidewalks to extend to existing sidewalks located off-site should the lack of a direct connection create a pedestrian hazard.
- (3) **Access Management.** Accesses and driveways shall be located and designed in accordance with Section 3.3. In any areas where access from a public street to land in an Industrial (I) District is obtained, or could be obtained, by passing through the PC District, development in said PC District shall be planned so as to ensure safe and efficient access to the Industrial property.
- (4) **General Standards and Specific Use Standards:** All uses and development within the PC District shall comply with other applicable standards of these regulations, including General Regulations under Article 3 and Specific Use Standards under Article 4.
- (F) **Additional Design Review**
- (1) Within the Planned Commercial District, all land development, including the erection, reconstruction, alteration, restoration, movement, demolition, or change in use or type of occupancy of any structure(s), shall comply with the *Planned Commercial District Design Standards* in subsection (G) as determined by the Development Review Board.
 - (2) For all applications for land development in the Planned Commercial District involving new construction or substantial renovation of a structure or structures containing 5000 (five thousand) gross square ft. or more of floor area, the Development Review Board may retain a licensed architect, at the applicant's expense, to review such applications and provide a report regarding whether or not the application complies with the *Planned Commercial District Design Standards*.
- (G) **Design Standards**

Table 2.10 (continued)
PLANNED COMMERCIAL(PC) DISTRICT

Design Standards

Section G1. Site Planning & Landscaping (Cont.)

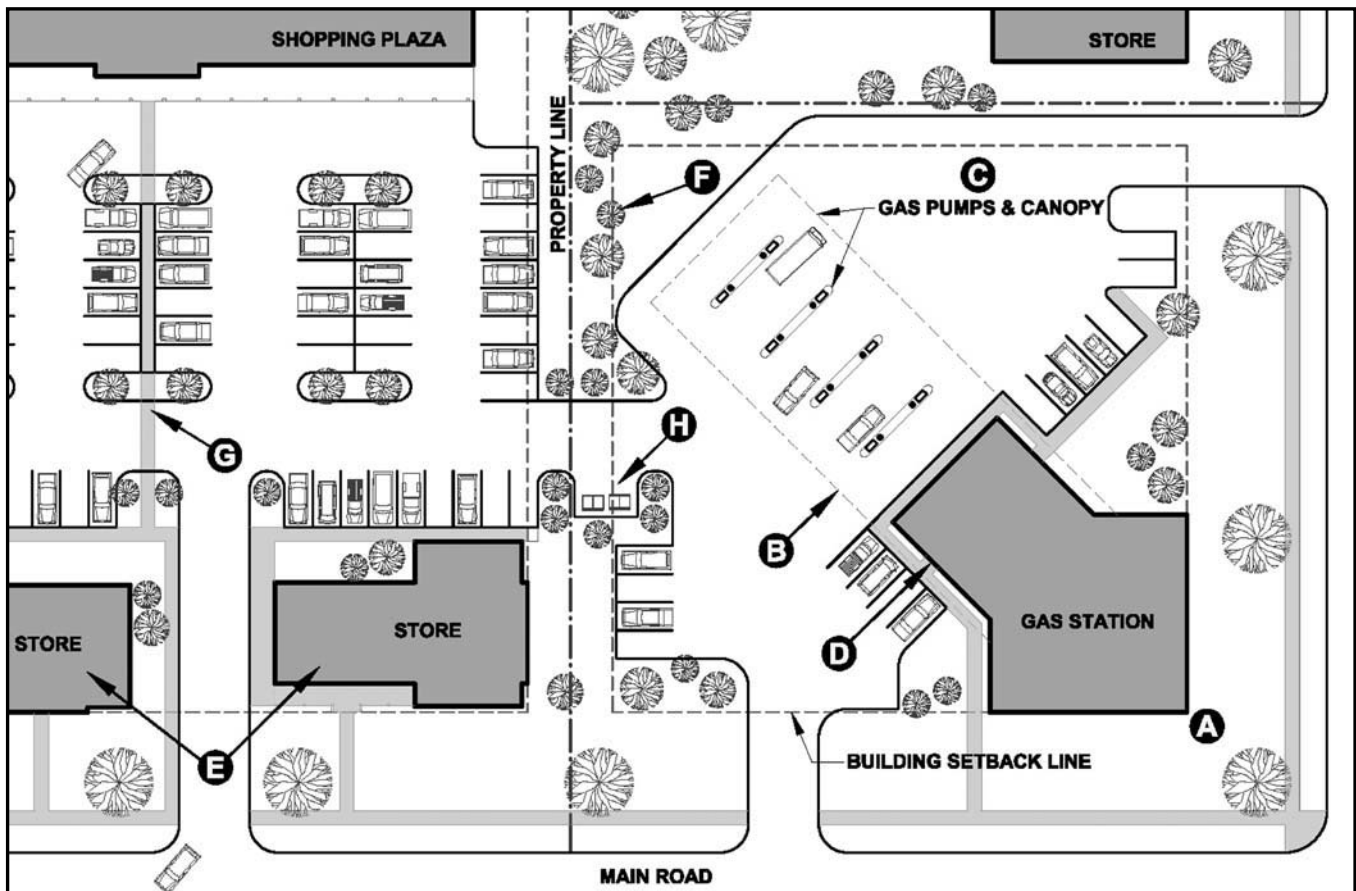


Figure G1.2: Redefining the Edges. Corner lots are especially important in defining the street. Special attention should be paid to bringing the building mass all the way out to meet the corner. Large shopping plazas should also attempt to infill the front of their lots with new commercial space to take advantage of the road frontage.

1.12 Corner lots should try to place as much building mass near the intersection as possible to help anchor the lot and take advantage of the high visibility. **(A)**

1.13 Gas station canopies should be designed as an integral part of the station architecture whenever possible. This can allow for a visual or even physical connection which provides shelter between the vehicle and the building. **(B)**

1.14 Alternative gas station layouts include placing the pumps near the rear of the lot while having the convenience store out in front near the street. **(C)** This helps to highlight the building, shield the utilitarian pump canopy and pulls the curb-cuts away from the intersection, creating easier access.

1.15 When it is not feasible to place the building entry directly on the front façade, attempts should be made to ensure that it is still readily visible and faces the main road or internal street. **(D)**

1.16 Older shopping plazas set back far from the street can benefit from developing the land at the front of their lot. This helps to define the street character and allows for more “one-stop” shopping and shared parking opportunities. **(E)**

1.17 Provide trees and other landscape screening to shield large parking areas from adjacent lots. **(F)**

1.18 Large parking lots are encouraged to provide landscaped islands and walkways which help to break up the visual expanse of blacktop and encourage safe pedestrian travel areas. **(G)**

1.19 Some developments may benefit from having a shared access to a common dumpster location which both neighboring properties can use. **(H)**

1.20 All public access ways on the site should comply with the *Americans With Disabilities Act*. Visit their Web page www.usdoj.gov/crt/ada/adahom1.htm for more information.

Table 2.10 (continued)
PLANNED COMMERCIAL(PC) DISTRICT

Design Standards

Section G2. Scale & Massing

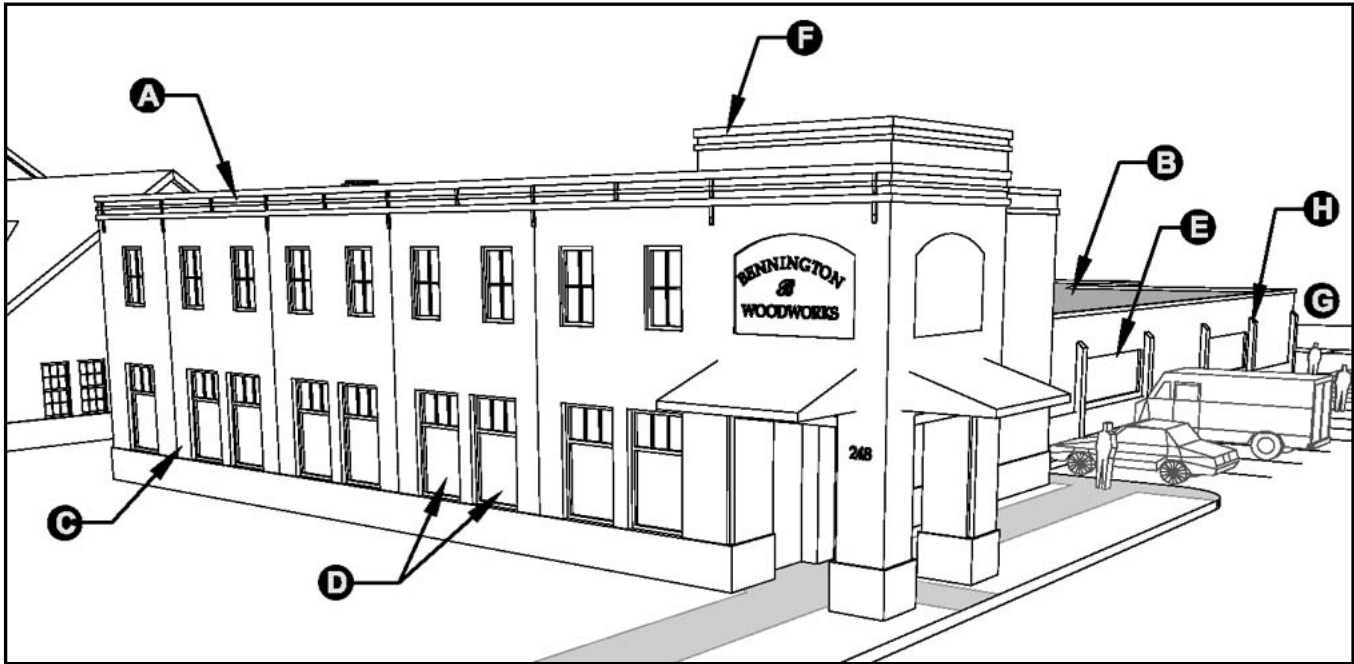


Figure G2.1: Breaking Up the Masses Helps Reduce the Scale. Dividing the building volume up into a variety of shapes helps to reduce the perceived scale of the architecture and allows placement of the more important volumes up near the front of the site.

2.1 Place a majority of the building mass close to the road to help define the street edge. In this example, the two-story mass is placed at the front of the lot, and likely contains the most public functions including reception, offices, showroom, retail space, etc. **(A)**

2.2 Less public areas such as warehouses, storage and manufacturing spaces can be shielded from view in the rear. This often allows for warehouse/utilitarian style construction to be hidden behind the smaller scale public spaces that are in front. **(B)**

2.3 The building mass near the front of the site should be articulated with design features which give it a more pedestrian scale appearance. Natural, smaller scale materials should be used near the front of the site and pedestrian areas whenever possible **(C)**

2.4 Large scale features such as long, uninterrupted picture windows are not encouraged near the front of the site. They should instead be separated into smaller groups to help reduce their scale, and give them a more vertical orientation. **(D)** The scale of these large windows can be further divided with the use of mullions and muntins.

2.5 Larger scale design features such as garage doors or long horizontal windows should be reserved for the rear of the facility whenever possible and out of sight from the street. **(E)**

2.6 Different massing at the entry to the building helps to further define a reduced scale appearance and improves visibility from many directions. **(F)**

2.7 In this example, the utility area in the rear is only one story, **(G)** but this could instead be a two or three story area which is still shielded from view behind the front portion of the building

2.8 Large areas of blank wall should be avoided, or should be reserved for the side or rear of the facility whenever possible. If they cannot be avoided, design accents such as pilasters or other façade articulations can help to reduce the overall scale appearance. **(H)**

2.9 Special design elements which help to articulate the façade help to further reduce the overall building scale. Articulations of the facade or breaks in the roofline help to define different masses and reduce the scale. **See Also 'Fenestration'.**

2.10 The use of covered porches and similar recessed front entry areas is encouraged to help create a more human scale appearance to the building. These also help to draw attention to the point of entry and provide shelter from the rain and snow. Porch areas should not be used for outdoor merchandise display.

2.11 In lieu of a formal porch entry, a small canopy or awning over the main entry also helps to provide a pedestrian scale appearance.

Table 2.10 (continued)
PLANNED COMMERCIAL(PC) DISTRICT

Design Standards

Section G2. Scale & Massing

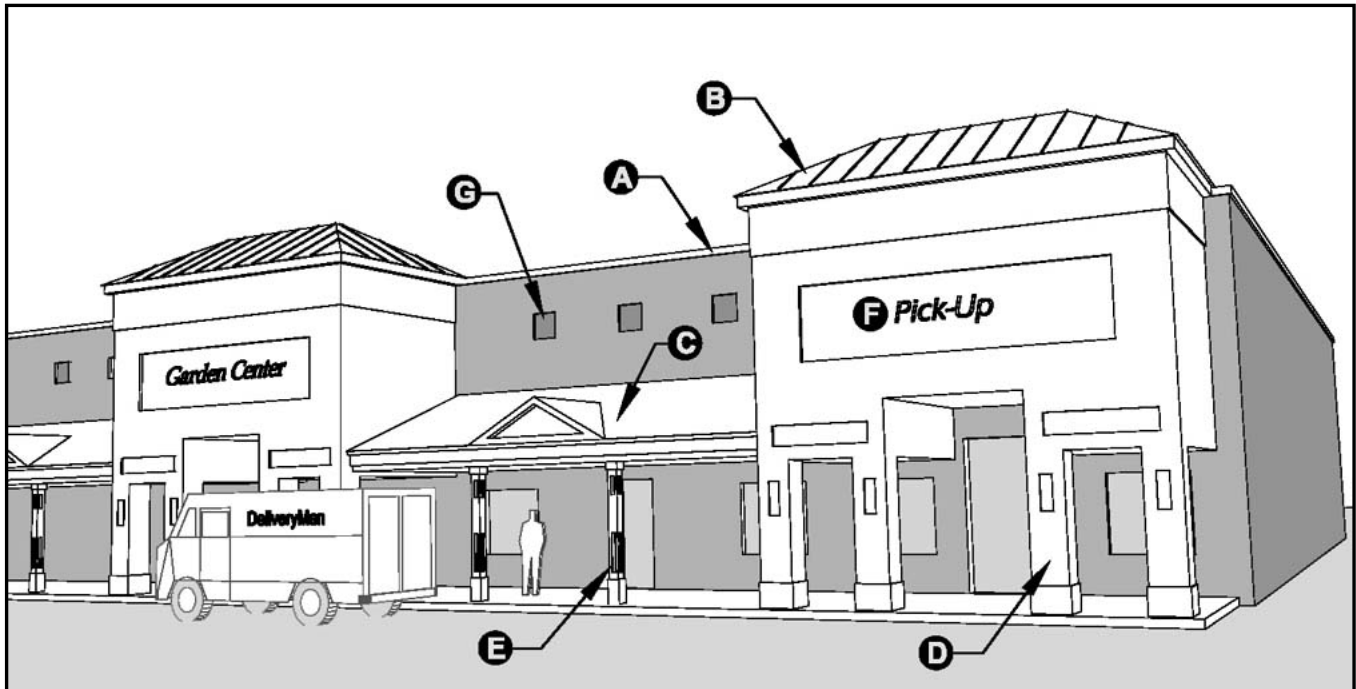


Figure G2.2: Alternate Design for Big-Box Retail. By articulating the façade of a typical Big Box retail store with different massing elements, you can help to give a smaller scale appearance to an otherwise featureless mass.

2.12 The typical Big-box retail structure can be seen here as a relatively featureless mass shaded in grey. **(A)** These structures usually have blank walls on most of the facades, and are articulated only at the point of entry.

2.13 Large retail structures are encouraged to articulate their primary façade(s) with various design features to help reduce the overall scale of the building with the use of roofline articulation or mass divisions. **(B)** These can be used to highlight entry points, exits, specialty areas (such as a garden/landscaping center or auto service) customer pick-up zones or separate places of business.

2.14 In between the main massing elements, a secondary level of scale reduction can be achieved with a smaller porch design. **(C)** In addition to creating a more interesting façade, this provides pedestrian shelter and helps to tie the façade together. In the case of multiple tenant plazas, these porch areas act as the front facades and entry points to smaller businesses.

2.15 The relative massing of the façade can be slowly broken down into progressively smaller elements. For example, the larger storefront elements **(B)** are supported on large piers. **(D)** These entrance elements frame smaller porches in between, which are supported on even smaller columns. **(E)** These smaller columns are scaled to the pedestrian, and use the smallest materials.

2.16 The front façade or entry areas may be designed to accommodate façade lettering where appropriate. **(F)**

2.17 The main façade **(A)** can be further enhanced with occasional variations in materials, such as the use of colored or textured masonry units in special areas to create localized patterns. **(G)** The use of banding designs (continuous horizontal stripes) across large areas of façade is not recommended.

2.18 Smaller scale materials should be used on these front façade massing elements whenever possible.

2.19 The size, scale, motif and use of materials for the front façade design should be kept consistent across the façade in order to tie the entire composition together. The use of a variety of design styles across the façade is not recommended.

Table 2.10 (continued)
PLANNED COMMERCIAL(PC) DISTRICT

Design Standards

Section G3. Building Height & Roof Design

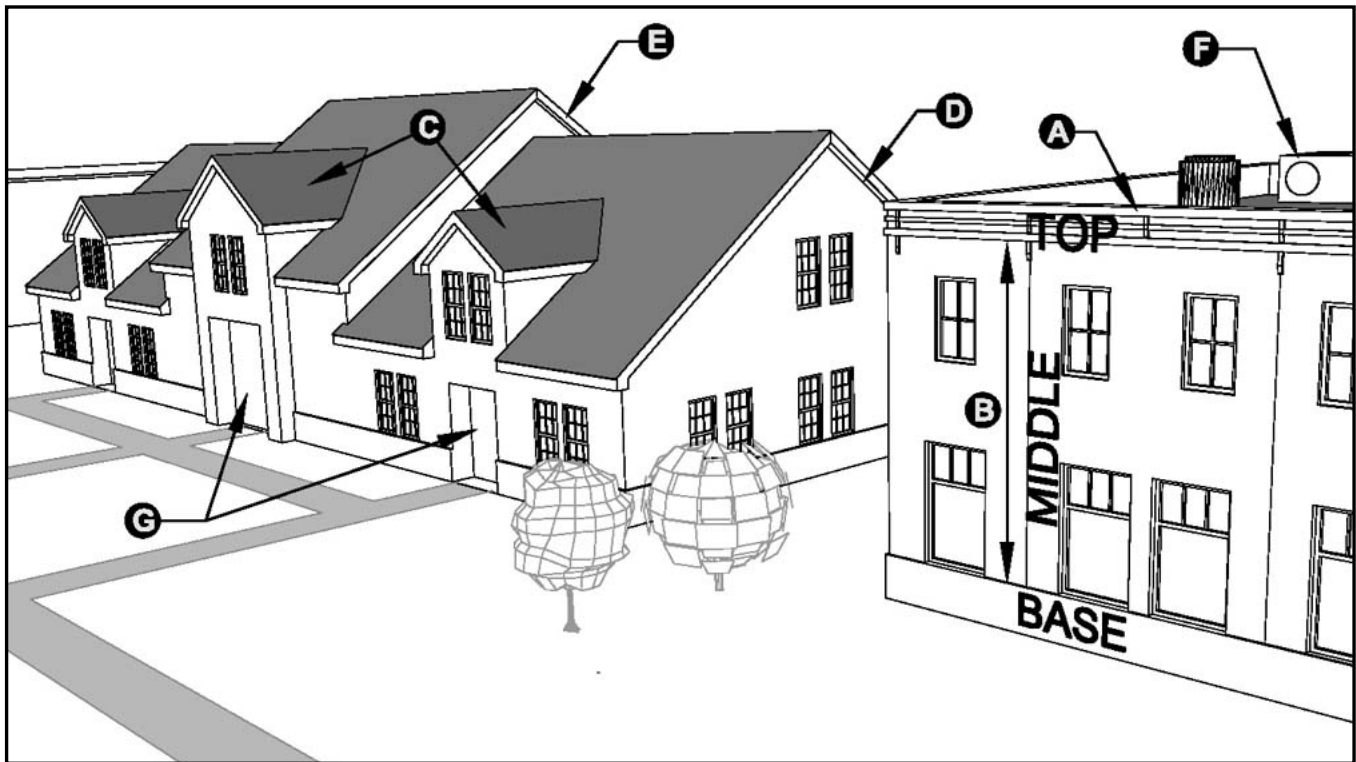


Figure G3.1: Different Roof Configurations. A well designed building roof provides screening, reduces the building scale, diverts the fall of rainwater, highlights important areas and creates a graceful “cap” to the structure, among other things.

3.1 The tallest façade of the building should face the street, stepping down in back if necessary.

3.2 The roof of the building should be in keeping with the scale of the structure itself. Overly large, bold or “inflated” roof and fascia designs are discouraged.

3.3 Flat roof structures should be capped by an articulated parapet design which acts as a structural expression of the building façade and its materials. **(A)** Fake roof fronts, built-out roof frames and similar applied designs are discouraged.

3.4 Subtle variations which help to differentiate the ‘base’, ‘middle’ and ‘top’ of the structure are encouraged. **(B)**

3.5 Sloped roof structures are encouraged to maintain a pitch between 6:12 minimum and 12:12 maximum slope on all primary roof areas. (Not including dormers, entry canopies or similar elements.) Mansard and shed roof designs are discouraged.

3.6 Buildings with sloped roofs are encouraged to employ the use of dormers and gables along the front to help maintain a prominent façade when feasible. **(C)** These also help to divert rainwater and snow away from doorways.

3.7 Buildings with sloped roofs are encouraged to provide roof overhangs between 6” and 18” deep. **(D)**

3.8 Subtle breaks and fluctuations in the roofline are encouraged to highlight important areas of the building (such as the entry) and break up longer runs of façade/roof area. **(E)**

3.9 Air handling units, condensers, satellite dishes and other equipment placed on the roof should not be visible from the street, and instead should be screened by building elements so they are shielded from sight. **(F)** In addition, roof mounted equipment shall be visually minimized with painted colors and finish complementary to the overall building design.

3.10 The roof of a structure should be designed so as to divert the fall of rain and snow away from pedestrian areas such as walkways and doors. The use of canopies, awnings or similar protective designs are also encouraged at entry locations. **(G)**

3.11 Although the town wishes to encourage two and three story development along the street, there may be some instances where a taller structure could obstruct a natural or historic vista such as a public view of the Bennington Monument. In these cases a more sensitive design approach may be required.

Table 2.10 (continued)
PLANNED COMMERCIAL(PC) DISTRICT

Design Standards

Section G4. Proportions

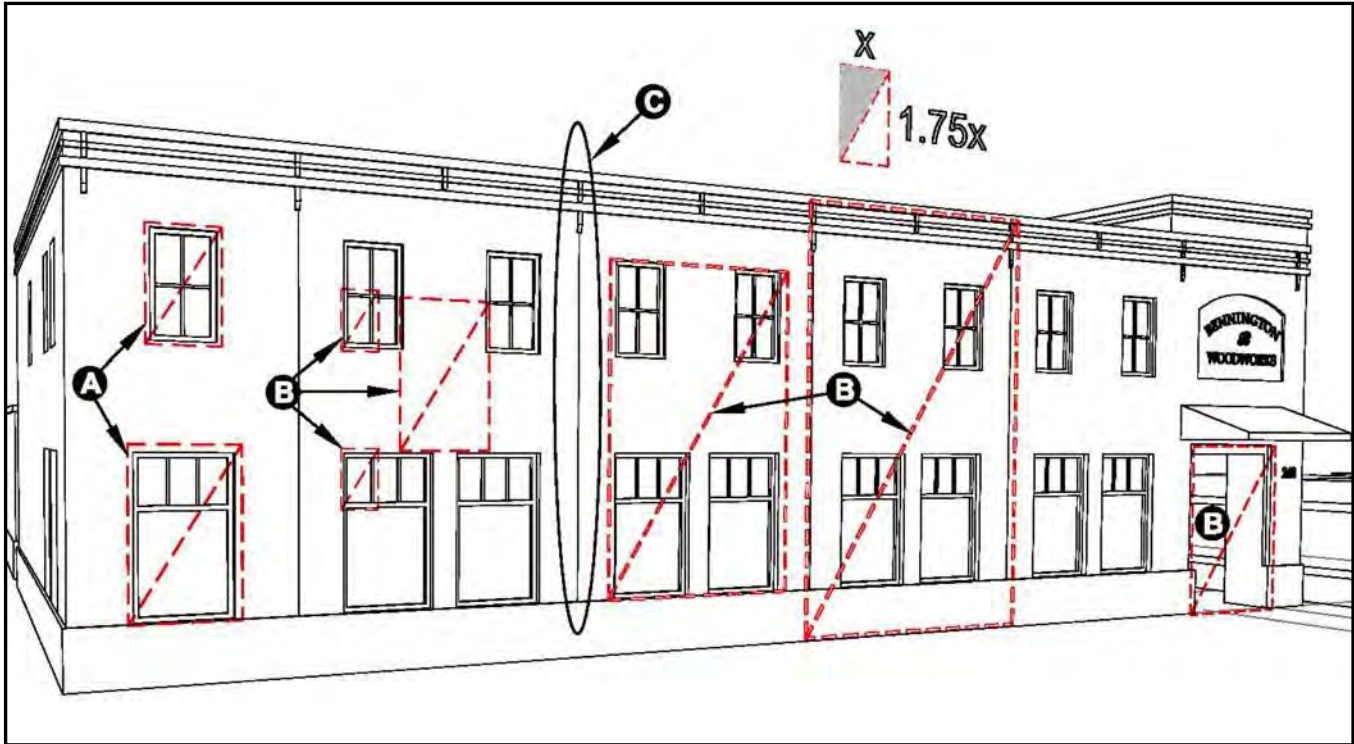


Figure G4.1: A Consistent Proportioning System. Many of the façade characteristics of this building are determined by the same width to height proportioning ratio (1:1.75). This can help to visually balance and tie the building together.

4.1 The proportions of design elements such as windows, columns or bay spacing should be kept as consistent as possible on the façade. In this example, the windows on the second floor have the same width to height ratio as the windows on the first floor. **(A)**

4.2 Proportioning systems also can be very effective in guiding other design characteristics of the façade. Here, the same width to height ratio of the windows was used to determine the proportions of many other features. **(B)**

4.3 The use of vertically proportioned elements (elements which are generally taller than they are wide) is encouraged to help give the building a taller, lighter and more stately appearance. Strong horizontal influences such as large fascias or banding designs are discouraged, or should be adequately balanced with vertical elements. **(C)**

4.4 The proportion of structural elements such as posts or columns should be appropriate to the weight they appear to be carrying. Columns which support larger masses, such as upper floors, generally have a low width to height ratio (For example 1:5). **(D)** Columns supporting lighter elements such as a porch roof generally have larger ratio (For example 1:15). **(E)** These relative proportions help balance a façade visually.

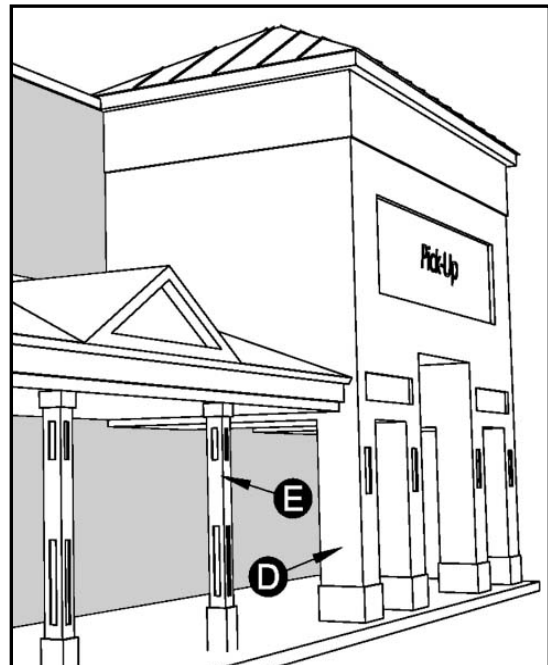


Figure G4.2: Relative Column Proportions. The thickness of the column or pier should reflect the amount of weight it appears to be carrying.

Table 2.10 (continued)
PLANNED COMMERCIAL(PC) DISTRICT

Design Standards

Section G5. Fenestration



Figure G5.1: Fenestration is a Measure of the 3-Dimensional Depth of a Façade Created by Fluctuations or Openings in a Wall. Recesses such as archways or deep windows are two examples of fenestration. They help to give a façade a more 3- dimensional appearance by casting shadows and creating a visual contrast

5.1 Articulations in the plane of the façade are encouraged to create an interesting design, reinforce rhythms and cast shadows. **(A)** Very flat façade designs are discouraged.

5.2 Typically, the most fenestration is found at the first floor level near pedestrian areas. Here, the use of larger openings and increased depth is encouraged. **(B)** This creates a more open and inviting area.

5.3 In a building of two or more stories, the upper floors typically would have decreasing levels of fenestration. Here, smaller openings and less depth is usually found compared to the first floor. **(C)**

5.4 Openings in masonry buildings should express a structural lintel or arch to express how it is carrying the weight above. **(D)** Likewise, door and window frames can also use a wider trim at the head than is used on the sides to achieve the same visual effect.

5.5 The primary entry to a building is the best place to be creative with the use of depth in a façade. The added depth and articulation help to draw attention to the entry and highlight it as an important place. **(E)**

5.6 The use of façade articulation such as expressing the structural bays of the building with pilasters or other detailing can be useful in animating an otherwise blank area of wall. **(F)**

5.7 In non pedestrian areas, such as the side or rear of the building, an increased level of fenestration is not as important, and can be scaled down if desired. **(G)**

5.8 The use of porches, colonnades, canopies or awnings is a great way to introduce shadows on a façade, and are encouraged. **(H)**

Table 2.10 (continued)
PLANNED COMMERCIAL(PC) DISTRICT

Design Standards

Section G6. Materials & Colors

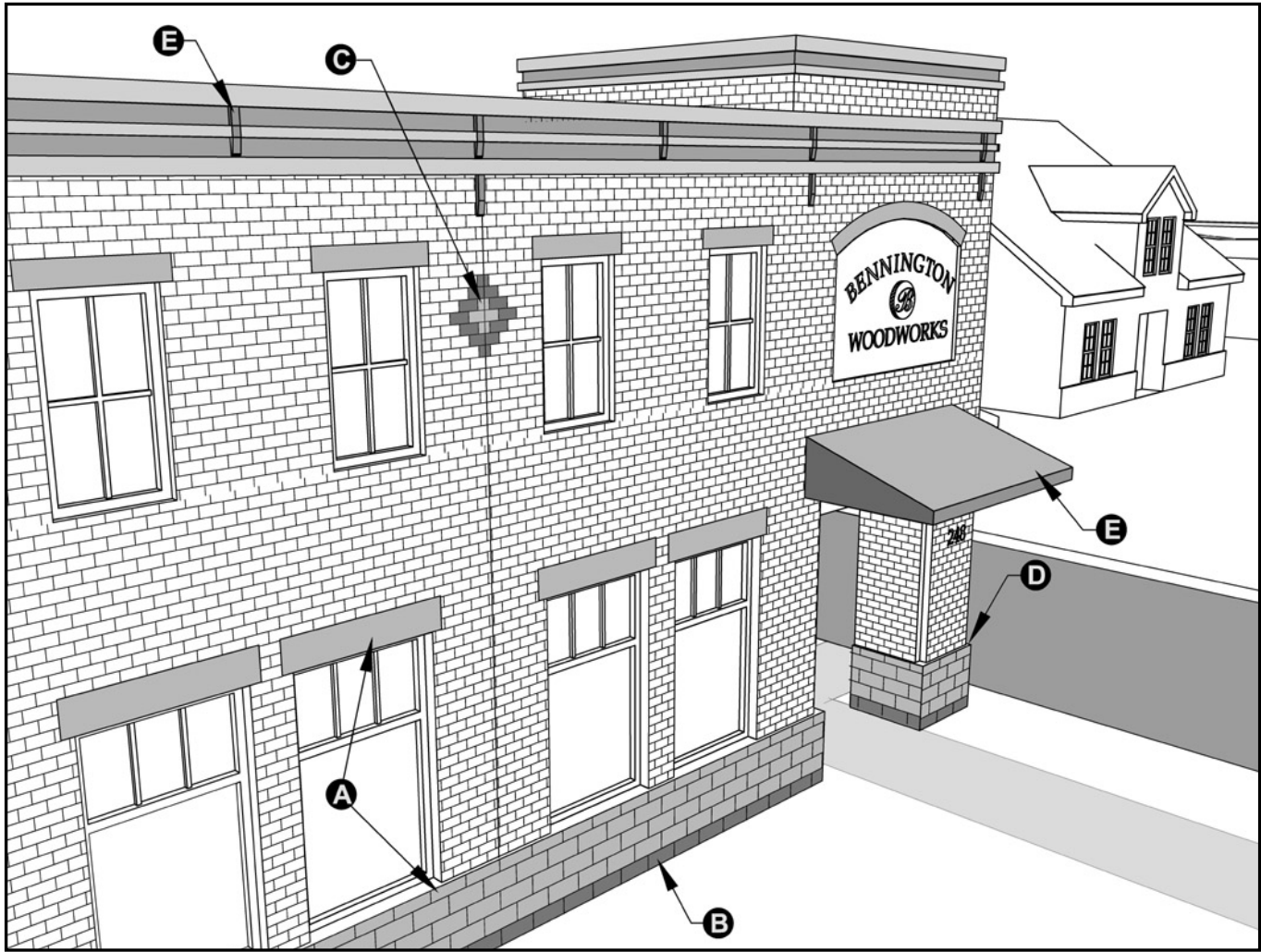


Figure G6.1: Smaller Scale Materials. The use of smaller building materials is recommended to help give the structure a more pedestrian scale.

6.1 Smaller scale, natural materials are encouraged whenever possible, especially on the front façade and near pedestrian areas.

6.2 When using more than one material on a façade, it is recommended to have one as the dominant theme with the others acting only to compliment or accentuate the design. In this example, the main brick façade is accented with the use of a special concrete block at the base, with matching concrete lintels. **(A) & (B)** This helps to tie the design together and provides a visual base for the building to rest on.

6.3 Special patterns included in the façade or roofing material every now and then can help to create a more lively and interesting design, and are encouraged. **(C)**

6.4 When making a transition from one material to the next, it is recommended that the change occur at a hard edge or “bump-out” in the façade. This helps to create a surface for the first material to terminate into before the second one begins. **(D)**

6.5 When using multiple colors on the exterior of the building only one color should be used as the main theme, with the other colors used more sparingly to create accents. **(E)**

6.6 The main color theme should typically be of a natural, muted shade. Brighter, more vibrant colors such as red or yellow should generally be reserved for minor accents and highlights only, and should be used sparingly.

6.7 The use of contrast between primary and accent materials or colors can help enrich a façade design.

Table 2.10 (continued)
PLANNED COMMERCIAL(PC) DISTRICT

Design Standards

Section G6. Materials & Colors (Cont.)

Table G6.1: Recommended Materials Chart. The following chart is intended as a general guide to the materials most and least preferred for use within the Planned Commercial District. It is not intended to be comprehensive. Actual exterior materials and colors should be approved by the Town. Materials listed in the 'Not Recommended' column, or materials not specifically listed in this chart, may be permitted, but are subject to review and approval by the Review Board to ensure appropriateness.

ELEMENT	RECOMMENDED	NOT RECOMMENDED
Façade	Common Red Brick	Multi-colored Brick
	Bare (consistent tone)	Imitation Brick Siding
	Painted (approved color)	
	Special Masonry Units	Plain (bare) Concrete Masonry Units
	Textured Concrete Block	Metal Siding
	Colored Concrete Block	Exterior Insulation Finish Systems
	Split-faced Block	
	Natural Stone / Imitation Stone	
	Wood Clapboard	Asphalt Siding
Wood Shingle		
Trim	Wood (Painted or Stained)	Bare Wood
	Finished Grade	Lumber Grade
	Aluminum	
Windows	Anodized Aluminum Frame	
	Approved Color	
	Wood Frame	
	Painted or Stained Approved Color	
	Vinyl Clad	
	Expressed Lintels (over openings)	Steel Plate or Angle
	Brick	
	Limestone	
	Colored Concrete	
	Clear, Etched or Frosted Glass	Mirrored Glass
Stained Glass		
Roof	Natural Slate	
	Standing Seam Metal	
	Small Seam Width, Approved Color	
	Asphalt Shingles	
	Parapet Caps / Chimney Caps	
	Stone, Pre-Cast Concrete or Limestone	
Other	Canvas Awnings	Plastic Awnings
	3 color maximum, approved colors	
	Walkway Pavers/sidewalk	Asphalt walkways
	Stamped or Poured Concrete	
	Brick or Colored Paving Stone	

**Table 2.11
PLANNED AIRPORT (PA) DISTRICT**

(A): The purpose of the Planned Airport District is to provide for the safe and convenient use of lands encompassing, the Bennington Airport and the immediate vicinity and allow the Airport to successfully coexist with its neighbors within and outside of the District.

(B) **Allowed Uses -- with Zoning Permit:** None - All uses require Development Review Board approval.

(C) **Allowed Uses -- with DRB Approval:** The following uses are allowed with the approval of the Development Review Board in accordance with Article 5:

- | | |
|---|--|
| (1) Accessory Use/Structure (see Section 4.3) | (5) Professional/Business Office (see subsection (E)) |
| (2) Airport (see subsection (E)) | (6) Sale and rental of aircraft and aircraft parts, accessories and equipment. |
| (3) Flight instruction | (7) Warehouses (see subsection (E)) |
| (4) Mixed Use | |

(D) **Dimensional Standards:**

- | | |
|--|-------------------------------------|
| (1) Lot Area (Minimum) | 40,000 square feet |
| (2) Front Yard Setback (Minimum) | 100 feet |
| (3) Side Yard (Minimum) | 50 feet |
| (4) Rear Yard (Minimum) | 50 feet |
| (5) Setback from Residential Use or District | 50 feet |
| (6) Building Height (Maximum) | 40 feet (see subsection (E), below) |

(E) **Supplemental District Standards**

- (1) **Additional Use Standards.** In addition to other standards set forth in these regulations, within the PA District the following standards and restrictions shall apply to the following uses:
- a. **Airport** shall encompass all accessory uses associated with the operation of a commercial airport such as, but not limited to, facilities enabling landing, takeoff, and storage of aircraft and helicopters; terminal facilities, hangars, maintenance and repair shops; and others required to service the air traveling public.
 - b. **Professional/Business Offices** shall be limited to those uses for which frequent access and proximity to the airport is integral part of the office use.
 - c. **Warehouse** uses are limited to storage and shipping facilities associated with the transfer of freight transported by air.
- (2) No use shall be permitted which will produce electrical interference with radio communications or radar operations at the airport.
- (3) No lights or glare shall be permitted which could interfere with vision or cause confusion with airport lights.
- (4) No use or structure shall be permitted which could obstruct the airport approaches as described in Table 2.19.
- (5) Front yards should be used for landscaping and pedestrian paths and associated pedestrian amenities (e.g., street furniture, pedestrian scale lighting and signs). Outdoor storage, parking and loading areas shall not be located within front yards
- (6) No dwelling shall be permitted other than the residence of a caretaker, proprietor or security personnel.
- (7) **General Standards and Specific Use Standards:** All uses and development within the PA District shall comply with other applicable standards of these regulations, including General Regulations under Article 3 and Specific Use Standards under Article 4.

Table 2.12
MIXED RESIDENTIAL #2 (MR-2) DISTRICT

(A) **Purpose:** The purpose of the Mixed Residential District #2, in addition to permitting the same development as in the MR-1 and the VR District, is to provide suitable locations for apartment buildings, row houses and similar group housing, and planned development projects with integrated design, in order to promote the most appropriate use of land, to ensure economical provision of streets and utilities, and to secure the best possible environment for these types of dwellings.

(B) **Allowed Uses -- with Zoning Permit:** The following uses are allowed with the approval of the Administrative Officer in accordance with Section 9.3

- | | |
|---|----------------------------|
| (1) Accessory Use/Structure (see Section 4.3) | (4) Single family dwelling |
| (2) Home Child Care | (5) Two family dwelling |
| (3) Home Occupation (see Section 4.13) | |

(C) **Allowed Uses -- with DRB Approval:** The following uses are allowed with the approval of the Development Review Board in accordance with Article 6:

- | | |
|---|---|
| (1) Accessory Use/Structure (see Section 4.3) | (7) Multi family Dwelling |
| (2) Bed & Breakfast | (8) Neighborhood Grocery (see subsection (E)) |
| (3) College/University | (9) Place of Worship |
| (4) Community Care Facility | (10) Public Facility (see subsection (E)) |
| (5) Day Care Facility | (11) Rooming House |
| (6) Mixed Use | (12) School |

(D) **Dimensional Standards:**

- | | |
|---|---|
| | connected to both municipal water & sewer |
| (1) Lot Area (min.) | 12,000 sq. ft. |
| (2) Lot Area Per Family (min.) – single family dwelling | 12,000 sq. ft. |
| (3) Lot Area Per Family (min.) – two family dwelling | 6,000 sq. ft. |
| (4) Lot Area Per Family (min.) – multi family dwelling | 6,000 sq. ft. first unit; + 2,000 sq. ft. each additional unit |
| (5) Lot Width (min) | 80 ft. (1 & 2 family); 100 ft. (multi-family) |
| (6) Front Yard Setback (min./max.) | New buildings – front setback shall be within 5 feet, greater or lesser, of the average front setback of historic residential structures located on the street. Porches, steps, entry ways added to existing structures – 10 feet minimum |
| (7) Side Yard (min.) | 10 ft. (1 fam); 15 ft. (2 fam) |
| (8) Rear Yard (min.) | 35 ft. (1 & 2 family); 40 ft. (multi-family) |
| (9) Building Height (max.) | 30 ft. (1 & 2 family); lesser of 3 stories or 35 ft. (multi-family) |
| (10) Building Coverage (max.) | 25% |

Table 2.12 (continued)
MIXED RESIDENTIAL #2 (MR-2) DISTRICT

(E) Supplemental District Standards

- (1) **Additional Use Standards:** In addition to other standards related to specific uses set forth in these regulations, within the MR-2 District the following restrictions also shall apply:
 - a. **Public Facilities** shall be limited to public utilities (e.g., water, sewer, electric facilities), neighborhood parks and playgrounds serving the surrounding area, and emergency service stations (e.g., fire, rescue) serving as a satellite facility to service the surrounding area and maximize response time.
 - b. **Neighborhood Grocery** shall be limited to 1,500 square feet of floor area; shall be designed so that the enterprise does not change the residential character of the neighborhood; and gasoline sales are prohibited.
- (2) **Front Yard Treatment:** Front yards shall be used for landscaping and pedestrian paths and associated pedestrian amenities (e.g., street furniture, pedestrian scale lighting and signs). Outdoor storage, parking and loading areas shall not be located within front yards without Development Review Board approval in accordance with Article 5. In granting approval, the Board must find that the property is a pre-existing building and that no other practical alternative exists.
- (3) **Building Dimensions.** All dwellings shall have a footprint, excluding porches, decks, entry stairs, of not less than 20 feet in width and 20 feet in depth, and shall have a minimum roof pitch of 5 over 12.
- (4) **Supplemental Review Standards:** In addition to the standards set forth in Article 5, in approving development in the MR-2 District the Development Review Board shall apply the following standards:
 - a. **Pedestrian Access.** One or more walkways or sidewalks, separate and distinct from driveways, shall be installed to provide direct pedestrian access from adjacent sidewalks to the building's primary entrance.
 - b. **Building Height:** New buildings requiring Board approval shall be architecturally compatible with the scale and form of historic structures located within the MR-2 District. In addition, such buildings shall be designed with a minimum roof pitch of 8 over 12, excluding roofs covering open porches, entry ways and accessory structures less than 500 square feet.
 - c. **Building Orientation:** Buildings requiring Board approval shall front toward and relate to streets, both functionally and visually, and not be oriented toward parking lots. The front facade should include a main entry-way and pedestrian access to the street. Buildings located on corner lots shall either be oriented toward the primary street or include a corner entrance. The Board may impose a maximum setback, relative to adjacent buildings, to achieve a consistent streetscape. Multi-Family structures may orient toward the street and internal parking lots and/or courts.
- (5) **Access Management.** Accesses and driveways shall be located and designed in accordance with Section 3.3.
- (6) **Water Supply & Sewage Disposal.** All new structures requiring a water supply and sewage disposal shall connect to the Bennington municipal wastewater treatment facility and municipal water supply.
- (7) **General Standards and Specific Use Standards:** All uses and development within the MR-2 District shall comply with other applicable standards of these regulations, including General Regulations under Article 3 and Specific Use Standards under Article 4.

Table 2.13
RURAL RESIDENTIAL (RR) DISTRICT

(A) **Purpose:** The purpose of this designation is to encourage low density residential development in appropriate areas, especially areas which have experienced substantial residential development in the past, while preserving the rural character, scenic landscape and natural resources.

(B) **Allowed Uses -- with Zoning Permit:** The following uses are allowed with the approval of the Administrative Officer in accordance with Section 9.3:

- | | |
|---|--|
| (1) Accessory Apartment (see Section 4.2) | (5) Home Child Care |
| (2) Accessory Use/Structure (see Section 4.3) | (6) Home Occupation (see Section 4.13) |
| (3) Agriculture | (7) Single family dwelling |
| (4) Forestry | |

(C) **Allowed Uses -- with DRB Approval:** The following uses are allowed with the approval of the Development Review Board in accordance with Article 5:

- | | |
|--|---|
| (1) Accessory Use/Structure (see Section 4.3) | (9) Extraction of Earth Resources (see Section 4.8) |
| (2) Agricultural Retail (see Section 4.9) | (10) Golf Course (see Section 4.11) |
| (3) Bed & Breakfast | (11) Mixed Use (see section 4.16) |
| (4) Cemetery | (12) Mobile Home Park (see Section 4.17) |
| (5) College/University (see Section E) | (13) Multi-Family Dwelling (see subsection (E)) |
| (6) Cultural Facility (see Section E) | (14) Neighborhood Grocery (see subsection (E)) |
| (7) Community Care Facility (see subsection (E)) | (15) Public Facility (see subsection (E)) |
| (8) Day Care Facility | (16) Veterinary Clinic |

(D) **Dimensional Standards:**

	connected to neither municipal water & sewer	connected to municipal sewer and/or water
(1) Lot Area (min.)	40,000 sq. ft.	30,000 sq. ft.
(2) Lot Area Per Family (min.)*	30,000 sq. ft.	15,000 sq. ft.
(3) Lot Width (Minimum)	150 ft.	120 ft.
(4) Front Yard Setback (min.)	40 ft.	30 ft.
(5) Side Yard (min.)	30 ft.	20 ft.
(6) Rear Yard (min.)	40 ft.	40 ft.
(7) Building Height (max.)	30 ft.	30 ft.
(8) Building Coverage (max.)	10%	15%

*applicable to two-family and multi-family dwellings

(E) **Supplemental District Standards**

(1) **Additional Use Standards:** In addition to other standards related to specific uses set forth in these regulations, within the RR District the following restrictions also shall apply:

- a. **College/University.** The maximum building height for College/University buildings shall be 40 ft. Taller buildings may be approved by the DRB due to unique site conditions provided the building and site design complies with the Review Standards set forth in Article 5.

Table 2.13 (continued)
RURAL RESIDENTIAL (RR) DISTRICT

- b. **Community Care Facilities** shall meet the requirements of the State of Vermont Department of Human Services, and shall be located on a lot which meets the lot size standard in subsection (D) and has not less than 6,000 square feet in area per person/accommodation. If the facility is connected to public water and public sewer, the land area per person/accommodation may be reduced to 3,000 square feet each. Community Care Facilities in the RR District shall meet the standards set forth in Section 8.3(D).
 - c. **Cultural Facilities** may be permitted only if
 - i. located within an existing historic structure; or
 - ii. it is a botanical or zoological garden on a property with direct access (no longer than 100 ft.) from Route 7, 7A or 9.
 - d. **Dwellings (all)**. All dwellings shall have a building footprint, excluding porches, decks and entry stairs, of not less than 20 feet in width and not less than 20 feet in depth, and shall have a minimum roof pitch of 5 over 12.
 - e. **Multi-family Dwellings** are only permitted in a Planned Residential Development (PRD) approved in accordance with Section 8.3.
 - f. **Neighborhood Grocery Stores** shall be limited to 1,500 square feet total floor space, shall be designed so that the enterprise does not change the residential character of the neighborhood, and gasoline sales are specifically prohibited.
 - g. **Public Facilities** shall be limited to public utilities (e.g., electric utilities), neighborhood parks and playgrounds serving the surrounding area, and resource based activities associated with other municipal activities (e.g., highway maintenance facilities).
- (2) **Access Management.** Accesses and driveways shall be located and designed in accordance with Section 3.3
- (3) **Subdivisions.** It is important that special consideration be given to the pattern and configuration of new subdivisions to maintain the district's rural character, in accordance with Section 7.4. Any major subdivision within the RR District, as defined in Article 10, shall meet the standards for a Planned Residential Development set forth in Article 8.
- (4) **General Standards and Specific Use Standards:** All uses and development within the RR District shall comply with other applicable standards of these regulations, including General Regulations under Article 3 and Specific Use Standards under Article 4.

Table 2.14
RURAL CONSERVATION (RC) DISTRICT

(A) Purpose: The purpose of the Rural Conservation District is to preserve the rural character, scenic landscape and natural resources of the area while accommodating low density residential development in a manner that avoids the need for public water supply and public sewer systems.

(B) Allowed Uses -- with Zoning Permit: The following uses are allowed with the approval of the Administrative Officer in accordance with Section 9.3:

- | | |
|---|--|
| (1) Accessory Apartment (see section 4.2) | (5) Home Child Care |
| (2) Accessory Use/Structure (see Section 4.3) | (6) Home Occupation (see Section 4.13) |
| (3) Agriculture | (7) Single family dwelling |
| (4) Forestry | |

(C) Allowed Uses -- with DRB Approval: The following uses are allowed with the approval of the Development Review Board in accordance with Article 5:

- | | |
|---|---|
| (1) Accessory Use/Structure (see Section 4.3) | (7) Extraction of Earth Resources (see Section 4.8) |
| (2) Adaptive Reuse (see Section 4.4 and subsection (E)) | (8) Golf Course (see Section 4.11) |
| (3) Agricultural Retail (see Section 4.9) | (9) Kennel (see Section 4.15) |
| (4) Cemetery | (10) Public Facility (see subsection (E)) |
| (5) College/University (see Section E) | (11) Sawmill |
| (6) Cultural Facility (see subsection (E)) | (12) Veterinary Clinic (see Section 4.15) |

(D) Dimensional Standards:

- | | |
|----------------------------------|--------------------|
| (1) Lot Area (Minimum) | 80,000 square feet |
| (2) Lot Width (Minimum) | 200 feet |
| (3) Front Yard Setback (Minimum) | 50 feet |
| (4) Side Yard (Minimum) | 30 feet |
| (5) Rear Yard (Minimum) | 50 feet |
| (6) Building Height (Maximum) | 30 feet |
| (7) Building Coverage (Maximum) | 10% |

(E) Supplemental District Standards

- (1) **Adaptive Reuse of Historic Structures:** Within any building identified as a historic structure on the Vermont Historic Sites & Structures Survey, the following uses may be permitted:
- a. Bed & Breakfast
- (2) **Additional Use Standards:** In addition to other standards related to specific uses set forth in these regulations, within the RC District the following restrictions also shall apply:
- a. **College/University.** The maximum building height for College/University buildings shall be 40 ft. Taller buildings may be approved by the DRB due to unique site conditions provided the building and site design complies with the Review Standards set forth in Article 5.
 - b. **Cultural Facilities** may be permitted only if
 - i. located within an existing historic structure; or
 - ii. it is a botanical or zoological garden on a property with direct access (no longer than 100 ft.) from Route 7, 7A or 9.

Table 2.14 (continued)
RURAL CONSERVATION (RC) DISTRICT

- c. **Dwellings (all).** All dwellings shall have a building footprint, excluding porches, decks and entry stairs, of not less than 20 feet in width and not less than 20 feet in depth, and shall have a minimum roof pitch of 5 over 12.
 - d. **Public Facilities** shall be limited to public utilities (e.g., electric facilities), resource based activities associated with other municipal activities (e.g., highway maintenance facilities).
- (3) **Access Management.** Accesses and driveways shall be located and designed in accordance with Section 3.3.
- (4) **Subdivisions.** It is important that special consideration be given to the pattern and configuration of new subdivisions to maintain the district's rural character, in accordance with Section 7.4. Any major subdivision within the RC District, as defined in Article 10, shall meet the standards for a Planned Residential Development set forth in Article 8.
- (5) **General Standards and Specific Use Standards:** All uses and development within the RC District shall comply with other applicable standards of these regulations, including General Regulations under Article 3 and Specific Use Standards under Article 4.
- (6) **Municipal Sewer.** No use, including residential uses, shall be connected to the municipal wastewater system unless the Development Review Board approves such connection pursuant to review under Article 5. In approving such a connection, the Board shall find that the use is an existing use and /or structure as of the effective date of these regulations and that such use and/or structure has not expanded since that date, that the existing use and/or structure poses a clear threat to public health and safety and water quality in the vicinity as a result of a failed or inadequate on-site sewage disposal system, and that no practical on-site disposal alternative is available. Once connected to the municipal wastewater system in accordance with this Section, the use and /or structure shall not under any circumstances (e.g., variance, conditional use) be expanded.

(F) Scenic Resource Protection & Review Criteria

This section is intended to further the goal of preserving the scenic quality of Bennington's rural landscape by promoting a development pattern consistent with the guidelines set forth in the report entitled "Town of Bennington Scenic Resource Inventory," dated December 2004 and with the goals and policies of the Bennington Town Plan. The regulations are further intended to prevent development from degrading the natural visual appeal of hillsides, ridgelines, or open fields, or from visually encroaching upon a natural or historic area or upon a stream, wetland, or other water resource. To this end, development having an adverse impact on scenic resources in the RC District shall not be permitted.

In addition to the definition set forth in Section 10.2 development in the RC District includes any changes to the exterior materials (including windows and other glass surfaces) or color of an existing structure. All such development shall be subject to the following additional procedures and standards, authorized pursuant to 24 V.S.A. Section 4414(1)(E).

- (1) Upon receipt of an application for development in the RC District, the Administrative Officer shall review the application and determine whether the proposed development is exempt from review under this subsection (see Subsection (F)(2)). If the proposed development is deemed exempt, the application shall be reviewed as provided for in subsections B through E.
If the application is not exempt, it shall be referred to the Application Review Panel which shall review the application giving consideration to the criteria contained in Subsection (F)(3) in making a determination as to whether the project will have any adverse impact on scenic resources
- (2) The following development is exempt from review under this subsection (F):
- a. Expansion of an existing structure provided that such expansion does not increase the total footprint of the existing structure by more than one hundred (100) square feet or increase the maximum height of the structure.
 - b. Construction of an accessory building, or additions to an accessory building, having a total footprint of no more than one hundred (100) square feet and a height of no more than fifteen (15) feet.

Table 2.14 (continued)
RURAL CONSERVATION (RC) DISTRICT

(3) The Application Review Panel shall review all development referred to it under this Section for compliance with (a) or (b) below, as appropriate. In determining whether a development is likely to have an adverse impact on scenic resources, the Application Review Panel shall consider whether such new development, including buildings, accessory structures, driveways, and utility lines, shall be prominently visible from any roadway or other public place and whether construction will require removal of mature trees:

- a. Open/Agricultural Land. For development proposed in open and agricultural land, the development shall conform to the following standards.
 - i. The development shall be designed and sited so as to preserve large blocks of contiguous open or agricultural land, including important agricultural soils, to the maximum extent possible.
 - ii. Buildings or other structures shall not be sited in the middle of open or agricultural land, but shall be located, to the extent possible, in wooded areas or at the edge of fields to protect scenic vistas and avoid fragmentation of productive land (see Photographs 1A and 1B).
 - iii. Development shall be sited so as to minimize the intrusion of any structure or improvement into a scenic viewshed. Existing vegetation shall be utilized as screens or buffers for development whenever possible.



1A. The house and garage are sited along a treeline at the edge of a large field and do not detract from the scenic quality of the view.



1B. This house is sited prominently in the center of an open field, significantly diminishing the scenic value of the viewshed.

- iv. Utility lines shall be constructed and routed in a manner that minimizes detrimental effects on the visual setting. Underground installation is preferred, but above-ground construction is permitted provided the above-ground lines follow treelines and avoid straight runs across open fields. (Photographs 2A and 2B).



2A. Underground utility lines leading to the house at the back edge of the field leave an open, uncluttered foreground.



2B. Above-ground utility lines cutting across the open field to the house at the back edge detract from the scenic quality of the field.

Table 2.14 (continued)

RURAL CONSERVATION (RC) DISTRICT

- v. Roads and driveways shall follow treelines and the edge of fields where topography permits, or along contour lines where the land is characterized by steep slopes. The intent of this requirement is to minimize adverse impacts on the visual appeal of open fields (see Photographs 3A and 3B).



3A. The access to this house follows the treeline and then rises following the natural contours of the land, preserving the visual appeal of the open field in the foreground.

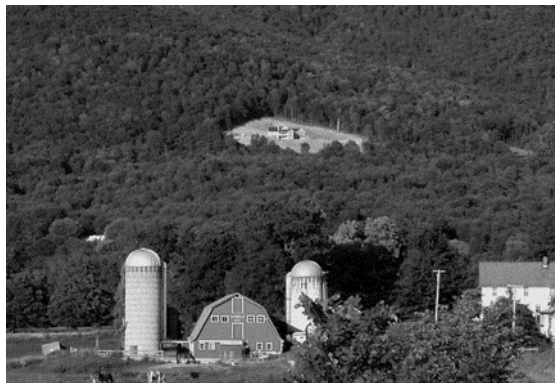


3B. The access to this house traverses the middle of an open field and cuts directly across contours, becoming the dominant feature in the view and adversely impacting the visual appeal of the open field.

- b. Hillside and Ridgelines. For development on hillsides or ridgelines, development shall conform to the following standards:
- Development shall be blended into the existing natural landscape to minimize its visual impact from public roads and lands. This effect shall be accomplished through one or more of the following: siting of structures within forest or forest edge areas rather than in open fields or meadows; the use and long-term maintenance of vegetative screening and landscaping; the retention of mature forest cover; the use of natural or earth-colored non-reflective siding and roofing materials; limiting the use of reflective glass; construction of roads or driveways that follow the contour of the land and existing wooded areas or treelines (Photographs 4A and 4B).
 - Development shall not cause undue alteration of natural topographic patterns.
 - Tree removal shall not cause undue alteration of the natural vegetation patterns of the hillside or ridgeline (Photographs 4A and 4B).



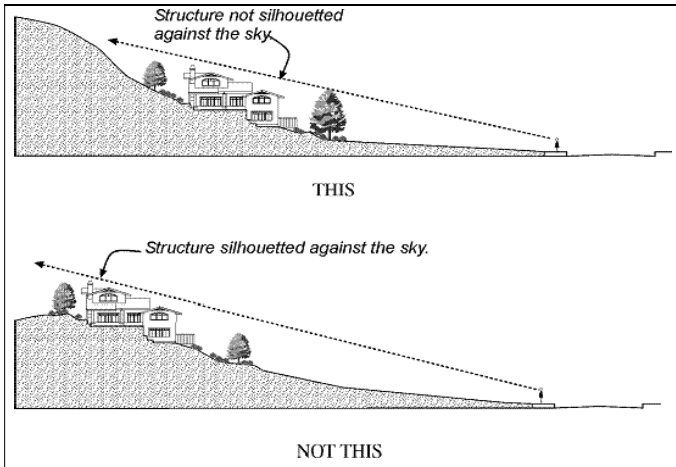
4A. The house has been located within the wooded area, with minimal tree removal for either the house or drive, and the open field has been left undisturbed.



4B. A large swath of trees was cut and the house was sited prominently in the center of the opening, significantly impacting the natural appeal of the hillside view.

Table 2.14 (continued)
RURAL CONSERVATION (RC) DISTRICT

- iv. Development shall be sited so that no building or structure shall exceed the height of land serving as the visual and physical backdrop to the site as viewed from a public road or other public land (Photographs 5A and 5B).
- v. Outdoor lighting shall be designed and positioned to provide lighting on the subject property only and should not illuminate off-site locations. Recessed, shielded, or cutoff fixtures or motion-activated and timed shut-off security lighting shall be used to satisfy this standard.
- vi. Utility lines shall be constructed and routed in a manner that minimizes detrimental effects on the visual setting. Underground installation is preferred, but above-ground construction is permitted provided the above-ground lines follow treelines and avoid straight runs across open fields.



5A. Proper and improper siting of a building on a ridge; the building should not be silhouetted against the sky when viewed from a public road.



5B. The house on top of this hill significantly alters the natural appearance of the topography as viewed from the highway.

- vii. Antennas, towers, and similar structures shall be carefully sited to ensure that they are not prominently visible in a manner that would detract from the scenic character of the area.
 - viii. Windows with an outside visible reflectance rating in excess of 15 percent generate excessive glare and shall not be used. Large, uninterrupted expanses of glass and repetitive bands of windows shall be avoided.
- (4) The Application Review Panel shall review applications for development under this subsection within thirty (30) days of a referral from the Administrative Officer and shall prepare findings and recommended actions for each such application. The recommendations may include conditions to minimize the potential for adverse impacts on the rural character and scenic resources of the area.
 - (5) The Administrative Officer shall issue a decision on any application for development within the RC District within fifteen (15) days of receiving a complete application for development that is exempt from review under subsection F and within fifteen (15) days of receiving a report with findings and recommendations from the Application Review Panel for non-exempt applications. The Administrative Officer may approve, approve with conditions, or deny an application based on compliance with the standards of this subsection. Appeals of any decision of the Administrative Officer shall be made to the Development Review Board pursuant to Section 9.5.
 - (6) An application for a development that is not exempt from review under this subsection shall include a site plan, drawn to scale, that includes the following:
 - a. Location of the proposed development;
 - b. Physical characteristics of the site, including steep slopes, surface water features, and forested and open areas;
 - c. Proposed clearing and landscaping.
 - d. Road access and driveway locations.

Table 2.14 (continued)
RURAL CONSERVATION (RC) DISTRICT

- e. A general statement about the proposed development including information as to the type and extent of the proposed development.
- f. A drawing or photographic simulation of the proposed development depicting the site and including all existing and new buildings, structural alterations, additions, access roads, driveways, and other development. The applicant also should provide photographs of the site, showing where development will occur as viewed from public roads and other public lands.
- g. Any other information that is deemed relevant or necessary for proper consideration of the application by the Administrative Officer or the Application Review Panel.

**Table 2.15
Agriculture (A) DISTRICT**

(A) Purpose: The purpose of the Agriculture District is to provide for all types of agricultural uses while limiting non-agricultural uses. Municipal utilities are neither planned nor available. Low density residential development and agricultural support services may occur in the district.

(B) Allowed Uses -- with Zoning Permit: The following uses are allowed with the approval of the Administrative Officer in accordance with Section 9.3:

- | | |
|---|---|
| (1) Accessory Apartment (see section 4.2) | (4) Forestry |
| (2) Accessory Use/Structure (see Section 4.3) | (5) Home Occupation (see Section 4.13) |
| (3) Agriculture (see subsection (E)) | (6) Single family dwelling (see subsection (E)) |

(C) Allowed Uses -- with DRB Approval: The following uses are allowed with the approval of the Development Review Board in accordance with Article 5:

- | | |
|---|--|
| (1) Accessory Use/Structure (see Section 4.3) | (3) Public Facility (see subsection (E)) |
| (2) Bed & Breakfast (see subsection (E)) | (4) Farm Demonstration Center |

(D) Dimensional Standards:

- | | |
|----------------------------------|----------|
| (1) Lot Area (Minimum) | 25 acres |
| (2) Lot Width (Minimum) | 600 feet |
| (3) Front Yard Setback (Minimum) | 50 feet |
| (4) Side Yard (Minimum) | 50 feet |
| (5) Rear Yard (Minimum) | 50 feet |
| (6) Building Height (Maximum) | 30 feet |
| (7) Building Coverage (Maximum) | 5% |
| (8) Lot Coverage (Maximum) | 5% |

(E) Supplemental District Standards

- (1) **Additional Use Standards:** In addition to other standards related to specific uses set forth in these regulations, within the Agriculture District the following restrictions also shall apply:
- a. **Accessory Apartments** within the Agriculture District may, in addition to minimum requirements under Section 4.2, include up to two detached, single family dwelling as an accessory to a commercial agricultural operation provided the accessory dwellings are:
 - i. occupied by full time employees working on said farm, and their immediate family;
 - ii. located on the same parcel as the principal dwelling associated with the commercial agricultural operation;
 - iii. located so as to meet all dimensional standards set forth in subsection (D), above; and
 - iv. removed from the premises if the parcel ceases to be an operating farm.
 - b. **Bed & Breakfast** are only permitted as an accessory to a commercial agricultural operation, and shall be located on or contiguous to such agricultural operation.
 - c. **Public Facilities** shall be limited to public utilities (e.g. electric facilities), neighborhood parks and playgrounds serving the surrounding area, and resource based activities associated with other municipal activities (e.g., extraction of earth resources).
 - d. **Single-family dwellings** shall be located on a lot not less than 25 acres in area. All dwellings shall have a building footprint, excluding porches, decks and entry stairs, of not less than 20 feet in width and not less than 20 feet in depth, and shall have a minimum roof pitch of 5 over 12.

Table 2.15 (continued)
Agriculture (A) DISTRICT

- (2) **Access Management.** Driveways and their intersections with streets shall be located and designed in accordance with Section 3.3.
- (3) **General Standards and Specific Use Standards:** All uses and development within the A District shall comply with other applicable standards of these regulations, including General Regulations under Article 3 and Specific Use Standards under Article 4.

Table 2.16
Forest (F) DISTRICT

(A) **Purpose:** The purpose of the Forest District is to provide for commercial forestry uses and the protection of timber and wildlife resources in the Town's major forested areas. The land is generally characterized by steep grades, the absence of permanent structures for year-round or sustained use and the absence of improved roads.

(B) **Allowed Uses -- with Zoning Permit:** The following uses are allowed with the approval of the Administrative Officer in accordance with Section 9.3:

- (1) Forestry

(C) **Allowed Uses -- with DRB Approval:** The following uses are allowed with the approval of the Development Review Board in accordance with Article 5:

- (1) Accessory Use/Structure (see Section 4.3)
- (2) Public Facility (see subsection (E))
- (3) Seasonal Camp (see subsection (E))
- (4) Telecommunications Facility (see Section 4.19)

(D) **Dimensional Standards:**

- (1) Lot Area (Minimum) 25 acres
- (2) Lot Width (Minimum) 600 feet
- (3) Front Yard Setback (Minimum) 50 feet
- (4) Side Yard (Minimum) 50 feet
- (5) Rear Yard (Minimum) 50 feet
- (6) Building Height (Maximum) 20 feet
- (7) Building Coverage (Maximum) 1%
- (8) Lot Coverage (Maximum) 5%

(E) **Supplemental District Standards**

(1) **Additional Use Standards:** In addition to other standards related to specific uses set forth in these regulations, within the F District the following restrictions also shall apply:

a. **Seasonal Camps** shall, in addition to complying with other applicable standards of this section, meet all of the following conditions:

- i. The Development Review Board must have granted approval pursuant to Article 5.
- ii. The Camp must not have a permanent foundation as defined in Section 2.
- iii. The Camp must not exceed 720 square feet in building area which area includes all covered porches and other roofed portions.
- iv. If a metal roof is installed, it shall be non reflective; reflections from windows and other glass or reflective surfaces shall not be visible from valley(s) below.
- v. The Camp must not exceed 20 ft. in building height measured to the peak of the roof, and shall be a single story with a maximum loft area of not greater than 50% of the floor space of the ground floor.
- vi. Water supplies from drilled wells are prohibited.
- vii. Subsurface septic disposal systems, including subsurface septic or holding tanks, are prohibited.
- viii. No black water discharge (household sewerage which comes from toilets) or grey water discharge (household sewage from sinks, shower facilities, etc.) shall be permitted; "mulbank" type toilets, gas toilets, chemical toilets, mulching toilets, oil recirculating toilets, incinerating toilets and similar devices which are approved by the Vermont Department of Environmental Conservation and do not discharge black water or grey water into subsurface disposal facilities or holding tanks may be permitted.

Table 2.16 (continued)
Forest (F) DISTRICT

- ix. All applicants who wish to construct a camp in the Forest District must provide satisfactory proof upon request of the Zoning Administrator of a permanent residence other than the camp.
 - x. The Camp shall be a private recreational camp, consisting of a building not used as a primary or secondary residence, but used occasionally for temporary shelter in connection with recreational activity, but not operated as a business, provided that the following requirements are met:
 - The minimum lot size shall be 25 acres.
 - No building shall be located closer than 100 feet to any individual lot line.
 - The camp shall not be served by public utilities (e.g., electricity, telephone).
 - b. **Public Facilities** shall be limited to open space and land-based recreation uses (e.g., public forest, protected wildlife habitat; recreation trails) which are suitable to a forest environment.
- (2) **Supplemental Review Standards:** In addition to the standards set forth in Article 5, in granting site plan approvals in the Forest District the Development Review Board shall apply the following standards:
- a. There shall be no explosives used in the Forest District for any purpose.
 - b. With the exception of roads and driveways specifically approved by the Development Review Board, the natural elevation, contours and grade of the ground shall not be disturbed, excavated or graded; provided, however piers (or pier like structures) may be placed below grade under a structure, including a camp, if all of the following conditions are met:
 - i. The piers are constructed of wood, stone, concrete or masonry.
 - ii. The piers shall be no larger than 16"×16".
 - iii. The footings, if any, shall be no larger than 16"×16".
 - iv. The piers, including any footings, shall be sunk to a depth of no more than 4 feet.
 - v. The piers shall be no closer than 8 feet to each other.
 - vi. After the piers are sunk, the contours and elevation of the site must be returned to their condition prior to the construction of the camp or accessory building.
 - vii. The piers must be removed to grade if the camp or accessory building is removed.
 - c. Natural vegetation on-site shall be preserved to the greatest extent possible. There shall be no clear-cutting or excessive thinning of trees in the area surrounding any structure, including camps or buildings accessory to a camp use, that would allow the structure to be visible off-site.
 - d. All roads, driveways and associated excavation and tree removal shall comply with *Acceptable Management Practices for Maintaining Water Quality on logging jobs in Vermont*.
- (3) **General Standards and Specific Use Standards:** All uses and development within the F District shall comply with other applicable standards of these regulations, including General Regulations under Article 3 and Specific Use Standards under Article 4.

Table 2.17
PUBLIC OPEN SPACE (POS) DISTRICT

(A): The purpose of the Public Open Space District is to recognize the existence of the major community public open spaces and to provide for their continuation.

(B) **Allowed Uses -- with Zoning Permit:** None - All uses require Development Review Board approval.

(C) **Allowed Uses -- with DRB Approval:** The following uses are allowed with the approval of the Development Review Board in accordance with Article 5:

- (1) Accessory Use/Structure (see subsection 4.3)
- (2) Mixed Use
- (3) Public Facility

(D) **Dimensional & Supplemental District Standards:**

- (1) No building or structure shall be erected within 15 feet of the boundary of any Residential District.
- (2) The maximum height of a building shall be 30 feet.
- (3) Public facilities shall be limited to recreation facilities, public park and conservation areas and municipality owned public utilities including accessory uses and structures associated with the maintenance, management and administration of public recreation and parks facilities, conservation areas and municipally owned public utilities.

Table 2.18
FLOOD HAZARD OVERLAY DISTRICT (FHO)

(A) Purpose: The purpose of the Flood Hazard Area Overlay District is to (1) avoid and minimize the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flooding related inundation; and (2) manage all flood hazard areas designated pursuant to 10 V.S.A. Chapter 32 § 753, the municipal hazard mitigation plan; and make the Town of Bennington, its citizens, and businesses eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds as may be available.

(B) Disclaimer of Liability: These regulations do not imply that land outside of the areas covered by this Section will be free from flood or erosion damages. These regulations shall not create liability on the part of the Town of Bennington, 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.

(C) Lands to Which these Regulations Apply

(1) Regulated Flood Hazard Area

These regulations shall apply to the Special Flood Hazard Area in the Town of Bennington, Vermont as described below. This Flood Hazard Overlay District and the regulations herein are the minimum standards that must be met before meeting the additional standards applicable in the underlying district. This Special Flood Hazard Area includes: The Special Flood Hazard Area in and on the most current flood insurance studies and maps published by the Department of Homeland Security, Federal Emergency Management Agency, National Flood Insurance Program, as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. Chapter 32 § 753, which are hereby adopted by reference and declared to be part of these regulations.

(2) Base Flood Elevations and Floodway Limits in Special Flood Hazard Area

Where available, base flood elevations and floodway limits provided by the National Flood Insurance Program and in the Flood Insurance Study and accompanying maps shall be used to administer and enforce these regulations. In Special Flood Hazard Areas where base flood elevations and/or floodway limits *have not* been provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps, it is the applicant's responsibility to develop the necessary data. Where available, the applicant shall use data provided by FEMA, or State, or Federal agencies:

(D) Development Review in Hazard Areas

(1) Permit

A permit is required from the Administrative Officer (AO) for all development in the Special Flood Hazard Area. Development that requires a permit with Development Review Board (DRB) approval, non-conforming use approval, or a variance from the DRB under these flood hazard regulations, must have such approvals prior to the issuance of a permit by the AO. Any development subject to municipal jurisdiction in the designated hazard areas shall meet the criteria in subsection IV and V of this Section. Any permit issued shall require that all other necessary permits from State or Federal Agencies have been received before work may begin.

(2) Permitted Development

For the purposes of review under these regulations, the following development activities in the Special Flood Hazard Area where outside of the floodway and meeting the Development Standards in subsection V of this Section, require only an administrative permit from the AO:

- a. Non-substantial improvements;
- b. Accessory structures;
- c. Development related to on-site septic or water supply problems;
- d. Building utilities;
- e. At-grade parking for existing buildings; and
- f. Recreational vehicles.

(3) Prohibited Development in Special Flood Hazard Area

- a. New residential or non-residential structures (including the placement of manufactured homes and critical facilities) are prohibited in the floodway;
- b. Storage or junk yards;
- c. New fill except as necessary to elevate structures above the base flood elevation;

Table 2.18 (continued)
FLOOD HAZARD OVERLAY DISTRICT (FHO)

- d. Accessory structures in the floodway; and
- e. All development not exempted, or permitted.

(4) Approval by the DRB

Approval by the DRB is required prior to the issuance of a permit by the AO for the following proposed development:

- a. New residential or non-residential structures (including the placement of manufactured homes) in the Special Flood Hazard Area outside of the floodway;
- b. Substantial improvement, elevation, relocation, or flood proofing of existing structures;
- c. New or replacement storage tanks for existing structures;
- d. Improvements to existing structures in the floodway;
- e. Grading, excavation; or the creation of a pond;
- f. Improvements to existing roads;
- g. Installation or improvement of private bridges and culverts; and
- h. Public utilities.

(5) Exempted Activities

The following are exempt from regulation under this Section:

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

(6) Variations

Variations in the Special Flood Hazard Area may be granted in writing by the DRB only in accordance with Section 9.6, all the criteria in 24 V.S.A. § 4469, § 4424 (E), and 44 CFR Section 60.6.

Any variance issued in the Special Flood Hazard Area 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 base flood elevation 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.

(7) Nonconforming Structures and Uses

The DRB may, in accordance with Section 3.9, approve the repair, relocation, replacement, or enlargement of a nonconforming structure within a Special Flood Hazard area provided that:

- a. The proposed development is in compliance with all the Development Standards in subsection V of this Section;
- b. A nonconforming structure that is substantially damaged or destroyed may be reconstructed only in circumstances when the structure cannot be relocated to a less hazardous location on the parcel. The lowest floor of the reconstructed structure must be rebuilt to one foot or more above the base flood elevation, and the structure must otherwise comply with all requirements of the National Flood Insurance Program; and
- c. Nonconforming structures or uses shall be considered abandoned where such structures or uses are discontinued for more than 12 months.

(E) Development Standards. The criteria below are the minimum standards for development in the Special Flood Hazard Area.

(1) Special Flood Hazard Area

- a. All development shall be:

Table 2.18 (continued)
FLOOD HAZARD OVERLAY DISTRICT (FHO)

- i. Reasonably safe from flooding;
 - ii. Designed, operated, maintained, 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. Located so as to minimize conflict with changes in channel location over time and the need to intervene with such changes; and
 - vii. Required to locate any fuel storage tanks (as needed to serve an existing building in the Special Flood Hazard Zone) a minimum of one foot above the base flood elevation and be securely anchored to prevent flotation; or storage tanks may be placed underground, if securely anchored as certified by a qualified professional.
- b. In Zones A, AE, AH, and A1 – A30 *where base flood elevations and/or 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 elevation more than 1.00 foot at any point within the community. The demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and certified by a registered professional engineer.
- c. *Structures, including manufactured homes, to be constructed, placed or substantially improved* in Zones A, A1-30, AE, and AH shall be located such that the lowest floor is at least one foot above base flood elevation, this must be documented, in as-built condition, with a FEMA Elevation Certificate.
- d. *New subdivision developments*, planned unit developments, planned residential developments, or manufactured home parks of more than 5 acres or 50 lots, whichever is less, shall:
- i. Include base flood elevation data;
 - ii. Minimize flood damage within the flood-prone area;
 - iii. Provide adequate drainage to reduce exposure to flood hazards; and
 - iv. Locate and construct utilities and facilities, such as sewer, gas, electrical, and water systems, so as to minimize or eliminate flood damage.
- e. *Non-residential structures to be substantially improved shall:*
- i. Meet the standards in subsection V A 3, or as an alternative to subsection V A 3, such structures may:
 - ii. Have the lowest floor, including basement, together with attendant utility and sanitary facilities be designed so that two feet above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; A permit for flood proofing 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
- f. *Fully enclosed areas below grade* on all sides (including below grade crawlspaces and basements) are prohibited.
- g. *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 must be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria: A minimum of two openings on two walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- h. *Recreational vehicles* must be fully licensed and ready for highway use.
- i. A *small accessory* structure of 500 square feet or less that represents a minimal investment need not be elevated to the base flood elevation in this area, provided the structure shall meet the criteria in subsection V A 7.
- j. *Water supply systems* shall be designed to minimize or eliminate infiltration of flood waters into the systems.

Table 2.18 (continued)
FLOOD HAZARD OVERLAY DISTRICT (FHO)

- k. *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.
- l. *On-site waste disposal systems* shall be located to avoid impairment to them or contamination from them during flooding.
- m. *The flood carrying and sediment transport capacity* within the altered or relocated portion of any watercourse shall be maintained, and any alteration or relocation shall not result in any decrease of stream stability.
- n. *Bridges and culverts*, which by their nature must be placed in or over the stream, must have a stream alteration permit from the Agency of Natural Resources.
- o. *New Structures, Subdivisions, Planned Residential Developments and Planned Unit Developments must be accessible by dry land access* outside the Special Flood Hazard Area.

(2) Floodway Areas

- a. Encroachments or development above grade and less than one foot above the base flood elevation, are prohibited unless hydrologic and hydraulic analyses are 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 (0.00 feet) during the occurrence of the base flood;
 - ii. Not increase any risk to surrounding properties, facilities, or structures from erosion or flooding.
- b. Public utilities may be placed underground, and the analyses may be waived, where a registered professional engineer certifies that there will be no change in grade and the utilities will be adequately protected from scour.

(F) Administration

(1) Application Submission Requirements

Applications for development shall include:

- a. Where applicable, in addition to the requirements of Article 5 of these regulations, a site plan that depicts the proposed development, all water bodies, Special Flood Hazard Areas, floodways, Fluvial Erosion Hazard Zone, the shortest horizontal distance from the proposed development to the top of bank of any stream, any existing and proposed drainage, any proposed fill, and pre and post development grades, and the elevation of the proposed lowest floor, as referenced to the same vertical datum as the elevation on the current Flood Insurance Rate Maps.
- b. A Vermont Agency of Natural Resources Project Review Sheet for the proposal. The Project Review Sheet shall identify all State and Federal agencies from which permit approval is required for the proposal, and shall be filed as a required attachment to the municipal permit application. The identified permits, or letters indicating that such permits are not required, shall be submitted to the AO and attached to the permit before work can begin.

(2) Referrals

- a. Upon receipt of a complete application for a substantial improvement or new construction, the AO 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 (ANR), in accordance with 24 V.S.A. § 4424. A permit may be issued only following receipt of comments from the Agency, or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner.
- b. 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 Stream Alteration 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 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.

(3) Decisions

The DRB shall consider comments from the NFIP Coordinator at ANR.

(4) Records

The Administrative Officer shall properly file and maintain a record of:

Table 2.18 (continued)
FLOOD HAZARD OVERLAY DISTRICT (FHO)

- a. All permits issued in areas covered by this bylaw;
- b. An Elevation Certificate with the as-built elevation (consistent with the datum of the elevation on the current Flood Insurance Rate Maps for the community) of the lowest floor, including basement, of all new, substantially improved, or flood proofed buildings (not including accessory buildings) in the Special Flood Hazard Area;
- c. All flood proofing and other certifications required under this regulation; and
- d. All decisions of the DRB (including variances and violations) and all supporting findings of fact, conclusions and conditions.

(G) Certificate of Completion: Within 14 days of the receipt of an application for a certificate of completion, the AO shall inspect the premises to ensure that all permits identified on the Project Review Sheet have been acquired.

(H) Enforcement and Penalties

- (1) If a violation of this Section remains after all appeals have been resolved, the AO shall submit a declaration to the Administrator of the National Flood Insurance Program requesting a denial of flood insurance for the property pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.
- (2) Violations of the Accepted Agricultural Practices within the Special Flood Hazard Area shall be reported to the Secretary of Agriculture for enforcement under 6 V.S.A. Section 4812:

(I) Definitions:

The following definitions shall apply to this Section:

“Accessory Structure” means a structure which is: 1) detached from and clearly incidental and subordinate to the principal use of or structure on a lot, 2) located on the same lot as the principal structure or use, and 3) clearly and customarily related to the principal structure or use. For residential uses these include, but may not be limited to garages, garden and tool sheds, and playhouses.

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

“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 1 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 the building having its floor elevation below ground level on all sides.

“BFE” see Base Flood Elevation

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

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

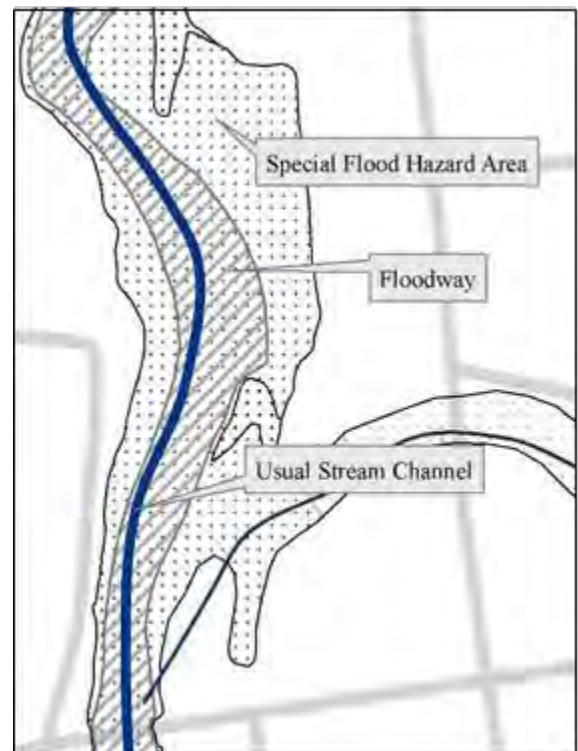


Table 2.18 (continued)
FLOOD HAZARD OVERLAY DISTRICT (FHO)

“Common plan of development” is where a structure will be refurbished over a period of time. Such work might be planned unit by unit.

“Critical facilities” - include police stations, fire and rescue facilities, hospitals, shelters, schools, nursing homes, water supply and waste treatment facilities, and other structures the community identifies as essential to the health and welfare of the population and that are especially important following a disaster. For example, the type and location of a business may raise its status to a Critical Facility, such as a grocery or gas station that survive a flood and now are the only sources for food and gas.

“Development” means any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

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

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

“Fill” means any placed material that changes the natural grade, increases the elevation, or diminishes the flood storage capacity at the site.

“FIRM” see Flood Insurance Rate Map

“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 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.

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

“Flood proofing” 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 Special Flood Hazard Areas and floodways may be shown on a separate map panels.

Table 2.18 (continued)
FLOOD HAZARD OVERLAY DISTRICT (FHO)

“Floodway, Regulatory in Town of Bennington” 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.

“Functionally dependent use” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water.

“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.

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

“Lowest floor” means 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.

“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”.

“Manufactured home park or subdivision” means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

“New construction” for regulation under this bylaw, 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.

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

“Nonconforming 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 the flood hazard regulations at the time of their creation, and remain so, remain violations and are not nonconforming structures.

“Nonconforming 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.

“Nonconformity” means a nonconforming use, structure, lot, or parcel.

Table 2.18 (continued)
FLOOD HAZARD OVERLAY DISTRICT (FHO)

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

“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 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.

“Special Flood Hazard Area” is the floodplain within a community subject to a 1 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 the Federal Emergency Management Agency. 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.

“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, regardless whether that alteration affects the external dimensions of the building.

“Structure” means, for regulatory purposes under this bylaw, a walled and roofed building, as well as a manufactured home, and any related built systems, 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.

“Substantial improvement” means any reconstruction, rehabilitation, addition, or other improvement of a structure after the date of adoption of this bylaw, the cost of which, over three years, or over a 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 specification which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (b) Any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

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

“Violation” means the failure of a structure or other development to be fully compliant with this bylaw. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR 60.3 is presumed to be in violation until such time as that documentation is provided.

Table 2.19
AIRPORT APPROACH OVERLAY (AAO) DISTRICT

(A): The purpose of the Airport Approach Overlay District is to provide an area of restricted use which protects the airport from injurious encroachment and from nearby uses harmful to the operation of the airport and aircraft using it. This District also provides for the safe and convenient use of lands within the District and allows the Airport to successfully coexist with its neighbors within and without the District.

(B): **Airport Approach Zones:** For the purposes outlined herein, the main runway (13-31) will be considered to be 3,800' long with the extension to be made on the southeastern end, and the crosswind runway (05-23) will be 2,500' long with the extension to be made on the southwestern end. The following definitions and descriptions are provided to aid in the understanding of the Airport control zones and approaches. The Airport Approach Zones are also shown on *Airport Approach Zones Overlay Map*.

- (1) **Primary Surface.** A surface longitudinally centered on the runway. When the runway has a specially prepared hard surface, the primary surface extends 200' beyond each end of the runway. At the Bennington State Airport the primary surface for runway 13-31 is 500' wide and for runway 05-23 is 250' wide.
- (2) **Non-precision Instrument Approach Zone.** The approach to runway 13 is to be designated as a non-precision instrument approach zone. The non-precision instrument approach zone shall have a width of 500' at a distance of 20' beyond the end of the runway, widening thereafter uniformly to a width of 2000' at a distance of 5200' from the end of the runway. This approach zone begins at an elevation of 794' MSL at 200' from the end of runway 13 and rises uniformly at a slope of 20:1 to an elevation of 1044' MSL at 5200' from the end of the runway. The centerline of this approach zone is a continuation of the actual runway centerline.
- (3) **VFR Approach Zone.** Runways 31, 05, and 23 are to be designated as Visual Runways. The Visual Approach Zone shall have a width of 250' at the ends of the primary surface of runway 05-23 and 500' at the end of the primary surface of runway 31 and they all widen thereafter uniformly to a width of 1250' at a distance of 5000' from the ends of the primary surfaces. These approach zones begin at the following elevations which are 200' beyond at the end of the runways (820' MSL for runway 31, 800' MSL for runway 05 and 779' MSL for runway 23) and rise uniformly at a slope of 20:1 for a distance of 5000'. The centerline of these approach zones is a continuation of the actual runway centerline.
- (4) **Clear Zone.** An area at the beginning of each approach zone. For runway 13 this area is 500' wide at the primary surface and proceeds outward from the runway, centered on the runway centerline extended for 1000' at a slope of 20:1, expanding to a width of 800'. The clear zone for runway 31 is 500' wide at the primary surface and expands to 650' centered around the extended centerline at a slope of 20:1 for 100'. The clear zones for runways 05 and 23 are 250' wide at the end of the primary surface and widen to a width of 450' at a distance of 1000' beyond the end of each primary surface, rising at a rate of 20:1.
- (5) **Transitional Surface.** Transitional surfaces are established adjacent to the runways and runway approach zones. These surfaces extend outward and upward at right angles to the runway and the runway centerline extended at a slope of 7:1 from the sides of the primary surface and the sides of the approach zones. These transitional surfaces extend upward to an elevation of 150' above the airport elevation.
- (6) **Horizontal Surface.** The horizontal surface is a horizontal plane 150' above the airport elevation. The limits of this surface are established by an arc of 5000' from the end of the primary surface for each runway; these arcs are connected by tangents. The airport elevation is 829'.
- (7) **Conical Surface.** The conical surface is established as the area that commences at the periphery of the horizontal surface and extends upward at a slope of 20:1 and outward for a distance of 4000'.

(C) **Development within designated Approach Zones.** Any application for a zoning permit for a use or structure located within an airport approach zone shall be referred to the Vermont Aeronautical Development Review Board in accordance with Section 9.3.

Table 2.20
Route 7A Corridor Overlay (CO) DISTRICT

(A) **Purpose:** The purpose of the Route 7A Corridor Overlay District is to permit, with strict performance standards, certain commercial uses determined to be compatible with the existing openness and scenic values, the agricultural potential, and the architectural, historic and cultural importance of the Route 7A North entrance to Bennington, while recognizing that these properties are in a major traffic corridor with soils that are generally poor for intense development.

(B) **Allowed Uses:** In addition to the uses allowed within the underlying zoning district, the following uses are allowed with the approval of the Development Review Board in accordance with Article 5, and the following standards:

- (1) Antique sales (see subsection (D))
- (2) Gift/Craft Shop
- (3) Restaurants (see subsection (D))
- (4) Hotel/Motel (see subsection (D))
- (5) Agricultural equipment sales

(C) **Dimensional Standards:** The dimensional standards of the underlying zone shall be applicable except as modified in Subsection D.

(D) Supplemental Overlay District Standards

(1) **Additional Use Standards:** In addition to other standards related to specific uses set forth in these regulations, within the CO District the following restrictions also shall apply:

- a) **Antique Sales** may include incidental refinishing or repairing provided no objectionable odor, noise or storage is produced.
- b) **Hotels and/or Motels** shall be limited to twelve or fewer double occupancy rooms.
- c) **Restaurants.** Drive-through windows are prohibited; all food and beverages must be served for consumption on the premises and not packaged or offered for consumption off-premises (e.g., fast-food or take-out).

(2) **Special Front Yard Requirements:** In order to preserve the positive quality of these approaches to Bennington, any new commercial building or use shall be setback from the edge of the right-of-way a minimum of 100'.

The setback area shall be maintained as a buffer interrupted only by pedestrian walks and driveways approved by the Development Review Board. Unless specifically waived by the Board due to unusual site conditions, parking is prohibited in the area between the structure and the street line. All parking areas shall be screened from view of public roads. No storage or sale activity, other than approved signage, shall be allowed within the approved front yard.

(3) **Special Dimensional Requirements:** Within the CO, the following dimensional requirements shall apply:

Side Yard Setback <u>Each</u>	Minimum Rear <u>Yard Setback</u>	Maximum Building <u>Height</u>	Maximum Building <u>Coverage</u>	Lot Frontage <u>(commercial use)</u>
50'	75'	30'	10%	150'

An existing structure which does not meet the front yard requirements, lot frontage requirements or special dimensional requirements specified above may be converted to a use allowed under subsection (B) of the TCO District provided that all landscaping, parking and other appropriate conditions set forth in this section and other appropriate sections are in compliance prior to occupancy.

(4) **Roof Pitch:** New buildings shall be compatible with the scale and form of existing historic structures located within the CO District. All buildings shall be designed with a minimum roof pitch of 4 over 12, excluding roofs covering open porches, entryways and accessory structures less than 500 square feet.

Table 2.21
FLUVIAL EROSION HAZARD AREA OVERLAY DISTRICT (FEH)

(A) Purpose: The purpose of the Fluvial Erosion Hazard Area Overlay District (FEH District) is to prevent increases in fluvial (river) erosion resulting from development in identified fluvial erosion hazard areas; minimize property loss and damage due to fluvial erosion; and prohibit land uses and development in fluvial erosion hazards areas that pose a danger to health and safety.

(B) Definitions: For the purposes of this FEH District, the following definition shall apply:

Fluvial Erosion Hazard Area: The land area adjacent to stream channels subject to fluvial erosion processes or other channel adjustments as delineated on the current Fluvial Erosion Hazard (FEH) Area zoning map (Map 7).

(C) Applicability

The Fluvial Erosion Hazard Area Overlay District shall be superimposed over any other zoning districts. All lands to which the FEH District applies shall meet the requirements of the underlying zoning districts and the FEH District. Where there is a conflict between the underlying zoning district and the FEH District, the more restrictive regulation shall apply.

(D) Fluvial Erosion Hazard Overlay District Boundaries

These regulations shall apply in all areas in the Town of Bennington that are identified as Fluvial Erosion Hazard Areas on the current Fluvial Erosion Hazard Area zoning map, on file at the Bennington Town Office.

(E) Allowed Uses – With a Zoning Permit

The following uses are allowed in the FEH District with the approval of the Administrative Officer in accordance with Section 9.3:

- (1) The removal of a structure in whole or in part.
- (2) Improvements to existing single family or two family residential structures and accessory structures (single family homes and duplexes and their accessory structures) that: i) do not result in a decrease of the existing structure setback from any stream; and ii) do not expand the footprint of the existing structure more than 500 sq. ft.

(F) Allowed Uses – Vermont Department of Environmental Conservation River Management Program's (RMP) Review Required

The following uses may be allowed in the FEH District with the approval of the Administrative Officer after referral to the RMP for review and comment in accordance with this Table 2.21:

- (1) Improvements to existing structures (other than those allowed in subsection E) that do not result in a decrease of the existing structure setback from any stream.
- (2) New residential accessory structures provided that the setback for such accessory structures is the same or greater than the existing residential primary structure setback from any stream.
- (3) Construction of driveways and/or access roads.
- (4) Buried utilities, including power, telephone, cable, sewer, and water.
- (5) Excavation, filling and/or grading of land.

(G) Exempt Uses

In accordance with Section 9.2, the following uses do not require a zoning permit:

- (1) Silvicultural activities not involving the use of structures and conducted in accordance with Vermont Department of Forest and Parks Acceptable Management Practices.
- (2) Agricultural activities not involving the use of structures and conducted in accordance with Vermont Department of Agriculture Acceptable Agricultural Practices.

(H) Prohibited Uses

The following activities and uses are prohibited in the FEH District:

- (1) Storage areas or facilities for floatable materials, chemicals, explosives, flammable liquids, or other hazardous or toxic materials.
- (2) All development not specifically allowed by subsections (E), (F) and (G).

(I) District Requirements

The following standards and procedures apply to all uses requiring RMP review within the FEH District:

Table 2.21 (continued)
FLUVIAL EROSION HAZARD AREA OVERLAY DISTRICT (FEH)

(1) Application Submission Requirements. In addition to the application requirements set forth in Section 9.3, applications for uses requiring RMP approval within the FEH District shall include:

- a. A statement of purpose and need of the proposed development;
- b. A description of alternatives considered to proposed development, including alternate locations on site, especially outside of the Fluvial Erosion Hazard Area;
- c. General location map including the relative locations of the existing development, the proposed development, the FEH District, and the nearest public road.
- d. Identification of the shortest horizontal distance from the proposed development to the center line (or top of nearest bank if not possible to measure to the center line) of any stream.
- e. Identification of the horizontal distance from the centerline of the nearest public road to the center line (or top of nearest bank if not possible to measure to the center line) of any stream.
- f. Such other information deemed necessary by the RMP for determining the suitability of the site for the proposed development.

(2) Application Review Procedures - Referral to the RMP.

Within ten days after a complete application is submitted to the Administrative Officer, a copy of the application shall be submitted by the Administrative Officer to the RMP for review and comment. The RMP shall have 30 days from the date the application is submitted to the RMP to provide written comments to the Administrative Officer. Within 45 days after a complete application is submitted, the Administrative Officer shall approve, approve with conditions, or deny the application based on compliance with this Table 2.21 and the written comments (if any) of the RMP.

(3) Appeal to DRB of Denial of Application.

- a. Appeals of any denial by the Administrative Officer shall be made to the Development Review Board pursuant to Section 9.5;
- b. Appeal Standards: The Development Review Board may approve an application for proposed development of an allowed use within the FEH District if, after consideration of the Administrative Officer's denial, testimony submitted by the applicant, and any comments provided by the RMP, the Development Review Board finds the proposed development within the FEH District conforms with all of the following standards:
 - i. No reasonable alternative location for the proposed development outside of the FEH area is available on the site;
 - ii. The proposed development will not increase the susceptibility of the property, including existing and proposed improvements, to fluvial erosion damage;
 - iii. The proposed development will not increase the potential for damage to other properties due to fluvial erosion;
 - iv. The proposed development will not increase the potential of materials being swept onto other lands or into the stream and causing damage to others from fluvial erosion;
 - v. The proposed development will not cause an undue burden on public services and facilities including roads, bridges, culverts, and emergency service providers during or after fluvial erosion events.
- c. An applicant appealing a denial of an application shall submit testimony from a Vermont Licensed Engineer, or similarly qualified expert, that the proposed development conforms with all of the standards set forth in this section based upon the expert's personal observation and study.

ARTICLE 3. GENERAL REGULATIONS

Section 3.1 Applicability

The following general regulations, including required provisions under the Act, apply to all uses and structures as specified.

Section 3.2 Abandonment & Demolition of Structures

(A) No zoning permit shall be required for the stabilization of a damaged structure to prevent hazards to public health and safety, and to adjoining properties; nor for the repair, restoration or reconstruction of a damaged structure to the extent of its prior condition and use. Reconstruction that results in density, dimensional or use changes, or design changes for structures subject to design review specified in Table 2.4, shall require a permit.

(B) Within one year after the cessation of use of any structure which has been substantially damaged or destroyed or has not been regularly maintained, or the cessation of construction of a substantially incomplete structure, the owner shall apply for a zoning permit to either:

- (1) resume repair, maintenance or construction, and thereby confirm the intent not to abandon the structure, or
- (2) demolish the structure in accordance with Subsection (C) and municipal building codes currently in effect.

(C) The demolition or replacement of any structure or portion thereof listed on the *Vermont Historic Sites and Structures Survey for the Town of Bennington*, or of any structure within the Historic Central Bennington Design Review District, or any application for development which involves the demolition of such structures shall be reviewed by the Development Review Board under Article 5, and the following provisions:

- (1) The permit application shall include, in addition to other required materials:
 - a. a demolition and site restoration plan which, at minimum, describes the intended use of the site; and the manner in which the site is to be restored to grade, surfaced, landscaped and/or screened to minimize adverse visual impacts, and secured to prevent hazards to public safety and adjoining properties; and
 - b. for historic structures, documentation that the rehabilitation of the structure would cause undue financial hardship to the owner; or that the demolition is part of a site development plan that would provide clear and substantial benefit to the municipality.
- (2) **Demolition of Historic Structures.** The demolition or replacement of any structure or portion thereof listed on the *Vermont Historic Sites and Structures Survey for the Town of Bennington*, or any structure within the Historic Central Bennington Design Review District, is prohibited unless the Development Review Board approves the demolition and site restoration plan, and:
 - a. The Development Review Board finds, pursuant to subsection 3.2(C)(3 and 5), that rehabilitation of the structure or portion thereof would cause undue financial hardship to the owner; or
 - b. The Development Review Board finds that the demolition is part of a site development plan and design plan (if applicable) that would provide clear and substantial benefit to the community.

Article 3. General Regulations

- (3) **Standards for Determination.** In considering undue financial hardship, the Development Review Board shall apply the following standards regarding the factors, evidence, and testimony to be considered in making its determination:
- a. The applicant's knowledge of the property's historical significance at the time of acquisition, or of its status subsequent to acquisition;
 - b. The structural soundness of the building, or any structures on the property and their suitability for rehabilitation;
 - c. The economic feasibility of rehabilitation or reuse of the existing property in the case of a proposed demolition;
 - d. The current level of economic return on the property as considered in relation to the following:
 - i. amount paid for the property, the date of purchase, and party from whom purchased, including a description of the relationship, if any, between the owner of record or applicant, and the person from whom the property was purchased;
 - ii. a substantial decrease in the fair market value of the property as a result of the denial of the permit;
 - iii. the fair market value of the property at the time the application is filed;
 - iv. real estate taxes for the previous three (3) years;
 - v. annual gross and net income, if any, from the property for the previous three (3) years; itemized operating and maintenance expenses for the previous three (3) years; and a depreciation deduction and annual cash flow before and after debt service, if any, for the previous three (3) years;
 - vi. remaining balance on any mortgage or other financing secured by the property and annual debt service, if any, during the previous three (3) years;
 - vii. all appraisals obtained within the previous three (3) years by the owner or applicant in connection with the purchase, financing or ownership of the property;
 - viii. any state or federal income tax returns on or relating to the property for the previous three (3) years.
 - e. The marketability of the property for sale or lease, considered in relation to any listing of the property for sale or lease, and the price asked and offers received, if any, within the previous two (2) years. This determination can include testimony and relevant documents regarding:
 - i. any real estate broker or firm engaged to sell or lease the property;
 - ii. reasonableness of the price or rent sought by the applicant, and
 - iii. any advertisements placed for the sale or rent of the property by the owner or applicant.
 - f. The infeasibility of alternative uses that can earn a reasonable economic return for the property as considered in relation to the following:
 - i. a report from a licensed engineer or architect with experience in rehabilitation as to the structural soundness of any buildings/structures on the property and their suitability for rehabilitation;
 - ii. testimony from a licensed engineer or architect with experience in rehabilitation as to the economic feasibility of rehabilitation or reuse of existing buildings/structures on the property.
 - g. Studies and evaluations conducted at the owner's expense shall identify impact of economic incentives and/or funding available to the applicant through federal, state, city, or private programs in

Article 3. General Regulations

relation to a ten (10) year pro forma of projected revenues and expenses for the reasonable uses or revenues that takes into consideration the utilization of incentives programs available.

h. Input from community organizations, preservation groups, other associations and private citizens who may wish to evaluate and comment on a submission made under the financial hardship provision.

(4) **Conduct to be excluded from review** - Demonstration of undue financial hardship by the owner shall not be based on conditions caused by or resulting from the following:

- a. willful or negligent acts by the owner;
- b. purchasing the property for substantially more than market value at the time of purchase;
- c. failure to perform normal maintenance and repairs;
- d. failure to diligently solicit and retain tenants;
- e. failure to prescribe a rental amount which is reasonable; or
- f. failure to provide normal tenant improvements.

(5) **Determination of Undue Financial Hardship** - A determination of undue financial hardship may be granted only if the project fully complies with one of the following requirements:

- a. For income producing properties - the building, site or object cannot be feasibly used or rented at a reasonable rate of return in its present condition or if rehabilitated, and denial of the application would deprive the owner of all reasonable use of the property; or
- b. For non-income producing properties - the building site or object has no beneficial use as a residential dwelling or for an institutional use in its present state or if rehabilitated, and denial of the application would deprive the owner of all reasonable use of the property.

(6) **Hearing Recess** - In accordance with the Act, prior to approving the demolition of an historic structure, the Development Review Board may temporarily adjourn the hearing process for a period not to exceed six months from the date of application, to provide time to assess the feasibility of rehabilitation of the structure, or to document the historic and architectural elements of the structure prior to its demolition.

(7) **Site Restoration** - Within 30 days after a permanent or temporary building or structure has been demolished, all structural materials shall be removed from the site, and the excavation thus remaining shall be covered over and filled to the normal grade by the owner(s), unless otherwise required as a condition of an approved site restoration plan.

Section 3.3 Access Management & Frontage Requirements

(A) **Required Frontage**. No land development may be permitted on lots which have a frontage of less than fifty (50) feet on a public street. However, if the Development Review Board has approved a parcel in accordance with Section 6.5, land development may be permitted on a lot which otherwise conforms with these regulations which has access to a public street by a permanent easement or right-of-way not less than 50 feet wide. The required right-of-way width may be increased by the Board as necessary, as determined from an evaluation of the proposed use, site and traffic conditions.

(B) **Access (Curb Cuts)**. Access onto public highways is subject to the approval of the Town of Bennington, and for state highways, the approval of the Vermont Agency of Transportation. As a condition to access approval, compliance with all local ordinances and regulations pertaining to roads and land use is required. Access permits must be obtained prior to the issuance of a zoning permit. In the

Article 3. General Regulations

event approval of the Development Review Board is required for the use or development, the access permit(s) shall be obtained after Development Review Board approval. In addition, the following provisions shall apply to all parcels having road frontage on town and state highways:

- (1) With the exception of accesses (curb-cuts) used solely for agricultural or forestry purposes, or for the exclusive use of emergency vehicles, no lot in existence as of the effective date of these regulations may be served by more than one access (curb cut). The Development Review Board may approve or require additional accesses in the event that:
 - a. the additional access is necessary to ensure vehicular and pedestrian safety; or
 - b. the strict compliance with this standard would, due to the presence of one or more physical features (e.g. rivers and streams, steep slopes, wetlands), result in a less desirable development or subdivision design than would be possible with the allowance of an additional access; or
 - c. a traffic management plan is developed in association with a planned residential development or planned unit development approved in accordance with Article 8; or
 - d. the additional access is necessary to provide interconnectivity between streets and the integration of site development between contiguous parcels; or
 - e. emergency vehicle access.
 - (2) Applicants for a zoning permit for any parcel where the number of existing accesses exceeds the number allowed under this section must eliminate or combine accesses in order to meet the applicable standard unless otherwise approved by the Development Review Board.
 - (3) Subdivision of a parcel after the effective date of these regulations shall not create a right to construct more than one access unless otherwise approved or required by the Development Review Board in accordance with subsection (1), above.
 - (4) Access shall be limited to an approved width, and shall not extend along the length of road frontage.
 - (5) An access shall be located at least 150 feet from the intersection of public road rights-of-way, for all uses except for single and two family dwellings, which shall be located at least 50 feet from such intersections, unless otherwise approved by the Development Review Board in accordance with approval under Article 5 or subdivision approval under Article 6. Distance should be measured from the radius of the driveway.
 - (6) Shared access is encouraged, and may be required for development subject to review and approval by the Development Review Board. In appropriate instances, including the presence of compatible adjacent uses, areas characterized by congestion and frequent and/or unsafe turning movements, or parcels having direct access to more than one public road, the Development Review Board may require provision for shared access between adjoining properties or may limit access to the property to a side street or secondary road. Requirements for shared access shall be made either at the time of Board approval under Article 5 or Article 6, if similar provision has been made on contiguous parcels, or contingent upon future development of neighboring properties.
 - (7) All access drives fronting upon a paved road shall have a paved apron of at least 20 feet from the right-of way.
- (C) No fence, wall, hedge, shrubbery, or other obstruction to vision in excess of 3 feet in height, as measured above the nearest portion of the traveled way, shall be placed or allowed to grow at a street intersection within the area formed by a line joining points on each front line 20 feet from the intersection of the tangents of such streets.

(D) The use of land for access or parking in connection with a use shall be considered to be accessory to and part of such use, except that this provision shall not prohibit access across a Commercial District to a use lying in an Industrial District. Except as otherwise provided in these regulations access to a permitted use may take place in any portion of the lot, including the required front, side, or rear yard.

Section 3.4 Conversions & Changes of Use

The conversion or change in use of land, existing buildings or other structures to another use is subject to the provisions of these regulations as follows:

(A) The proposed use shall be subject to all the requirements of these regulations pertaining to such use, including but not limited to district, access, and/or parking requirements, as well as any other applicable municipal, state or federal regulations currently in effect.

(B) An accessory structure such as a garage or barn may be converted to a principal use allowed within the district in which it is located only if the structure meets the lot size, setback, parking and other requirements applicable to the proposed use.

(C) A conversion or change of use to a use allowed with the approval of the Administrative Officer under Section 9.3 shall require a zoning permit issued by the Administrative Officer under that section.

(D) A conversion or change of use to a use allowed with approval of the Development Review Board shall be reviewed and approved in accordance with Article 5.

(E) Changes or conversions involving nonconforming uses and/or noncomplying structures also are subject to and will be reviewed under Section 3.9.

Section 3.5 Equal Treatment of Housing

(A) Except as provided in the Act, nothing herein shall have the effect of excluding:

- (1) mobile homes, modular housing, or other forms of prefabricated housing from the municipality, except upon the same terms and conditions as conventional housing is excluded;
- (2) housing to meet the needs of the population as identified in the *Bennington Town Plan*;
- (3) the establishment of mobile home parks in designated zoning districts; and
- (4) accessory apartments (“dwelling units”) as defined under the Act, which are constructed within or attached to a single family dwelling, subject to the standards set forth in Section 4.2; and
- (5) low and moderate income housing.

Section 3.6 Existing Small Lots

(A) Any lot in individual and separate, nonaffiliated ownership from surrounding properties, lawfully in existence as of the effective date of these regulations, may be developed for the purposes permitted in the district in which it is located, even though not conforming to minimum lot size requirements, if such lot is not less than 1/8 acres in area with a minimum width or depth dimension of forty feet, and all other applicable requirements of these regulations are met.

(B) If such lot subsequently comes under common ownership with one or more contiguous lots, the lot shall be deemed merged with the contiguous lot for the purposes of these regulations. However such lot shall not be deemed merged and may be separately conveyed if:

- (1) the lots are conveyed in the preexisting, nonconforming configuration, and
- (2) on the effective date of these regulations each lot had been developed with a water supply and wastewater disposal system, and
- (3) at the time of transfer, each water supply and wastewater system is functioning in an acceptable manner, and
- (4) the deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems in case a wastewater system fails, as defined in the Act.

Section 3.7 Height Regulations

(A) No structure in any district shall exceed the maximum height specified for that district, but this limit shall not apply to spires, cupolas, or similar architectural features of a building associated with a public (municipal, state or federal) use, occupying in the aggregate not more than 10 percent of the area of such building, and not used for any human occupancy, nor to residential chimneys, farm silos, municipal water storage tanks, radio or television aerials (excluding telecommunications facilities but including satellite dishes less than 18 inches in diameter providing such dishes are not mounted on a tower), electrical transmission towers, windmills, solar collectors or similar structures.

(B) The Development Review Board may, pursuant to Article 5, waive the height requirement for smokestacks, roof-top mounted ventilators, tanks, water storage tanks, HVAC equipment or similar structures. In approving such structures, the Board shall consider all applicable standards set forth in Article 5 to minimize visibility from ground level.

(C) Telecommunications facilities, including all communication receiving and /or transmitting devices and related support structures will be considered a separate use subject to review by the Development Review Board, and related height requirements, under Article 5 and Section 4.19.

(D) Flagpole heights are limited to the height of the building(s) located on the lot on which the flagpole is located.

Section 3.8 Lot & Yard Requirements

(A) Only one principal use or structure may be located on a single lot, unless allowed in a designated zoning district as a mixed use under Section 4.16, or as otherwise approved by the Development Review Board as part of a planned residential or planned unit development under Article 8. Every single family dwelling or two-family dwelling shall be located on an individual subdivided lot unless otherwise approved by the Board as part of a planned residential or planned unit development.

(B) No lot, yard, court, or any other open space shall be reduced in area, so that it cannot conform to minimum dimensional or coverage requirements prescribed in these regulations, except as approved by the Development Review Board for planned residential and planned unit developments under Article 8.

(C) Lot areas and front yards shall be calculated on a minimum street or highway right-of-way width of 50 feet.

(D) Any yard abutting a street right-of-way shall be considered a front yard. A corner lot shall be considered to have only front and side yards.

(E) An accessory structure must conform to all lot setback, coverage and dimensional requirements for the district in which it is located; except in the VR, MR-1, MR-2, IP, and MU-1 Districts, an accessory building of a maximum size of 100 square feet and a maximum building height of 12 feet shall have a minimum setback of 5 feet from side and rear lot lines. In the RR and RC Districts, accessory structures shall be setback a minimum of 50% of the setback distance in the respective district.

Section 3.9 Noncomplying Structures & Nonconforming Uses

(A) **Noncomplying Structures.** Any structure lawfully in existence as of the effective date of these regulations, which is not in compliance with the provisions of these regulations regarding lot size, density, height, setbacks, or other dimensional requirements for the district in which it is located, or any other requirement of these regulations, shall be considered a noncomplying structure. In accordance with the Act, a noncomplying structure may be continued indefinitely, but shall be subject to the following provisions.

- (1) A noncomplying structure may undergo normal maintenance and repair without a permit provided that such maintenance and repair does not result in an enlargement or alteration that would increase the degree of noncompliance, except in accordance with subsection (4).
- (2) A noncomplying structure shall not be moved, enlarged or substantially altered, unless the relocation, enlargement or alteration complies with all the regulations, including use regulations, for the district in which it is located.
- (3) A noncomplying structure may be repaired, restored or reconstructed after damage from any cause, provided that the repair, restoration or reconstruction occurs within one year after such damage occurred and does not increase the degree of noncompliance which existed prior to the damage.
- (4) A noncomplying structure may, subject to review by the Development Review Board under Article 5, undergo alteration or expansion which would increase the degree of noncompliance solely for the purpose of meeting mandated municipal, state or federal environmental, health, safety or energy regulations which would allow for continued use of the noncomplying structure.
- (5) Nothing in these regulations shall prohibit the projection of not more than three (3) feet into required yard or setback areas of pilaster, columns, belt courses, sills, cornices, or other similar architectural features, nor the planting or landscaping of such open spaces.

(B) **Nonconforming Uses.** Any use of a structure or land lawfully in existence as of the effective date of these regulations, which does not conform to the uses allowed for the zoning district in which it is located, shall be considered a nonconforming use. In accordance with the Act, nonconforming uses may be continued indefinitely, but are subject to the following provisions.

- (1) No nonconforming use may be changed, except to a conforming use.
- (2) No nonconforming use shall, if once changed into a conforming use, be changed back again into a nonconforming use.
- (3) No nonconforming use, which has been abandoned for six months, shall be resumed thereafter. No nonconforming use, which has been discontinued for twelve (12) calendar months, shall be resumed thereafter, unless, within twelve months after discontinuance of the nonconforming use, the Administrative Officer grants an extension of the time within which the use may be resumed. The Administrative Officer may grant up to a 12 month extension of the time within which a nonconforming use may be resumed, if the Administrative Officer finds that all of the following are true: a) the property has been and continues to be actively marketed for sale or lease, b) the property

is being regularly maintained and is in good condition, and c) there is a reasonable likelihood that the nonconforming use will be resumed. The Administrative Officer may grant additional extension(s) of the time within which a nonconforming use may be resumed (in up to 12 month increments), provided the criteria set forth in this subsection are met for each such extension.

- (4) No nonconforming use shall be reestablished following abandonment or discontinuance resulting from structural damage from any cause, unless the nonconforming use is carried on uninterrupted in the undamaged part of the structure, or with the approval of the Development Review Board under Article 5, is reinstated within one year of its discontinuance within the repaired or reconstructed structure.
- (5) No nonconforming use shall be extended or expanded, except with the approval of the Development Review Board under Article 5, and the Board finds that such extension or expansion will have no adverse effect upon the public health, safety, convenience, and upon property values in the vicinity. In addition, any expansion or extension must meet the most restrictive standards and requirements for those districts in which such use is an allowed use. In no event shall a nonconforming use be expanded beyond the boundaries of the lot on which the nonconforming use originated. There shall be no expansion of existing nonconforming sales of motor vehicles in any district.
- (6) No new nonconforming use shall be created under the variance provisions or any other provision of these regulations.

Section 3.10 Parking, Loading & Service Area Requirements

(A) **Applicability.** To alleviate traffic congestion and promote traffic safety, off-street parking, loading and service areas as accessory uses or principal uses in designated zoning districts, subject to review under these regulations in accordance with the following:

- (1) Off-street parking, loading and service areas shall be provided for any new building constructed, for any new use established, for any addition or enlargement of an existing building or use, and for any change in occupancy of any building or the manner in which any use is conducted which would result in an increase in required parking, loading and service areas.
- (2) No use of land lawfully in existence as of the effective date of these regulations shall be nonconforming solely because of the lack of required off-street parking, loading or service areas, provided that such facilities in existence as of the effective date of these regulations shall not be reduced in capacity or altered in design or function to less than the minimum standards required under these regulations.
- (3) For additions or enlargements of any building and use, or a change in occupancy or manner of use that would increase parking, loading and service areas required, the additional areas shall be required only for such addition, enlargement or change and not for the entire building or use.
- (4) Parking, loading and service areas required under these regulations for any building or use shall not be considered to meet the requirement for any other building or use, except as otherwise approved by the Development Review Board, subject to review under Article 5, for shared parking, loading or service areas which serve more than one building or use.

(B) **Location.** Required parking, loading and service areas shall be located on the same lot as the building or other use which they serve, except with the approval of the Development Review Board subject to review under subsection (E). In addition:

- (1) In residential zoning districts, required parking areas may not be located in the front setback, unless on a driveway with a permitted curb cut. Pavement shall not replace lawns or planted areas in the

Article 3. General Regulations

front setback, excessive of driveways. Residential driveways shall be no greater than 12 feet in width at the road and no greater than 20 feet in width at its widest point.

- (2) Parking, loading and service areas shall be located and screened in accordance with all supplemental district standards related to front yards, parking, landscaping and access set forth in Article 2.
- (3) Access to parking, loading, and service areas for commercial and industrial uses shall not be from streets with residentially zoned frontages.

(C) Parking Facilities. Off-street parking areas shall meet the following requirements as applicable to a particular zoning district and/or use:

- (1) Multi-family residential (more than 4 units), commercial, industrial, and institutional uses shall provide parking for the handicapped in accordance with the standards of the Americans with Disabilities Act and Table 3.1.
- (2) Unless otherwise specifically approved by the Development Review Board under subsection (E), required parking facilities shall contain not less than the minimum number of parking spaces set forth in the Table 3.2, exclusive of driveways and ramps necessary for access. Where calculation of the required number of spaces results in a fraction, the fraction shall be counted as a whole space. For unspecified uses, the minimum required number of spaces shall be determined by the Development Review Board in accordance with accepted parking standards.

Total Number of Parking Spaces/ Stalls	ADA Accessible Parking Spaces/Stalls
1-25	1
26-50	2
51-75	3
76-100	4
101-150	5
151-200	6
201-300	7
301-400	8
401-500	9
501-1000	2% of total
1001 and over	20 plus 1 for each 100 over 1000

- (3) Multi-family residential (more than 4 units), commercial, industrial, and institutional uses shall also provide adequate area for off-street bicycle parking for use by residents, employees and/or the general public, to include racks for short-term parking, and as appropriate, long-term bicycle storage facilities (e.g., lockers or garages).
- (4) Parking areas shall be designed to provide parking spaces of sufficient width, length and access to accommodate the planned angle of parking, in accordance with parking area layout requirements set forth in Table 3.3
- (5) Required parking areas shall be located on the same lot as the building or other use which they serve; unless specifically approved by the Development Review Board, subject to review under Article 5, and the following:
 - a. the off-site parking spaces are included as part of a parking management plan submitted in accordance with Subsection (E) and such spaces are located not more than 500 feet from such building or use as measured in a straight line to the nearest space for vehicular parking, and
 - b. such spaces are dedicated to the exclusive use of the applicant through a deeded easement or similar agreement.

Article 3. General Regulations

Table 3.2 Required Off-Street Parking Spaces

Rooming House	1 per bed
Clinic, Medical or Dental	4 per licensed primary care giver; and 1 for each employee on site at any one time.
Community Care Facility	1 space per 2 beds, and 1 per employee on site at any one time
Day Care, Child Care Home	1 space per nonresident employee, and drop off area
Day Care Facility, Nonresident	1 space per employee and drop off area
Dwelling, Accessory Apartment	1 additional per dwelling unit
Dwelling, Single Family	2 per dwelling unit
Dwelling, Two-Family or Multi-Family	1.5 per dwelling unit
Financial Institutions	1 per 300 sq. ft. of gross floor area; drive-through queue capacity of 5 cars
Funeral Home	5 per parlor, queue capacity of 5 cars
Home Occupation/Business	1 space per nonresident employee on-site at one time
Hospital	1 per bed; and 1 per employee on site at any one time
Lodging Facility (Hotel, Motel)	1 per guest room; and 1 per employee on site at any one time
Manufacturing/Laboratories	1 space per 3 employees on the largest shift, or 1 per 1,000 sq. ft. of gross floor area, whichever is greater
Nursing Home	1 per 4 beds
Office	1 per 300 sq. ft. of gross floor area
Personal Services	1 per 300 sq. ft. of gross floor area
Place of Indoor Public Assembly or Recreation (e.g., Theater, Place of Worship, Hall)	1 space per 4 seats or persons at capacity, and 1 space per employee on-site at one time
Place of Outdoor Public Assembly or Recreation	1 per 4 legal patrons at capacity, and 1 space per employee on-site at one time
Restaurant or Tavern	1 space per 4 seats or patrons at capacity, and 1 space per employee on-site at one time
Retail Establishment	1 space per 300 sq. ft. of gross floor area
School - Primary or Middle	1 space per employee, 1 space per classroom, and drop off areas
School - High School	1 space per employee, 1 space per 10 students at capacity, and drop off areas
School/College or Private School	1 space for each employee and 1 space for each 5 classroom seats at capacity
Secure Care Facility	1 space per 4 beds, and 1 space per employee on-site at one time
Service Station	1 space for 350 sq. ft. of gross floor area, and queue capacity equal to service capacity of pumps
Social Club (Hall, Lodge)	1 space per 200 sq. ft. of gross floor area
Warehouse,	1 per 2 employees for the largest shift
Wholesale Establishment	1 space per 300 sq. ft. of sales/service area (excluding storage area)

(6) All parking areas in excess of five (5) spaces, unless specifically waived by the Development Review Board, shall include landscaping and screening as follows:

- a. All proposed parking shall meet all supplemental district standards set forth in Article 2. Where those supplemental standards and the requirements of this section are in conflict, the most stringent shall apply.
 - b. A perimeter landscaped strip at least 5 feet wide between and adjacent to a line defining the exterior boundary of the parking area and adjoining property lines. Where the landscaped strip adjoins a public street or pedestrian walkway, it shall be a minimum of ten (10) feet in depth as measured from the highway right-of-way, and shall include a hedge, fence, wall or other equivalent screening feature which is a minimum of 42 inches in height except at a driveway or road intersection, where such hedge, fence, wall or other screening shall meet the standards set forth in Section 3.3(C). The perimeter landscaped strip may include any landscaped yard or area otherwise required, and shall be continuous except at points of access.
 - c. Interior landscaped areas, at minimum equal to at least 10% percent of the parking area (excluding perimeter landscaped areas), shall be integrated into parking lot design and be regularly maintained.
 - d. One shade tree, planted in accordance with section 5.3(7) shall be planted for every 2,000 square feet of parking lot. Each tree shall be planted within a minimum 200 square feet of unpaved area. Trees shall be planted throughout the parking lot in locations approved by the Development Review Board.
 - e. Lawn, shrubs and ground cover must be planted at sufficient density to completely cover interior parking lot landscaped areas within three years of initial planting.
- (7) Lights used to illuminate parking areas and drives shall be the minimum necessary for safety and security, and shall be arranged and designed to deflect light downward and away from adjacent properties and public highways. Shielded and/or cut-off fixtures shall be used. All parking luminaries shall be extinguished by 10:00 pm or within one hour of the end of business hours, whichever is later, and remain extinguished until one hour before the commencement of business hours. For reasons of security, a maximum of 20% of the total luminaries used for parking lot illumination may remain in operation during such period.
- (8) Permanent parking areas shall have adequate all-weather surfacing (including stone or gravel in appropriate instances) capable of allowing free and safe movement of all vehicles customarily using the facility, and shall incorporate accepted structural or nonstructural stormwater best management practices to manage related stormwater runoff, in accordance with state and federal requirements.
- (9) For parking facilities subject to review by the Development Review Board, the Board may require the preparation and implementation of a parking management plan, to include:
- a. shared parking areas,
 - b. designated employee parking and customer areas,
 - c. associated pedestrian facilities,
 - d. additional landscaping and directional signs, and/or
 - e. other strategies to ensure safe and efficient on-site parking and circulation.

(D) **Loading & Service Areas.** Where a proposed development will require the frequent or regular loading and unloading of people or goods, loading and service areas shall be provided on-site, in accordance with the following provisions.

Article 3. General Regulations

- (1) In the case of retail, wholesale, and industrial buildings, space shall be provided for loading and unloading trucks at the rate of one space not less than 400 square feet in area for each 15,000 square feet of gross floor area, or as otherwise approved by the Development Review Board.
- (2) For development accessed by public transit services, a location for a sheltered waiting and drop-off on-site for passengers indicated on the site-plan, unless specifically waived by the Board.
- (3) On-site service areas shall be provided as necessary for emergency vehicle access, recycling and waste collection facilities, snow storage and removal, or other purposes necessitated by the type and frequency of vehicle deliveries.
- (4) Unless specifically waived by the Board, loading docks, trash collection and recycling areas, and similar service areas, shall be sited and screened on all sides so that no portion of such areas are visible from public streets and adjacent properties. Screening may include but not be limited to new and existing plantings, walls, fences, or screened panels.

Table 3.3 Parking Layout: Minimum Dimensional Requirements

Angle of Parking	Stall Width	Curb Length Per Car	Stall Depth	Minimum Aisle Width	1 Row of Parking & 1 Aisle	2 Rows of Parking & 1 Aisle	3 Rows of Parking & 2 Aisles	4 Rows of Parking & 2 Aisles
				One-way/ Two-way	Bay Width/ Sq. Ft. per Car	Bay Width/ Sq. Ft. per Car	Bay Width/ Sq. Ft. per Car	Bay Width/ Sq. Ft. per Car
0°	9' 10'	23'-0" 23'-0"	9'- 0" 10'- 0"	12'/20' 12'/20'	21'- 0"/ 483 22'- 0"/ 506	30'- 0"/ 345 32'- 0"/ 368	51'-0"/ 391 54'-0"/ 414	60'-0"/ 345 64'-0"/ 368
30°	9' 10'	18'-0" 20'-0"	17'- 4" 18'- 3"	12'/20' 12'/20'	28'- 4"/ 510 29'- 3"/ 585	45'- 8"/ 411 47'- 6"/ 475	66'-2"/ 397 68'-0"/ 453	83'-6"/ 376 86'-2"/ 431
45°	9' 10'	12'-9" 14'-2"	19'-10" 20'- 6"	13'/20' 13'/20'	32'-10"/ 420 33'- 6"/ 490	52'- 8"/ 336 54'- 0"/ 383	79'-0"/ 376 80'-4"/ 379	98'-10"/ 315 100'-10"/ 358
60°	9' 10'	10'-5" 11'-6"	21'- 0" 21'- 6"	18'/22' 18'/22'	39'- 0"/ 407 39'- 6"/ 455	60'- 0"/ 313 61'- 0"/ 351	95'-0"/ 330 95'-6"/ 366	116'-0"/ 305 116'-6"/ 355
90°	9' 10'	9'-0" 10'-0"	19'- 0" 19'- 0"	24'/24' 24'/24'	43'- 0"/ 387 43'- 0"/ 430	62'- 0"/ 279 62'- 0"/ 310	105'-0"/ 315 105'-0"/ 350	124'-0"/ 279 125'-0"/ 310

Article 3. General Regulations

(E) **Waivers.** For development subject to review by the Development Review Board, the Board may waive, reduce or otherwise modify on-site parking, loading and/or service area requirements under one or more of the following provisions based on a determination that, due to circumstances unique to the development, the strict application of these standards is unnecessary or inappropriate.

- (1) Within any designated downtown parking assessment district established by the town for the purposes of providing public off-street parking facilities, all or a portion of the off-street parking requirement for a use may be satisfied by payment of assessments or fees levied by such district on the basis of parking spaces required but not provided.
- (2) The Development Review Board may reduce the number of parking spaces required where it is shown that an employer-sponsored “transit pass” program, or other vanpool, carpool or rideshare program, will substantially reduce the need for on-site parking.
- (3) The Development Review Board may reduce the number of parking spaces required in any district where it can be shown that traffic volumes will be substantially less than normally anticipated.
- (4) The Development Review Board may reduce the number of parking space required in any district when shared use of parking space is agreed to by two or more users who can demonstrate that their parking demands are at different times, and that meeting the requirements will jeopardize aesthetic and landscaping features the Development Review Board deems essential to the proposed development. In the case of shared parking, the minimum number of spaces should be sufficient to meet the requirements of maximum simultaneous use.
- (5) The Development Review Board may limit the number of parking spaces to a maximum number equal to or greater than the required minimum number of spaces, based on site considerations including aesthetics and landscaping features, use, traffic patterns, streetscape, and other relevant concerns.
- (6) The Development Review Board may reduce the initial parking, loading or service area required in association with the dedication of one or more undeveloped areas, to be maintained as landscaped open space, for potential conversion in the event that areas initially permitted are subsequently deemed inadequate by the Board in relation to documented volumes of use.
- (7) The Development Review Board may modify or waive parking, loading and service area requirements to promote the development of affordable and elderly housing, but only to the extent that resident, motorist and pedestrian safety is not adversely affected.
- (8) The Development Review Board may modify or waive space requirements to allow for the development of parking structures which are designed to avoid more land-intensive surface level parking, which serve one or more uses, and which are compatible with other structures and uses within the immediate vicinity of the proposed parking structure.

Section 3.11 Performance Standards

(A) In accordance with the Act, the following performance standards must be met and maintained for all uses, except for agriculture and forestry, in all districts, as determined or measured at the property line. In determining ongoing compliance, the burden of proof shall fall on the applicant, property owner, and/or all successors and assigns. No use, under normal operating conditions, shall:

- (1) emit regularly occurring noise in excess of seventy (70) decibels (except within the Airport District),

Article 3. General Regulations

- (2) emit dust, dirt or any odor which is considered offensive,
 - (3) emit any smoke, in excess of Ringleman Chart No. 2,
 - (4) emit any noxious gases which endanger the health, comfort, safety, or welfare of any person, or which cause injury or damage to property, businesses, animals, or vegetation,
 - (5) cause a vibration which, when transmitted through structures or the ground, is discernable at the property line without the aid of instruments (except within the Airport District),
 - (6) lighting, glare, or reflection which constitutes a nuisance to other property owners or tenants, or which could impair the driver of motor vehicle or aircraft,
 - (7) cause a fire, explosion, radiation or other safety hazard,
 - (8) cause electromagnetic disturbances, electronic transmissions or signals which repeatedly interfere with the reception of radio, television or other electronic signals, or which are otherwise detrimental to public health, except as specifically licensed and regulated through the Federal Communications Commission,
 - (9) generate solid or hazardous wastes in excess of available capacities for proper storage and disposal, or which cannot be stored and disposed of by available methods without undue burden to municipal or other state certified waste disposal facilities, nor
 - (10) cause harmful wastes to be discharged into the sewer systems, streams, or other bodies of water; all effluent disposal shall comply with the *Bennington Sewer Use Ordinance* and the state's *Environmental Protection Rules*, as most recently amended.
- (B) Agricultural operations shall at a minimum meet Accepted Agricultural Practices (AAPs) as defined and regulated by the Vermont Department of Agriculture (see Section 9.2).
- (C) Forestry operations shall at minimum meet Acceptable Management Practices (AMPs) as defined and regulated by the Vermont Department of Forests, Parks, and Recreation (see Section 9.2). Such AMPs include *Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont*.

Section 3.12 Steep Slopes

(A) All development involving the excavation, filling, or regrading of land having a slope of 15% or more shall be subject to review by the Development Review Board under Article 5. Under this provision the Board may require for review and approval, the submission of erosion control and stormwater management plans, prepared by a licensed professional engineer or forester which:

- (1) cover all phases of development, including site preparation, construction, and post-construction,
- (2) incorporate accepted or best management practices for erosion control and stormwater management as defined by the Vermont Department of Environmental Conservation; and
- (3) which identify related long-term maintenance and management requirements.

(B) On that portion of a lot where slopes exceed 20%, no excavation shall occur; no structure shall be constructed; no water or wastewater system shall be installed; and no roads or driveways shall be constructed, and no flora shall be disturbed or removed.

Section 3.13 Storage of Junk Automobiles, Scrap, Waste & Hazardous Materials

(A) No junk motor vehicle may be stored on any lot for a period in excess of thirty (30) days, except within a building, or in an approved salvage yard.

(B) No scrap or waste material not originating on the premises may be stored or disposed of on any lot, except at a state certified solid waste disposal or transfer facility.

(C) No scrap or waste material originating on the premises may be stored on any lot unless within a building, except that thirty (30) days shall be allowed for the removal of scrap or waste material resulting from a construction operation, or from fire, flood or similar emergency. Outdoor storage shall not be permitted in excess of thirty days except with the issuance of a temporary zoning permit by the Administrative Officer for a period not to exceed thirty days. Further extensions may be granted by the Development Review Board subject to review under Article 5.

(D) Petroleum products shall not be stored above ground in quantities exceeding 1,000 gallons except when bunkered as approved by fire safety codes, and lesser amounts may be stored above ground but none shall be closer than 50 feet from a lot line.

(E) All dumpsters, regardless of the principal use of the property, shall be screened from view of streets and adjacent properties and shall be maintained in a sanitary manner. The use of dumpsters for single family and two-family dwellings is prohibited, with the exception of short term use for construction purposes.

Section 3.14 Surface Water Protection

(A) **Streams & Water Courses.** No structure shall be placed, and no land shall be excavated, filled or graded in any zoning district within a distance of 50 feet from the following surface waters except with approval of the Development Review Board, subject to review under Article 5:

- (1) the normal bank of any stream or watercourse shown on town plan maps; or
- (2) the delineated boundary of a Class 1 or Class 2 wetland, as defined and regulated under the Vermont Wetland Rules, and as shown on the most recent *Vermont Significant Wetlands Inventory Map for the Town of Bennington*.

Article 3. General Regulations

(B) **Buffer Management.** The Board may require for review and approval, in addition to other required application materials, the submission of a buffer management plan describing the long-term management of land within required setback areas to protect surface water quality, fish and wildlife habitat, and stormwater management systems.

(C) **Development Review Board Determination.** Prior to granting such approval, the Board shall find that the proposed construction, earth excavation, filling or grading, will not contribute to any impeded drainage, flood hazard, erosion silting, or other adverse effect on natural conditions, or on fish or wildlife habitat, nor interfere with the present or planned storm water drainage system of the town.

(D) **Modification of Setback Standards.** The Development Review Board may approve modification to the setback standards set forth in subsection (A) in accordance with Article 5, and after a determination that the proposed modification meets the following standards:

- (1) the proposed development is located within any district other than the RR, RC, PC, F and A Districts and reflects the historic settlement pattern and character of the surrounding area; and
- (2) reasonable measures are undertaken to protect water quality, such as, but not limited to, the planting of shade trees adjacent to streambanks, the establishment of vegetated buffer areas along streambanks, and/or stormwater management provisions to collect and disperse stormwater away from the stream or river.

(E) **Exemptions from Buffer Requirements.** Required setback areas are to be maintained in a vegetated, undisturbed state, unless otherwise permitted by the Development Review Board as part of an approved buffer management plan. The following structures or uses may also be allowed, subject to approval by the Development Review Board, within setback areas required under this Section:

- (1) road, driveway and utility crossings,
- (2) bank stabilization and restoration projects, in accordance with applicable state and federal regulations,
- (3) stormwater management and flood control facilities, in accordance with applicable state and federal regulations,
- (4) bicycle and pedestrian paths, and
- (5) structures specifically intended to provide access to surface waters and wetlands (such as docks, boardwalks, or boat launches).

(F) **Protection of Route for Proposed Trails.** Where a proposed development contains or abuts a stream or waterway shown in the Town Plan as part of the proposed trail or walkway system, then wherever possible, a strip of land 50 ft. wide running parallel to the edge of such stream or waterway shall be maintained as open space, and the Development Review Board may require that it shall be accessible to the public for recreational use of the stream and for trail or walkway use.

(G) **Wetlands.** The application for a proposed project which may impact a Class 1 or 2 wetland, a designated floodplain area, or would impound or alter a stream watercourse, shall be referred to the Agency of Natural Resources, prior to review and approval by the Development Review Board in accordance with Article 5. Notice for proposed watercourse alterations or relocations also shall be given to adjacent, up and downstream communities.

(H) **Lake Paran Shoreline Standards.** No structure or septic system shall be placed, and no land shall be excavated, filled or graded within a distance of 200 feet of the mean water mark of Lake Paran. Land within this setback shall maintain, to the extent possible, the natural setting. Appropriate open air uses within the 200 foot setback are: recreation, picnic grounds and shelters, swimming areas, parks, wildlife and nature preserves, fishing areas, lawns, gardens, agricultural farming and pasturing with appropriate buffers, and similar uses.

ARTICLE 4. SPECIFIC USE STANDARDS

Section 4.1 Applicability

The following standards shall apply to specified uses in all zoning districts in which such uses are allowed. Specified uses may also be subject to review by the Development Review Board in accordance with Article 5. If there is a conflict between a standard in this section and a standard in another section of these regulations, the more restrictive standard shall apply.

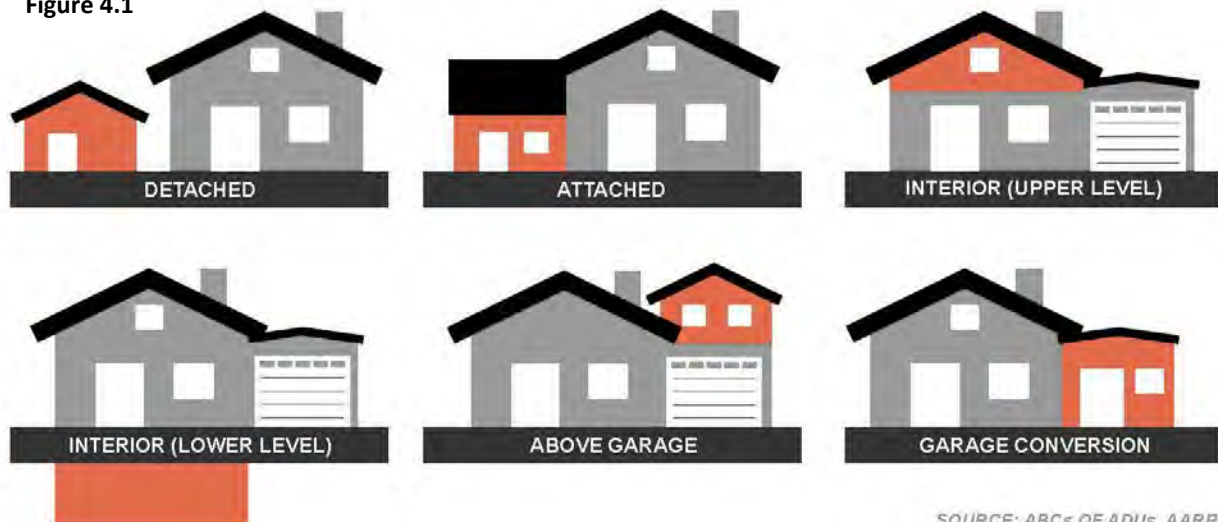
Section 4.2 Accessory Apartment (Accessory Dwelling Units, ADUs)

(A) In accordance with the Act, one accessory apartment (also known as an accessory dwelling unit, ADU) within or appurtenant to a single family dwelling may be allowed in any district subject to review by the Administrative Officer and the following requirements:

- (1) the owner shall reside on the property in either the primary or accessory dwelling unit;
- (2) occupancy of the accessory apartment is restricted to not more than two persons,
- (3) the floor area of the accessory apartment shall not exceed 30% of the floor area of the total existing living area of the single family dwelling, or 900 square feet, whichever is greater;
- (4) one on-site parking space is provided for the residents of the accessory apartment;
- (5) the accessory apartment shall have only one bedroom;
- (6) the accessory apartment is served by the same vehicle access and driveway as the single family dwelling;
- (7) applicable coverage and setback requirements are met; and
- (8) the property has sufficient wastewater capacity as demonstrated by required permits.

(B) Accessory apartments may be sited as attached, detached, or interior units. Examples of locations for an accessory apartment are illustrated in Figure 4.1:

Figure 4.1



SOURCE: ABCs OF ADUs, AARP

Article 4. Specific Use Standards

(C) Accessory apartments are exempted from lot area per dwelling unit requirements.

(D) A zoning permit issued for an accessory apartment shall clearly state that the apartment is permitted only as an accessory to the principal residential use of the property and as such shall be retained in single ownership. Such an accessory dwelling may be subdivided and/or converted for conveyance or use as a principal dwelling only if it is found to meet all current municipal regulations applying to a two family dwelling, including all density and dimensional requirements for the district in which it is located. All applicable municipal permits and approvals shall be required prior to conversion to, or conveyance as a principal dwelling.

Section 4.3 Accessory Uses & Structures

(A) As specified in Article 2, a use or structure which is clearly secondary, incidental and subordinate to a principal use may be located on the same parcel in accordance with the following:

- (1) A use or structures that is accessory to a principal use allowed with review and approval of the Administrative Officer in accordance with Section 9.3 shall likewise be allowed in accordance with the same procedures.
- (2) A use or structures that is accessory to a use that is allowed with review and approval of the Development Review Board in accordance with Article 5 shall likewise require review and approval of the Development Review Board under that Article, unless the use or structure meets the requirements for an administrative amendment under Section 5.2.

Section 4.4 Adaptive Reuse of Historic Structures

(A) **Purpose.** To encourage and enable the restoration, rehabilitation, continued viability and use of historic structures which have outlived their original function, by allowing for a variety of uses within the current dimensions of such structures.

(B) **Applicability.** The adaptive reuse of an historic structure may be allowed in designated zoning districts, subject to review by the Development Review Board under Article 5, district requirements as specified for adaptive reuses, and the provisions of this section. Historic structures, for the purposes of these regulations, shall include all structures which are at least 50 years old and/or are listed or eligible for listing on the *State Survey of Historic Sites and Structures for the Town of Bennington*. The adaptive reuse of structures within the Historic Bennington Design Review District is also subject to design review as identified in Table 2.4.

(C) **Allowed Uses.** As specified for the district in which the structure is located.

(D) **Special Requirements.** The restoration, rehabilitation and reuse of historic structures shall also meet the following requirements:

- (1) If the structure is a noncomplying structure, the use shall in no way increase the degree of noncompliance, except in accordance with the requirements of Section 3.9.
- (2) The proposed use shall not alter the footprint, historic facade, character or immediate context of the structure. Exterior renovations shall be compatible with the original architectural design of the structure, and conform to *The Secretary of the Interior's Standards for Rehabilitation* [36 CFR 76] and associated *Guidelines for Rehabilitating Historic Buildings*, as most recently amended, and *Time and Place in Bennington*.

(E) A zoning permit issued for an adaptive reuse shall clearly state that the use is allowed only within

Article 4. Specific Use Standards

the existing structure, and shall not be re-established if the structure is substantially modified, destroyed or demolished. All applicable municipal permits and approvals shall be required prior to the reestablishment of such use in a substantially modified or new structure.

Section 4.5 Adult Oriented Businesses

(A) **Purpose.** It is the intent of these regulations to carefully regulate adult oriented businesses, in accordance with the maximum authority permissible under the Vermont and U.S. Constitutions, in order to:

- (1) maintain separation between incompatible land uses, while protecting specific land uses from adverse impacts commonly associated with adult oriented businesses;
- (2) maintain property values;
- (3) protect the economic viability of land uses allowed within specified districts;
- (4) promote a pedestrian oriented, mixed use development pattern within the urban core to serve all residents and visitors to the Town;
- (5) prevent the concentration of adult oriented businesses within a compact area or neighborhood; and
- (6) provide adequate opportunity for the location of adult oriented businesses consistent with (1)-(5), above.

(B) **Types of Adult Oriented Business.** For the purpose of these regulations, the following three categories of adult oriented business may be allowed within the Industrial District with the approval of the Development Review Board in accordance with Article 5 and the following regulations.

- (1) **Adult Retail**, defined as an establishment that rents and/or sells media or other goods and meets *any one* of the following:
 - a. 30% or more of the public floor area is devoted to adult media; or
 - b. 30% or more of the stock-in-trade consists of adult media; or
 - c. 10% or more of the public floor area is devoted to the display of sexually oriented toys or novelties; or
 - d. 10% or more of the stock-in-trade consists of sexually oriented toys or novelties; or
 - e. it advertises itself out in any forum as: “XXX,” “adult,” “sex,” or otherwise as a sexually oriented adult business other than an adult retail store, adult cabaret or adult motion picture theater.
- (2) **Adult Cabaret**, defined as an establishment which features dancing or other live entertainment which constitutes the primary live entertainment and is distinguished or characterized by an emphasis on the exhibition of specific sexual activities and/or specified anatomical areas for observation by patrons.
- (3) **Adult Theater**, defined as an establishment showing sexually oriented movies, which are distinguished or characterized by an emphasis on the exhibition of specific sexual activities and/or specified anatomical areas for observation by patrons.

(C) **Standards.** In addition to all other applicable standards set forth in these regulations, adult oriented businesses shall meet the following standards.

Article 4. Specific Use Standards

- (1) An adult oriented business shall be located a minimum of 1,000 feet from any zoning district within which adult oriented business is not an allowed use. Such 1,000 feet distance shall be measured from the district boundary to the nearest portion of the parcel upon which the adult oriented business is located.
- (2) An adult oriented business shall be located a minimum of 1,000 feet from any other adult oriented business already in existence. Such 1,000 feet distance shall be measured from parcel boundary to parcel boundary.
- (3) An adult oriented business shall be setback a minimum of 150 feet from a highway right-of-way.
- (4) An adult oriented business shall be located a minimum of 1,000 feet from any existing place of worship, school, day care facility and/or public outdoor recreation facility. Such 1,000 feet distance shall be measured from parcel boundary to parcel boundary.
- (5) Signs shall meet the standards set forth in the Bennington Sign Ordinance and the following standards:
 - a. No sexually explicit images or language shall be displayed;
 - b. No internal illumination is permitted;
 - c. The sign shall not be visible outside of the I District; and
 - d. Each adult oriented business shall be limited to no more than one sign which shall not exceed a maximum of 12 square feet.
- (6) Sexually oriented toys or novelties, adult media, or live performances shall not be displayed or be visible from the exterior of the establishment. Exterior windows shall not, however, be made opaque through the use of paint, newspaper or other paper covering, or exterior wood surface (e.g. plywood); rather, interior curtains, blinds or similar conventional window treatment shall be used to prevent visual access into the premises.

(D) Standards for Retail Establishments. Retail establishments which offer adult media for sale and do not meet the standards set forth in subsection (B), are permitted in any district in which retail establishments are an allowed use. However, establishments within which between 10% and 30% of the gross public floor areas is devoted to adult media, or between 10% and 30% or more of the stock-in-trade consists of adult media, are subject to the following:

- (1) Adult media shall be kept in a separate, specified portion of the establishment which:
 - a. is physically or visually separated from the rest of the store by an opaque wall of durable material; and
 - b. is located as far from the entrance(s), and from media or goods likely to be of interest to persons less than 18 years of age, as is reasonably practical; and
 - c. is clearly identified as not being open to persons under the age of 18.

Section 4.6 Campers [Recreational Vehicles]

(A) No camper shall be parked on public or private property except in conformance with the following requirements:

- (1) One unoccupied camper may be stored on the lot of a single or two family dwelling by a permanent resident of the dwelling, provided that it is not located within required setbacks for the district in which it is located; not occupied for dwelling purposes; and is not hooked up to the residential water or wastewater system. No such camper shall remain unregistered and/or uninspected for greater than two years.

- (2) Campers shall not be used as a dwelling except in the case of damage to a primary dwelling, in which case the residents of the damaged dwelling may occupy a camper located on the parcel on which the damaged dwelling is located for up to 60 days. The occupied camper must meet all applicable standards of these regulations. The period of occupation may be extended by the Development Review Board under Article 5, but in no case shall a camper be occupied for more than one year.

(B) Any wastewater or sewage generated by a camper shall be disposed of off-site in accordance with all applicable state and federal regulations.

Section 4.7 Recreational Vehicle (RV) Parks

(A) A new or expanded travel trailer or RV Park, consisting of three or more camp sites on a single parcel of land, may be allowed in designated zoning districts subject to review by the Development Review Board under Article 5, state agency referral as applicable under Section 9.3, and the following requirements:

- (1) A minimum of 5 acres of land is required for new RV Parks, with at least 20% of the total area set aside for conservation, recreation and open space. The number of camp sites shall not exceed an overall density of eight (8) per acre, but may be clustered where appropriate to accommodate larger groups and/or to protect natural, cultural or scenic features on the site.
- (2) The RV Park shall meet minimum setback requirements for the district in which it is located. Buffer areas of at least 50 feet in width along property boundaries, and 100 feet in width along public rights-of-way and waters, are to be maintained. Buffer areas shall not be included in the calculation of open space under Subsection (A)(1). No building, camp site, parking or service area shall be located in a buffer area. Landscaping and/or fencing along property boundaries, within designated buffer areas, shall be provided as appropriate for screening, security, and privacy.
- (3) Recreational vehicles shall be stored on the property only if they are properly registered for highway use.
- (4) Adequate access and parking will be provided to accommodate all camp sites.
- (5) Roads within the RV Park shall meet the minimum standards set forth in Table 4.1, and be properly maintained.

Table 4.1 RV Park Road Standards		
	One-way Roads	Two-way Roads
Gravel Depth	12 inches	12 inches
Gravel Width	10 feet	20 feet

- (6) Potable water and wastewater disposal systems are required and must be designed and installed in accordance with applicable municipal and state regulations, including the Vermont Environmental Protection Rules as most recently amended for campgrounds.

Article 4. Specific Use Standards

- (7) Covered and screened facilities for the sanitary collection and disposal of trash and recyclables shall be provided.
- (8) Customary accessory uses and structures to RV Parks, subject to review by the Development Review Board, may include an office, camping supply stores, playground and athletic fields, recreation and dining halls, snack-bars, laundry and shower facilities and similar facilities intended solely for the use of park residents and guests.

Section 4.8 Extraction of Earth Resources

(A) **Applicability.** The extraction, quarrying or removal of topsoil, sand, gravel, rock, minerals or other similar earth resource materials, and the on-site storage and processing of such materials, may be allowed in designated zoning districts subject to review by the Development Review Board, and the requirements of this section. The following are specifically exempted from these provisions:

- (1) driveway, yard, and gardening activities as exempted from these regulations under Section 9.2;
- (2) the extraction of materials associated with agricultural and forestry operations, for use in such operations (e.g., for farm and logging roads);
- (3) site and excavation work incidental to a use for which a zoning permit or subdivision approval has been issued (e.g., for building foundations, driveways, access roads, internments, etc.);
- (4) extraction and quarrying operations in lawful existence as of the effective date of these regulations, which maintain existing rates of extraction and do not expand onto adjoining parcels of land or another district.

(B) **Application Requirements.** The application for review by Development Review Board under Section 5.2 shall also include site, erosion control and reclamation plans which show the following:

- (1) existing grades, drainage, and depths to bedrock and the seasonal high water table;
- (2) the extent and magnitude of the proposed operation, including proposed phasing schedules;
- (3) areas for the on-site storage and/or processing of materials;
- (4) a description, including specifications, for all extraction and processing equipment to be used onsite;
- (5) the location and a description of stormwater management and erosion control measures to be used during extraction or quarrying operations;
- (6) a description of site reclamation measures to be used following the conclusion of operations, including finished grades and drainage patterns; and
- (7) any other materials the Development Review Board finds necessary to determine compliance with the review criteria under subsection (C), below.

(C) **Review Criteria.** In granting approval, the Development Review Board shall find that the proposed extraction or quarrying operation meets the following criteria:

- (1) The extraction operation shall not:
 - a. create a hazard to public health and safety;
 - b. have an undue adverse impact on neighboring properties, property values; public facilities and services; drainage, surface and groundwater supplies; or other natural, cultural, historic or scenic features in the vicinity of the operation; or
 - c. eliminate any subsequent use of the site.
- (2) Proper drainage and stormwater management shall be provided during and after the completion of operations.

Article 4. Specific Use Standards

- (3) No bank shall exceed a slope of one foot of vertical rise to two feet of horizontal distance, except in ledge or bedrock.
- (4) No removal of materials is allowed within 20 feet of a property line, except that where the grade from a property line rises toward the lot where the extraction is to occur, material lying above the grade at the property line may be removed.
- (5) At the conclusion of the operation, or each phase of the operation, the entire area of operation, except where bedrock is exposed, shall be graded, covered with not less than four inches of top soil, and seeded with a suitable cover crop in accordance with the reclamation plan approved by the Development Review Board.
- (6) In order to avoid or mitigate under adverse impacts associated with extraction and quarrying operations, and/or to allow adequate reclamation and potential redevelopment of the site, the Development Review Board in granting approval may also consider and impose conditions with regard to any or all of the following as it deems appropriate:
 - a. the depth of excavation or quarrying,
 - b. slopes created by the removal of materials,
 - c. the storage of equipment and stockpiling of materials on-site,
 - d. potential impacts to surface drainage, on and off-site,
 - e. potential impacts to ground and surface water quality, and drinking water supplies,
 - f. potential impacts to traffic and road conditions, including potential damage to public roads,
 - g. potential impact to other properties in the vicinity due to noise, dust, or vibration,
 - h. potential impacts to natural, cultural, historic or scenic resources on-site, or within the vicinity of the project, including wildlife habitat and migratory corridors,
 - i. hours of operation for blasting, trucking, and processing operations,
 - j. landscaping and screening requirements for safety and aesthetics,
 - k. temporary and permanent erosion control and site reclamation measures,
 - l. Potential impacts to view sheds.
- (7) In accordance with the Act, a performance bond, escrow account, or other form of surety acceptable to the Selectboard shall be required as a condition of approval to cover the cost of any regrading, reseeding, reforestation or other required site reclamation activity. This provision, in accordance with the Act, specifically does not apply to mining or quarrying operations; however, upon the failure of the permit holder, their successors or assigns to complete site reclamation as required, the town may take legal action as appropriate to ensure site stabilization, reclamation, and cost recovery.

Section 4.9 Farm (Agricultural) Retail

(A) Agricultural retail may be allowed on lots of 10 acres or more, provided that:

- (1) If a building or structure is used, the total floor area of the retail use may not exceed 1,500 square feet.
- (2) The sale of non-agricultural products is limited to handcrafted items and packaged foods, which are not to exceed 20% of the total retail shelf space. In no event shall alcohol or tobacco products be offered for sale, with the exception of wines or beers produced in the region.
- (3) The design of any proposed building or structure shall be harmonious with the character of Vermont farm buildings, and the design shall be approved by the Development Review Board.

- (4) Adequate off-road parking shall be provided in accordance with Section 3.10.
- (5) Signs shall meet the requirements of the Bennington Sign Ordinance.

Section 4.10 Gas Stations/Motor Vehicle Service

(A) **Applicability.** For the purpose of this Section the term “service station” shall include both gas stations and motor vehicle service facilities. Service stations may be allowed in designated zoning districts subject to review by the Development Review Board in accordance with Article 5 and the requirements of this section.

(B) Station Siting, Layout & Design Requirements.

- (1) A service station shall have a minimum lot area of 20,000 square feet or as specified in the underlining district, whichever is greater, and shall not be located within 300 feet of any lot occupied by a school, library, hospital or place of worship.
- (2) All station buildings, equipment, service, parking and storage areas shall be set back at least 100 feet from streams, surface waters and wetlands. The setback area shall be maintained as an undisturbed vegetated buffer, except as required to accommodate accepted stormwater management practices. The required setback may be increased as appropriate to protect water quality, based on local site and drainage conditions.
- (3) A landscaped area at least 20 feet in depth shall be maintained along all road frontage, excluding designated access areas (curb cuts). Additional curbing, landscaping and screening, and pedestrian walkways may be required within specified zoning districts or by the Development Review Board as appropriate for traffic management, and to minimize adverse impacts to adjoining properties.
- (4) Service station siting, layout, architecture and design shall be compatible with the character of the neighborhood in which it is located. Building facades shall not be used for advertising purposes, except for as allowed for the placement of wall signs in accordance with the Bennington Sign Ordinance.
- (5) Station canopies, where permitted within a specific zoning district and if determined to be necessary or appropriate in relation to their context by the Development Review Board, shall be limited to the minimum area required for adequate pump coverage, and the minimum ceiling height necessary to meet applicable state and federal safety requirements. Canopy design shall be compatible with surrounding buildings. Corporate logos are specifically prohibited on station canopies, and canopy fascias shall not be illuminated or used for advertising.
- (6) All pumps, lubricating and other service equipment shall be located at least 30 feet from front, side and rear lot lines. Pump islands, pumps, air compressor and recharging stations, and other service areas shall be located to the side or the rear of the station building. There shall be no more than two pump islands, and two pumps (four fueling stations) per island located on the premises. Two additional pumps for diesel, kerosene and/or other fuels other than gasoline, and a recharging station for electric vehicles, may also be installed on-site with the approval of the Development Review Board. Due to unusual site conditions the Board may permit more than two pump islands, but in no event shall more than four pumps (eight fueling stations) be located on the premises.

Article 4. Specific Use Standards

- (7) Fuel and lubricant storage facilities, including underground storage tanks, shall meet all state fire codes and regulations, and shall be sited at least 15 feet from any property line and 35 feet from any existing building on an adjoining lot.
- (8) All automobile parts and dismantled vehicles shall be stored within an enclosed building or suitably screened area; no repair work shall be performed outside of a building.
- (9) There shall be no more than two (2) curb cuts providing access to and from adjoining roads. On corner or through lots, one or both accesses may be limited to the secondary road. The width of a curb cut shall not exceed 40 feet.

(C) **Lighting Requirements.** Maximum service station lighting (illuminance) levels, shall not exceed standards given in Table 4.2. In addition:

- (1) Building, canopy, pump island, and parking area lighting levels shall be the minimum required for safety and to support intended activities. Excessive interior (window) or outdoor lighting principally for advertising purposes is prohibited.
- (2) All outdoor lighting shall be designed to illuminate service station surfaces, and to avoid uplighting, side lighting, glare and excessive brightness through the use of down lighting, and cut off and low glare luminaires. Flat or prism lenses, rather than dropped lenses or refractors, are required.

Table 4.2 Service Station Lighting Levels		
Area to be Illuminated	Maximum Illuminance Level (Surface Average)	
	Foot Candles	Lux
Approach	1.5	15
Driveway	1.5	15
Pump Island [areas under canopy]	5	50
Building Facades	2	20
Service Areas	2	20
Landscape Highlights	1	10
Property Boundaries	0.2	2
Source: Illuminating Engineering Society of North America, <i>Lighting for Exterior Environments: Recommended Practice</i> [RP-33-99], 1999.		

- (3) Light fixtures mounted in/on station canopies shall either be recessed so that the lens cover is flush with the bottom surface (ceiling) of the canopy; or for indirect lighting, mounted and shielded or skirted so that direct illumination is focused exclusively on the underside of the canopy. Lights shall not be mounted on the top or sides (facias) of canopies, nor shall facias be internally illuminated.
- (4) All outdoor lighting, except for security lighting, shall be turned off within 30 minutes of the close of business. Under no circumstances shall the full illumination of the service station and lot be permitted after 11:00 pm.

Article 4. Specific Use Standards

(D) **Signs.** Service station signs shall meet all requirements of the Bennington Sign Ordinance. As part of the signs allowed for business uses, service stations, are allowed to have either pump-top pricing signs, each not to exceed two (2) square feet in area, which do not extend beyond the pump island, or one freestanding pricing sign which does not exceed 12 square feet in area

(E) **Parking Areas.** Service stations shall meet parking requirements under Section 3.10, however fueling stations at pump islands may be counted toward meeting on-site parking requirements.

(F) **Other Uses.** Use of a service station is limited to automobile repair services, and the retail sale of gasoline, other petroleum products, and other products associated with automobile service, maintenance and repair. The sale of other types of retail items (e.g., food or convenience items), or the provision of other services (e.g., car rentals, car washes, restaurant seating) shall be subject to review as a mixed use (see Section 5.16), and as such shall be required to meet applicable standards of these regulations pertaining to each use.

Section 4.11 Golf Course

(A) **Applicability.** New golf courses and driving ranges, or the expansion of existing golf courses and ranges, may be allowed in designated zoning districts subject to review by the Development Review Board under Article 5, and the following standards. Miniature golf courses and “chip and putts” are specifically exempted from the requirements of this section.

(B) Application Requirements.

In addition to the application information required under Section 5.2; applicants for a golf course or driving range shall also submit the following:

- (1) A site development plan showing:
 - a. golf course or range layout including the location of existing and proposed tees, greens, fairways, traps, practice ranges, buildings, roads, cart paths and parking areas;
 - b. existing elevation contours and land cover;
 - c. field located site features (surface waters, wetlands, floodplains, natural areas, wildlife habitat),
 - d. proposed site modifications, and
 - e. the location of existing and proposed wells, and water quality monitoring stations.
- (2) Information regarding anticipated trajectories (directions, distances) in relation to adjoining properties and public rights-of-way, and associated landscaping, screening and/or other protective barriers;
- (3) A course management plan, including operation and monitoring protocols.

(C) Minimum dimensional requirements:

	Golf Course	Driving Range
Minimum Lot Area (or portion thereof for use), excluding area within required setbacks.	20 acres	10 acres
Minimum Setback from Rights-of Way, Property Lines (area within the required setbacks shall not be applied toward the minimum acreage requirement.)	100 feet	100 feet

(D) **General Design Standards.** Golf courses shall be designed to:

- (1) preserve and enhance the ecological function of existing natural features, including but not limited to surface waters, wetlands, and critical wildlife habitats and corridors within and adjacent to the site;
- (2) incorporate natural terrain to the extent feasible to minimize the amount of site modification (e.g., grading, filling, clear cutting) required, and to avoid areas of steep slope;
- (3) minimize the number and length of stream crossings;
- (4) preserve and/or re-establish streambank habitat within required buffer areas; and
- (5) minimize the use of fertilizers and pesticides and associated impacts to water quality through the selection of disease resistant turf grass, integrated pest management, resource efficient irrigation and drainage systems, biofilters, and other accepted best management practices.

(E) **Groundwater Separation.** Greens and tees shall be located in areas where the depth to bedrock or maximum high water table is greater than four feet below the surface, as determined by field tests. Underdrain systems for greens and tees must also maintain four feet of soil separation between subsurface leaching systems and bedrock and/or high water tables.

(F) **Pesticides.** Golf courses and driving ranges must meet all applicable state regulations for golf courses, including but not limited to the requirements for golf course permits issued by the Vermont Department of Agriculture, Food and Markets for the application of pesticides. Pesticides and other hazardous materials shall be stored in an enclosed, secured building and disposed of in accordance with state and federal requirements.

(G) **Monitoring.** The Board may require the establishment of preconstruction (baseline) surface and ground water quality conditions, and the subsequent monitoring of surface and ground waters to determine the effects of golf course development and operation on water quality.

Section 4.12 Group Homes

(A) In accordance with the Act, a state licensed or registered residential care home or group home, serving not more than 8 persons who have a handicap or disability as defined in 9 V.S.A. Section 4501, shall be considered by right to constitute a single family residential use of property, except that no home shall be so considered if it locates within 1,000 feet of another such home.

(B) All other care facilities, including group homes serving more than 8 persons, and all other residential or secure care facilities, are allowed only in designated districts.

Section 4.13 Home Occupation

(A) **Home Occupation.** In accordance with the Act, no provision of these regulations shall prevent a person from using a minor portion of their dwelling for the conduct of an occupation which is customary in a residential area, and which does not have an undue adverse effect upon the character of surrounding area or neighborhood. An application for a zoning permit shall be submitted to the Administrative Officer for a determination as to whether the proposed use is a home occupation as defined by these regulations. A home occupation is permitted as an accessory use in all districts where residential uses are permitted, in accordance with the following:

- (1) The home occupation is conducted on-site by one or more residents of the dwelling and not more than two non-resident full-time employees.
- (2) The home occupation is clearly secondary to the use of the property for dwelling purposes, and

Article 4. Specific Use Standards

does not occupy a floor area of more than 30% of the total floor area of the principal dwelling.

- (3) The home occupation shall not generate objectionable noise, smoke, vibration, dust, glare, odors, electrical interference, heat or other nuisance that is detectable at or beyond the boundaries of the property, or create a health or safety hazard.
- (4) One unlit sign exterior sign is permitted in accordance with the Bennington Sign Ordinance. Other exterior displays of goods and wares, or other exterior indications of the home occupation, including alterations to the residential character of the dwelling, are not permitted.
- (5) The home occupation does not involve the outdoor storage of equipment or materials which are uncharacteristic of a residential use.
- (6) The home occupation shall not result in a significant increase in the amount of wastewater generated by the dwelling, nor in the generation of any hazardous materials or wastes.
- (7) The home occupation shall not result in traffic volumes (e.g., associated with commercial deliveries or sales) which are uncharacteristic of a residential use.
- (8) The home occupation shall meet parking requirements under Section 3.10.
- (9) The home occupation shall be open to the public by scheduled appointment only.

Examples of home occupations that meet this definition may include, but not be limited to: dressmaking and tailoring, home cooking, teaching or tutoring (one student per session), photo or artist studio, home professional or business office (e.g., doctor, dentist, attorney, engineer, writer, accountant, realtor, insurance agent), woodworking, furniture repair. Such home occupations specifically exclude kennels, commercial stables, restaurants and tea rooms, mortuaries, motor vehicle repair shops, motor vehicle sales, machine shops, contractor's yards and similar uses. In the RR District only, contractors may operate a home occupation provided all equipment (including vehicles) and material are fully and completely screened from the public right-of-way and adjoining properties. The area occupied by such equipment and material shall not exceed 1,000 square feet.

Section 4.14 Junk Yards

(A) **Applicability.** New or expanded junk yards, as defined in Article 10, may be allowed in designated zoning districts subject to review by the Development Review Board under Article 5, and the requirements of this section.

(B) **Application Requirements.** In addition to application requirements under Section 5.2, the applicant for a new or expanded junk yard shall submit a description of existing and proposed operations, including storage areas, and all equipment to be used on-site, and a site development plan that includes the following information:

- (1) the extent in area of existing and/or proposed junk yard operations, including all storage and processing areas, and distances from property boundaries, public streets, wetlands, surface waters and public and private wells on-site and in the vicinity;
- (2) site contours that show existing and proposed grades and drainage patterns,
- (3) test boring results indicating soil types, and depths to bedrock and seasonal high water tables within the proposed area of operation,
- (4) existing and/or proposed ground water monitoring well locations, if any,
- (5) proposed stormwater management measures, and
- (6) landscaping and screening details.

(B) **Siting Standards.** The Development Review Board shall determine whether on-site soils,

Article 4. Specific Use Standards

topography and drainage are suitable for junk yard development or expansion, and that soil or watercontamination will not result. Junk yard sites shall:

- (1) be readily accessible from maintained public roads,
- (2) be located out of floodways and floodplain areas,
- (3) avoid areas of steep slope, exposed bedrock, shallow or poorly drained soils, and high water tables,
- (4) be set back sufficiently from surface waters and wetlands to avoid potential contamination of publicwaters,
- (5) be specifically excluded from designated water supply source protection areas.

(C) Design Standards.

- (1) The entire area of operation shall be screened from view off premises by a fence, at least 8 feet in height, or with Development Review Board approval where topography and location warrant, other suitable screening. Landscaping and screening along the fence may also be required to minimize anyadverse visual impacts to public roads or neighboring properties.
- (2) No vehicles associated with the business, or any other waste, scrap, parts or materials shall be stacked, piled or stored higher than the fence or screen, nor placed within 30 feet of the fence or screen, 200 feet of a stream, wetland or other surface water, or 150 feet from a public road. Setback distances may be increased by the Development Review Board as appropriate based on site conditions, and potential adverse impacts on public roads, public waters, and neighboring properties.
- (3) Adequate access and egress, designed and built according to standards and requirements of Section4.3, shall be provided.
- (4) All weather off-street parking shall be provided for customer and business-related vehicles inaccordance with Section 3.10.

(D) Additional Regulations.

- (1) All junk yard owners and operators shall be licensed in accordance with State of Vermont regulationspertaining to junk yards, and shall be responsible for all upkeep and maintenance of fences, screening, and other required site improvements, and the proper storage of salvaged and hazardous materials, as required under municipal and state regulations, and associated conditions of approval.
- (2) There shall be no burning of refuse or other materials at any time. All fire hazards shall be removed,or minimized where the removal would create an unreasonable burden on the licensee. Fire lanes shall be maintained between all buildings, all rows of vehicles or other salvaged materials, and between stored materials and the perimeter fence or screen.
- (3) There shall be no disposal of any vehicle, scrap, waste, or other material on any premises licensedunder the provisions of these regulations.
- (4) All equipment used on-site shall meet applicable performance standards, in accordance with Section 3.11.
- (5) There shall be no more than one (1) advertising sign which shall not exceed 20 square feet in area.

Article 4. Specific Use Standards

- (6) Termination of a junk yard is the responsibility of the licensee and shall be completed only when all materials, stored or deposited on-site in connection with the use have been removed, and all unsightly or otherwise hazardous conditions have been eliminated.

Section 4.15 Kennels & Veterinary Clinics

(A) Kennels and veterinary clinics are allowed in designated districts with the approval of the Development Review Board in accordance with Article 5. In addition to the standards under Section 5.3, the Board shall find that the proposed facility will operate in compliance with the performance standards set forth in Section 3.11.

Section 4.16 Mixed Uses

(A) In designated zoning districts, more than one principal use may be allowed within a single building, or on a single lot, subject to review by the Development Review Board under Article 5 and the following provisions:

- (1) Each of the proposed uses are an allowed use within the zoning district in which the mixed use is located.
- (2) The combined uses meet all applicable standards for the district in which the mixed use is proposed, including minimum lot, frontage and setback requirements, and maximum lot coverage; or the mixed use is part of a planned unit development (PUD) reviewed in accordance with Section 8.4.
- (3) The mixed use meets all applicable general regulations under Article 3, including but not limited to sign and parking requirements.

Section 4.17 Mobile Home Parks

(A) **Applicability.** A new or expanded mobile home park may be allowed in designated zoning districts subject to review by the Development Review Board under Article 5, and the provisions of this section. All standards applicable to dwellings in the District within which the Mobile Home park is located shall apply equally to dwellings located within the park, unless otherwise specified below.

(B) **Application Requirements.** In addition to the application information required under Section 5.2, the applicant for a mobile home park shall also submit a site development plan that shows the following:

- (1) lot boundaries, required setbacks and buffers, and distances to the nearest intersecting streets;
- (2) designated mobile home sites;
- (3) existing and proposed building foot prints and elevations, including existing buildings on adjoining lots which are within 100 feet of the boundaries of the mobile home park;
- (4) existing and proposed vehicle and pedestrian circulation, including accesses, park roads, pedestrian paths, and parking areas,
- (5) existing and proposed open spaces and other common areas,
- (6) existing and proposed park infrastructure, including water and wastewater systems, utilities, drainage and stormwater management systems, and associated easements or rights-of-way; and
- (7) a detailed landscaping plan.

(C) **Siting Requirements.** All mobile home parks shall be sited on a lot that is:

- (1) a minimum of 10 acres in area,
- (2) served by a public or community water supply and wastewater system, and

Article 4. Specific Use Standards

- (3) well-drained, with land and soil conditions that are suitable for park development.

(D) Design Standards.

- (1) The maximum number of mobile homes in a mobile home park shall not exceed four (4) mobilehomes per gross acre of the park.
- (2) The mobile home park shall meet all set back requirements for the district in which it is located. A landscaped buffer strip, not less than 20 feet in width, shall be provided along all property and street lines. The Development Review Board may require increased set back distances and/or buffering and screening to minimize or avoid adverse impacts to adjoining properties and public rights-of-way.
- (3) Open space for recreation and playground purposes, occupying not less than 10 percent of the gross mobile home park area, shall be provided in a convenient location(s) for use by park residents. Such open space shall be suitably landscaped, equipped and furnished, and screened or protected from parking and service areas.
- (4) Designated rights-of-way for mobile home park roads shall be at least 50 feet wide; park roads shall have a maintained gravel or paved surface at least 20 feet wide and be adequately lighted.
- (5) Each individual mobile home shall be located on a site having a minimum width of 50 feet and a minimum area of 6,000 square feet, which is defined by 4"x4"x3' reinforced concrete markers at each corner.
- (6) Each mobile home, and associated accessory structures, shall be setback a minimum of 20 feet from adjoining sites and roadways.
- (7) Each site shall contain permanent, immovable service connections.
- (8) There shall be two parking spaces per mobile home, at least one of which is on the mobile home site. Common parking areas, and bicycle racks or storage areas, for the use of residents and visitors may also be provided in accordance with Section 3.10.

(E) Operation & Maintenance. The mobile home park owner, or designated operator shall, as a condition of Board approval:

- (1) maintain all park buildings, roads, parking areas, paths, utilities, infrastructure, landscaping, open space and common areas in good condition, and shall provide for the regular collection and removal of recyclables, waste and garbage;
- (2) remove snow from all park roads, parking and service areas;
- (3) plant and maintain a minimum of two trees (minimum 2.0" diameter at breast height or greater) on each mobile home site; and
- (4) not engage in the sale of mobile homes in connection with the operation of the park.

Failure to meet these operation and maintenance requirements shall constitute a violation of permit conditions and these regulations, subject to enforcement action under Section 9.7.

(F) Review of Mobile Home Accessory Structures. The owner of a mobile home within an approved mobile home park may apply for a zoning permit under Section 9.3 for a deck or accessory structure which meets site setback requirements under Subsection (D), without additional approval by the Development Review Board under Article 5.

Section 4.18 Public Facilities

(A) In accordance with the Act, the following uses are subject to Development Review Board approval under Article 5, and may only be regulated with respect to location, size, height, bulk, yards, courts, setbacks, density of buildings, off-street parking and loading facilities, traffic, noise, lighting, and landscaping or screening requirements:

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

(B) In accordance with the Act, the location of public facilities are regulated as follows (Table 4.3):

Table 4.3 Public Facilities	
Facility	Specified District
Public and private hospitals.	IP, MU-2
Regional solid waste management facilities certified by the State – excluding Transfer Station [10 V.S.A., Chapter 159].	I
Hazardous waste management facilities for which a notice of intent to construct has been received under state law [10 V.S.A., §6606a].	IP (limited), I
State or community owned and operated institutions and facilities.	specified by district
Public and private schools and other educational institutions certified by the Vermont Department of Education.	D, MU-1, MU-2, IP, MR-1, MR-2
Churches, convents, parish houses, and other places of worship	D, MU-1, MU-2, MR-1, MR-2

(C) In accordance with the Act, these regulations shall not regulate public utility power generating plants and transmission lines regulated under 30 V.S.A. Section 248.

Section 4.19 Telecommunications Facilities

(A) **Purpose:** The purpose of these regulations is to protect the public health, safety, general welfare and scenic character of the Town of Bennington, while accommodating the communication needs of residents and businesses. The intent of these regulations is to:

- (1) preserve the character and appearance of the town while allowing adequate services and coverage to be developed;
- (2) protect the scenic, historic, environmental and natural resources of the town;
- (3) provide standards as requirements for the siting, design, appearance, construction, operation, and removal of telecommunications facilities;
- (4) minimize tower and antenna proliferation by requiring the co-location and sharing of existing telecommunications facilities wherever feasible and appropriate; and

Article 4. Specific Use Standards

(5) facilitate the provision of telecommunications services to residents and businesses in town.

(B) Federal Limitations. In accordance with federal law, these regulations shall not have the effect of prohibiting personal wireless services, unreasonably discriminating among providers of functionally equivalent services, nor regulating wireless telecommunications facilities based on emissions which are subject to and in compliance with Federal Communications Commission (FCC) regulations.

(C) State Limitations. In accordance with the Act, these regulations shall not apply to beyond what is permitted under the 30 V.S.A. Section 248 review process.

(D) Applicability. Wireless telecommunications facilities shall include all facilities subject to licensing or regulation by the FCC, including towers, associated accessory structures, buildings and/or equipment, except as specifically exempted under subsection (D). New, modified or expanded wireless telecommunication facilities, except as specified for small scale facilities under subsection (G), may be allowed in designated zoning districts subject to Development Review Board approval under Article 5 and the requirements of this section. However:

(1) A new tower shall not be permitted unless it is found by the Development Review Board that the equipment planned for the proposed tower cannot be accommodated on an existing approved tower, building or structure.

(E) Exemptions. The following are specifically exempted from the provisions of this section:

- (1) A single ground or building mounted radio or television antenna or satellite dish not exceeding 36 inches in diameter which is intended solely for residential use, and does not, as mounted, exceed 35 feet in height above the lowest grade at ground level.
- (2) Federally licensed amateur radio and citizens band radio antennas which do not exceed a height of 50 feet above the grade level, whether free standing or mounted, and which meet all setback requirements for the district in which they are located.

(F) Application Requirements. In addition to application requirements under Section 5.2, applications for new towers shall also include the following:

- (1) the name and address of the applicant, landowners of record and agents, and contact information for the person(s) authorized to operate, maintain and ensure the safety of the facility;
- (2) information regarding existing coverage, the feasibility of using repeaters or microcells on existing structures to achieve desired coverage, the availability of other towers, buildings and structures located within 5 miles of the proposed site, and written documentation from other facility owners that no suitable sites are available;
- (3) a site plan showing the footprint of all proposed facilities, including towers and accessory structures, and proposed access roads, in relation to existing site features and adjoining properties;
- (4) a report from a qualified and licensed professional engineer which describes facility height, design, construction and capacity, including cross-sections, elevations, potential mounting locations, and fall zones;

Article 4. Specific Use Standards

- (5) a letter of intent committing the tower owner and his/her successors to allow shared use of the facility if an additional user agrees in writing to meet reasonable terms and conditions for shared use;
- (6) written documentation that the proposed tower shall comply with all requirements of the FCC and the Federal Aviation Administration (FAA);
- (7) any additional information as needed to determine compliance with the provisions of these regulations, including but not limited to visual impact assessments or independent evaluations of the proposed facility, to be paid for by the applicant; and
- (8) a wildlife impact assessment to determine the likely impacts on wildlife population, including avian species.

(G) Telecommunications Facility Standards:

- (1) Telecommunication facility construction and wiring shall meet all state and federal requirements, including but not limited to FCC requirements for transmissions, emissions and interference. No telecommunication facility shall be located or operated in such a manner that it poses a potential threat to public health or safety. Prior to the siting of new antennas at existing sites, a cumulative Radio Frequency Radiation (RFR) emissions study shall be performed by the applicant to certify FCC compliance.
- (2) No wireless telecommunication facility shall be located within 500 feet of an existing residence.
- (3) New towers shall be designed to accommodate the co-location of both the applicant's antennas and comparable antennas for one or more additional users, depending on tower height. Towers must be designed to allow future rearrangement of antennas, and to accept antennas mounted at varying heights.
- (4) Towers shall be set back from all property lines and public rights of-way for a distance equaling their total height, including attached antennas, unless otherwise permitted by the Development Review Board:
 - a. if tower design and construction guarantees that it will collapse inwardly upon itself, and that no liability or risk to adjoining private or public property shall be assumed by the municipality; or
 - b. to allow for the integration of a tower into an existing or proposed structure such as a church steeple, light standard, utility pole, or similar structure, to the extent that no hazard to public health, safety or welfare results.
- (5) New telecommunications facilities, including towers, shall be sited and designed to minimize their visibility and not result in an undue adverse impact on the town's scenic landscape. In no case shall a tower and all associated telecommunications facilities exceed a height of 100 feet, although the Development Review Board may impose conditions regarding the location, height and design of the structure, including a reduction of tower height, in accordance with the following:
 - a. The Development Review Board may require an assessment of potential visual impacts from specified vantage points. In determining whether a facility's impact on scenic resources would be undue and adverse, the Board will consider:
 - i. the period of time during which the proposed tower would be viewed by the

- traveling public on a public highway;
 - ii. the frequency of the view experienced by the traveling public;
 - iii. the degree to which the tower would be screened by existing vegetation, the topography of the land, and existing structures;
 - iv. background features in the line of sight to the proposed tower that obscure the facility or make it more conspicuous;
 - v. the distance of the proposed tower from the vantage point and the proportion of the facility that is visible above the skyline;
 - vi. the sensitivity or unique value of a particular view affected by the proposed tower, including scenic features or landscapes identified in the Bennington Town Plan and/or through a site assessment; and
 - vii. the potential disruption to a viewshed that provides context to a historic or scenic resource.
- b. The Development Review Board shall consider the number of service providers to be accommodated on a new facility. Any tower designed to accommodate a single provider shall not exceed a maximum height of 70 feet. The Board may allow taller towers, in accordance with these standards, up to the maximum of 100 feet, to encourage co-location and discourage multiple facilities.
- c. No tower shall be located on an unforested hilltop or ridgeline. Telecommunications facilities should be installed in forested settings wherever feasible. No tower, antenna and/or associated fixtures or equipment shall exceed a height of 10 feet greater than the average height of the canopy measured within a 200 foot radius of the facility. A management plan may be prepared and submitted to the Board to ensure that the adjoining tree cover will be maintained to create the visual impression of the tower and/or associated equipment emerging from a largely unbroken tree canopy and protruding no more than 10 feet above that canopy.
- d. Telecommunications facilities shall not be illuminated by artificial means and shall not display strobe lights.
- e. Telecommunications facilities shall be designed to blend into the surrounding environment, to the greatest extent feasible, through the use of natural topography, existing vegetation, landscaping and screening, the use of compatible materials and colors, and/or other camouflaging techniques. Camouflaging techniques which may be required by the Board include designing the facility to mimic natural or architectural features, depending upon the context of the surrounding landscape and applicable zoning districts.
- (6) Towers shall be enclosed by security fencing at least 6 feet in height, but not greater than 12 feet in height, and shall be equipped with appropriate anti-climbing devices. The Board may require that appropriate landscaping materials be planted adjacent to the security fence to screen it from view of neighboring properties and public roads.
- (7) The use of any portion of a tower for signs other than warning or equipment information signs is strictly prohibited.
- (8) Access roads, and all accessory utility buildings and structures shall be designed to follow natural contours, aesthetically blend in with the surrounding environment, and meet all other minimum requirements for the zoning district in which they are located. Utility lines (e.g., power) serving telecommunications facilities shall follow access roads and not involve extensive clearing; the Board may require that such utilities be buried where they are likely to otherwise have an adverse visual impact.
- (9) Ground-mounted equipment shall be screened from view. The Board may require increased setback, landscaping and screening as appropriate based on site conditions, to protect

neighboring properties and uses.

(H) Small Scale and Temporary Facilities. Notwithstanding the requirements of Article 2 and/or this section, the following may be permitted in any zoning district subject to approval by the Development Review Board under Article 5 and the standards set forth above.

- (1) Small scale wireless telecommunications equipment, including antennas, microcells or repeaters, which are to be installed in or on existing buildings or utility poles; or the installation of ground facilities less than 20 feet in height, provided that:
 - a. no such device is located within 50 feet of an existing residence;
 - b. no changes are made to the height or appearance of such structure except as required for mounting;
 - c. the height of the facility as mounted does not extend the total height of the structure by more than eight feet;
 - d. no panel antenna shall exceed 72 inches in height or 24 inches in width;
 - e. no dish antenna shall exceed 3 feet in diameter; and
 - f. any accompanying equipment shall be screened from view;
 - g. in instances involving buildings listed on the Vermont Historic Sites and Structures Survey for the Town of Bennington, antennas and related facilities shall not be visible from the exterior of the building unless such equipment is mounted on the rooftop in a manner which is not visible to a person standing 40 feet or closer to the building.
- (2) Wireless communications facilities designed for temporary use, provided that:
 - a. the temporary facility is permitted for the duration of the intended use or event, as specified in the permit, which shall not exceed 30 days, and is removed immediately upon the expiration of the permit,
 - b. the height of the facility does not exceed 50 feet from grade, and
 - c. the facility complies with all other applicable provisions of these regulations.
- (3) The Administrative Officer may issue a permit for telecommunications facilities installed inside or on the rooftop of any existing building provided it meets the criteria set forth in this Section.

(I) Removal. All abandoned, unused, obsolete, or noncompliant wireless telecommunications facilities, including towers, accessory structures and/or equipment, shall be removed within 12 months of the cessation of operations at the site, and the site shall be restored to its original appearance. A copy of the relevant portions of any signed lease which requires the applicant to remove the tower and associated facilities shall be submitted at the time of application. A bond or other form of surety acceptable to the Selectboard may be required to ensure tower removal and site reclamation.

Section 4.20 Temporary Uses & Structures

(A) Special events. Special events (e.g., weddings, receptions, concerts, festivals, fairs and other cultural events, trade and antique shows), may be allowed as temporary accessory uses to an existing use, provided that such use occurs for no more than 7 days within any 12 month period, and adequate off-street parking and circulation, sanitary and trash collection facilities are provided. Special events may be issued a zoning permit by the Administrative Officer, for a specified period of time not to exceed one year from the date of issuance, with the provision that the use will be discontinued upon the expiration of the permit. In addition:

- (1) Family or household events associated with a residential use (e.g., weddings, reunions) and

Article 4. Specific Use Standards

events traditionally held on college/university campuses (e.g. commencements, graduations) are exempt from this provision, and shall not require a zoning permit.

- (2) Special events with an expected attendance of over 100 people, or extending more than 7 days within a 12 month period, shall be subject to review by the Development Review Board under Article 5 prior to the issuance of a zoning permit.
- (3) No zoning permit shall be issued for any event or use which also requires the approval of the Bennington Selectboard until such approval is issued.

(B) Temporary Structures. A trailer manufactured to be used as a vehicle shall not be used as a building except as set forth in this section. A mobile home shall not be used as a storage building except as set forth in this section. Structures used for temporary office or storage space, including box trailers and mobile homes, or for special events requiring a permit under Subsection (A), may be allowed as temporary accessory structures to an existing or permitted use with approval of the Development Review Board under Article 5. Such temporary structures may be approved by the Board for a specified period of time not to exceed 90 days, which may be extended by the Board in 90 day increments to a maximum period of one year from the date of issuance if such storage or office space is required as a result of fire or similar hardship. Temporary structures shall be dismantled and/or removed upon expiration of the permit.

Section 4.21 Bus Shelters

(A) Bus Shelters shall be allowed in all districts subject to Development Review Board review and approval under Article 5. The dimensional requirements for each individual bus shelter shall be set by the Development Review Board based on safety issues and compatibility with the surrounding neighborhood. The design of bus shelters shall be compatible with the surrounding neighborhood.

Section 4.22 Large Scale Retail

Community Impact Study. In all zoning districts except the D District, no new or expanded single retail store (including, but not limited to, a retail establishment as defined in Article 10) located in a single building, combination of buildings, single tenant space and/or combination of tenant spaces, that exceeds 50,000 (fifty thousand) gross square feet of floor area in the aggregate, shall be permitted unless the Development Review Board finds that the project will not have an undue adverse impact on local wages, housing costs, or on the ability of the Town to provide municipal services and facilities through the diminution of property values and/or tax revenues resulting from the loss of economic viability of existing commercial enterprises. To this end, upon receipt of an application to the Development Review Board for such a retail store, the Town shall retain, at the applicant's expense, a consultant to perform an evaluation (Community Impact Study) of the projected costs and benefits to the community resulting from the project, including:

- (1) projected costs arising from the demand for and required improvements to public services and infrastructure, including roads;
- (2) value of improvements to public services and facilities to be provided by the project;
- (3) projected tax revenues to be generated by the project;
- (4) projected impact on property values in the community (especially those located in the D, MU-1, and MU-2 Districts) and the potential loss or increase in municipal tax revenues from the proposed project;
- (5) projected net job loss or creation caused by the project and the resulting potential loss or increase in tax revenues; and
- (6) estimate of how much revenue generated by the project will be retained and re-directed

Article 4. Specific Use Standards

back into the economy of Bennington.

No application for a retail store shall be deemed complete until 60 days after the applicant has submitted to the Town the following: a) funds sufficient to pay the estimated fee for the Town's consultant to perform the Community Impact Study; and b) all information deemed necessary by the Town's consultant to complete the Community Impact Study.

ARTICLE 5. DEVELOPMENT REVIEW

Section 5.1 Applicability

(A) In accordance with the Act, any use or development requiring Development Review Board approval, as specified in Article 2 and/or Article 3, shall not be issued a zoning permit by the Administrative Officer until the Board grants such approval. Applications for Board approval, excluding applications for flood hazard review under the Flood Hazard Overlay District (Table 2.18) and design review under the Historic Bennington Design Review District (Table 2.4), shall be reviewed in accordance the following standards and procedures.

(B) Appeals of decisions of the Administrative Officer and requests for variance shall be reviewed in accordance with Section 9.5 and 9.6, respectively, and not as provided in this Article.

(C) Applications for flood hazard review approval within the Flood Hazard Overlay District shall be reviewed in accordance with the procedures set forth in Section 5.2 and the standards set forth in Table 2.18. Applications for flood hazard review that also require Development Review Board approval under a different section of these regulations (e.g., the underlying zoning district requires Board approval for the specific use) shall be reviewed concurrently in accordance with the procedure set forth in Section 5.2 and the standards set forth in both Section 5.3 *and* Table 2.18.

(D) Applications for design review approval within the Historic Bennington Design Review District shall be reviewed in accordance with the procedures and standards set forth in Table 2.4. An application for design review approval that also requires Development Review Board approval under a different section of these regulations (e.g., the underlying zoning district requires Board approval for the specific use) shall be reviewed concurrently in accordance with the procedures set forth in Section 5.2 and the standards set forth in both Section 5.3 *and* Table 2.18.

(E) To the extent feasible, as determined by the Administrative Officer, all reviews before the Development Review Board for any use or development requiring Development Review Board approval shall be conducted concurrently.

Section 5.2 Review Process

(A) **Application.** Applications for Development Review Board approval shall submit a complete application, to include 10 copies of a site development plan depicting the information described in Table 5.1, and any applicable fees, to the Administrative Officer for consideration of the Board in accordance with the following.

(B) **Review Procedure.** As provided in the Act, the Development Review Board shall review applications for development approval at a duly warned public hearing. Applicants are required to consult with the Administrative Officer and/or other appropriate town staff prior to submitting the site development plan to ensure that the application complies with all applicable provisions of these regulations.

- (1) Upon submission of a complete application, the Administrative Officer may, in consultation with the Development Review Board Chair, classify the project as an **administrative amendment**. Applications defined as administrative amendments shall be limited to the following:
 - a. the application is for an amendment to a use or development that has received prior approval of the Board, and in granting approval the Board set forth the range of modifications or changes to the approved project that could be defined as an administrative amendment, which clearly includes the proposed application; or

- b. the proposed use is a change of use in an existing structure which will not result in exterior changes to the building or site, or require additional parking spaces unless it may be documented that such spaces are available in accordance with the standards set forth in Section 3.10; or
 - i. the proposed use or development is accessory to a principle use that is clearly allowed in the district within which it is proposed; and
 - ii. the proposed development does not exceed a maximum of 500 square feet of floor space or 1,000 square feet of site disturbance; and
 - iii. the proposed use or development will not require an increase in on-site parking, and clearly meets all other standards set forth in these regulations.

Projects classified as administrative amendments may receive a permit issued by the Administrative Officer based upon the approved site development plan, which shall be signed by the Development Review Board Chair and recorded in accordance with subsection (C), below.

- (2) The Administrative Officer shall refer and forward complete applications not classified as an administrative amendment to the Development Review Board, which will schedule a public hearing warned in accordance with subsection 9.8(C). The Board may recess the convened hearing to require the submission of additional information from the applicant, or to allow for the submission of information from other parties. The Board shall act to approve, approve with conditions, or disapprove an application within 45 days of the date of the final public hearing; and shall issue a written decision to include findings, any conditions deemed necessary to ensure compliance with the standards set forth below, and provisions for appeal. Failure to act within the 45 day period shall be deemed approval.
- (3) Prior to a public hearing described in subsection (2), the Administrative Officer may, in consultation with the Development Review Board Chair, submit the site development plan to an Application Review Panel for preliminary review. Preliminary review by the Application Review Panel is intended to expedite the review process by providing the Development Review Board with proposed findings and/or conditions of approval prior to the warned hearing. In such instances, the Application Review Panel shall schedule a public meeting for the purpose of reviewing the application and associated materials, receiving testimony of the applicant and interested persons, and preparing a recommendation to the Development Review Board regarding Board action. Applications undergoing preliminary review by the Application Review Panel shall be formally acted upon by the Development Review Board in accordance with subsection (2), above.

(C) Recording Requirements: Decisions of the Administrative Officer, in the case of administrative amendments, and of the Development Review Board shall be recorded in accordance with subsection 9.8(D). Such approvals shall include the written notice of decision and a copy of the approved site development plan dated and signed by the Chair of the Development Review Board (or Vice-chair in the Chair's absence).

(D) Compliance & Enforcement: Where an application has received approval of Development Review Board or Administrative Officer under this section, it shall be the responsibility of the landowner and/or the applicant to complete all improvements in accordance with the approved site development plan. The site development plan, signed by the Development Review Board Chair, together with supporting documentation and the written decision of the Board, shall be the basis for compliance. To assure compliance with the approved plan, a Certificate of Completion shall be required in accordance with Section 9.4. Failure to complete a project in accordance with the approved site development plan shall be deemed a violation of these regulations and enforced in accordance with Section 9.7.

**Table 5.1
Application Requirements**

(A) Required Application Information:

1. Name and address of owner(s) of record of the property; name, address and interest of the applicant, if different than the owner(s) of record; name and address of the person or firm preparing the application and plans; date of the application and related plans; proof of notification of all owners of adjoining lands in accordance with subsection 9.8(C).
2. A plan drawn to scale prepared by a licensed engineer, surveyor, land planner, or as otherwise approved by the Development Review Board showing the following:
 - a. north arrow and scale;
 - b. legal property boundaries for the property;
 - c. existing and proposed features, to include land use, lot size, existing vegetation, natural areas and critical habitat, streams, floodplains and wetlands; zoning district boundaries; abutting property owners, topography (existing and proposed); structures (building footprints), signs, walls and fences; fuel tanks; outdoor storage or location of materials, equipment, supplies; waste disposal facilities; historic sites; roads, driveways, easements and rights-of-way, utilities; and buildings located within setbacks of adjacent lots..
 - d. traffic and pedestrian circulation within the site; location and dimension of parking, loading and snow retention areas; access to neighboring properties and public roads; and, sidewalks, pathways and trails in the vicinity.
3. Site location map showing the location of the project in relation to nearby town highways, adjoining parcels and uses and zoning district boundaries.
4. Proposed landscaping and screening plan, including plant details (size, location, species).
5. Grading and drainage plan (showing areas of cut and fill and proposed drainage patterns and provision for stormwater management).
6. Description of proposed water supply and wastewater disposal.
7. Proposed lighting plan, including the design and location of all exterior lighting and photometric plan
8. Preliminary building elevations for new or altered structures, including an indication of the exterior facade design, window treatment and roof and siding materials.
9. Phasing schedule for completion of all proposed development and site improvements.
10. Estimate of traffic to be generated by the project and the impact of such traffic on area roads.
11. Statement of compliance with all applicable zoning district standards, including overlay district standards and supplemental Development Review Board standards that may apply within a particular district or subject to a specific use.
12. All necessary approvals for water, sewer or roadway access or connection.

(B) The Development Review Board may require additional information depending upon the scope and location of the proposed project, including but not limited to the following:

1. Forest management, tree removal and vegetation management plans.
2. Stormwater management and erosion control plans.
3. Visual impact analysis.
4. Traffic impact analysis (current and proposed traffic volumes, capacities, levels of service, proposed improvements).
5. Community service impact assessments (analysis of fiscal costs and benefits to the town).
6. Open space management plan.
7. Site reclamation plan (for proposed projects involving extraction).
8. Habitat impact assessment (identification of critical wildlife habitat, including wildlife travel corridors, analysis of potential impact and proposed mitigation measures).
9. Other information or studies the Board deems necessary for the Board to conduct a comprehensive review.

Section 5.3 Review Standards

(A) **General Standards.** Pursuant to the Act, an application may be approved by the Development Review Board only upon finding that the proposed development will not result in an undue adverse effect on any of the following:

- (1) **The capacity of existing or planned community facilities or services.** The Board shall consider the demand for community services and facilities that will result from the proposed development and determine whether that demand will exceed the capacity of existing facilities or services (e.g., school capacity, emergency services, recreation facilities). In making such a determination, the Board will consider any capital program or budget in effect at the time of application. Conditions may be imposed regarding the timing and phasing of development to minimize the impact on community facilities and services; or the applicant may be required to contribute funds, facilities and or physical improvements toward the provision of new or expanded facilities to mitigate the impacts of the proposed development.
- (2) **Character of the neighborhood or area affected.** The Board shall consider the design, location, scale and intensity of the proposed development and/or use, relative to the use and character of adjoining properties and other properties likely to be affected by the proposed use; and shall consider the proposed development's compatibility with the purpose and character of the affected zoning district as defined in Article 2 of these regulations, the town plan, and testimony provided as part of the public hearing process. Proposed activities that would adversely affect the character of the neighborhood, area or district shall not be approved unless the adverse impacts can be avoided or mitigated through changes to the location, design, scale, operation, composition and/or intensity of the proposed development or use.
- (3) **Traffic on roads and highways in the vicinity.** The Board shall consider the projected impact of traffic resulting from the proposed development on the capacity, safety, efficiency and use of affected public roads, bridges, and intersections. The Board will rely on accepted transportation standards in evaluating traffic impacts, and shall not approve a project that would result in the creation of unsafe conditions for pedestrians or motorists or unacceptable levels of service for local roads, highways and intersections, unless such conditions or levels of service can be mitigated by the applicant through physical improvements to the road network and/or traffic management strategies.
- (4) **Bylaws now in effect.** Proposed development and uses must conform to all municipal bylaws and regulations in effect at the time of submission of the application, including conformance with the policies of the Bennington Town Plan and compliance with conditions of prior permits or approvals, including subdivision approval.
- (5) **The utilization of renewable energy resources.** The Board will consider whether the proposed development will interfere with the sustainable use of renewable energy resources by diminishing the future availability or by eliminating nearby property owners' access to such resources.

(B) **Specific Standards.** In addition to the general standards set forth above, the Development Review Board may impose specific conditions or require project modifications to ensure the following:

- (1) **Building & Site Design – Inside the Urban Core:** The design and location of structures located inside the Urban Growth Center, as defined in the Bennington Town Plan, shall be compatible with their proposed setting and context, as determined in relation to zoning district objectives and requirements, existing site conditions and features, and adjoining structures and uses. Conditions may

be imposed with regard to siting, density, setbacks, height, massing, materials and/or orientation, to ensure the following:

- a. Buildings, and modifications to existing buildings, are designed in a manner that is compatible with, and does not stand in contrast to, nearby historic structures (and other existing structures, if applicable) with regard to building scale, massing, materials, orientation and rhythm of openings (fenestration).
- b. Large expanses of undivided glass and/or monolithic walls are avoided.
- c. Buildings shall not be designed to function as advertisements through the use of garish color schemes; internal illumination of roofs, facades or awnings; oversized display windows (e.g., enclosing children's play areas); the integration of over-sized logos and advertising features into the building's design; or formulaic or homogenous architectural design based on a national standard for a particular business or franchise that is not consistent with historic building types and designs typical of Bennington.
- d. Buildings, and associated site design, shall reinforce and/or create, rather than destabilize, a defined streetscape by being located as close to the front setback as practical; orienting buildings to front upon the road; and, where the placement of a building along the front setback is not practical due to preexisting site conditions, the incorporation of landscaping features, such as low walls and planting materials, along the setback line to create a transition between the public right-of-way and the site.

(2) **Building & Site Design – Outside the Urban Core:** The design and location of structures located outside the Urban Growth Center, as defined in the Bennington Town Plan, shall be compatible with their proposed setting and context, as determined in relation to zoning district objectives and requirements, existing site conditions, structures and features, and adjoining structures and uses. Conditions may be imposed with regard to siting, density, setbacks, height, massing, materials and/or orientation, to ensure the following:

- a. Buildings shall be sited in a manner that is harmonious with the surrounding landscape, minimizes placement on primary agricultural soils or other open farmland, and avoids adverse impacts on scenic resources. Buildings shall be sited in accordance with the standards set forth in Section 7.4 (Preservation of Rural Character).
- b. Buildings shall be designed and arranged in a manner that is compatible with historic settlement patterns and architectural styles in the rural areas of Bennington with regard to building scale, massing and materials.
- c. Buildings shall not be designed to function as advertisements through the use of garish color schemes; internal illumination of roofs, facades or awnings; oversized display windows (e.g., enclosing children's play areas); the integration of over-sized logos and advertising features into the building's design, or formulaic or homogenous architectural design typical of a national standard for a particular business or franchise but is not consistent with historic architectural design typical of Bennington.
- d. Large reflective surfaces such as roofs, glass, etc. that are visible off-site should be avoided.

(3) **Traffic Circulation & Access.** The number and size of curb cuts shall meet the standards set forth in Section 3.3 and the following:

- a. Driveway accesses (curb cuts) shall meet all state and municipal standards. Pre-existing, oversized curb cuts shall be brought into compliance with these standards as a condition of Board approval unless such compliance is impossible due to site limitations.
- b. Curb cuts and/or street frontage shall be curbed or otherwise defined with a clear edge.

- c. In appropriate instances, including the presence of compatible adjacent uses, areas characterized by congestion and frequent and/or unsafe turning movements, or parcels having direct access to more than one public road, the Board may require provision for shared access between adjoining properties or may limit access to a side street or secondary road. Requirements for shared access shall be made either at the time of Board approval if similar provision has been made on contiguous parcels, or contingent upon future development of neighboring properties.
- d. In reviewing site development plans, the Board shall consider the Bennington Access management Guidebook, prepared by Resource Systems Group, Inc., in September 1997 and may, as a condition of approval, require compliance with recommendations contained therein.

(4) **Bicycle & Pedestrian Access.** On-site pedestrian circulation that links to pedestrian facilities located on adjacent properties and/or along public roads, and to on-site parking areas, shall be required. Such access shall take the form of sidewalks, walking and/or bicycle paths, or other facilities depending upon the property's location, site conditions and proximity to other bicycle/pedestrian facilities. Access points at property edges shall be coordinated with existing and planned development to provide pedestrian connections between uses. Bicycle racks shall be required for commercial and public uses intended for general public access. In addition, adequate access from the parking area and sidewalks to the building(s) that are open to the general public shall be provided for people with disabilities.

(5) **Parking & Service Areas.** Parking and service areas will be provided in accordance with the requirements of Section 3.10. Nonresidential parking and service areas shall be designed in accordance with supplemental district standards, and shall be located to the side or rear of buildings (i.e. no parking and/or service areas between buildings and street), unless otherwise specifically approved by the Board due to existing site limitations. Driveway connections to parking areas on adjacent properties, or provision for future connection to adjacent properties, shall be required where feasible. In the event that such connections allow for shared parking between properties, the overall parking requirements may be reduced pursuant to subsection 3.10(E). Requirements for shared parking shall be made either at the time of approval if similar provision has been made on contiguous parcels, or contingent upon future development of neighboring properties.

(6) **Outdoor Storage & Display.** The outdoor storage or display of goods, supplies, vehicles, equipment, machinery or other materials is prohibited unless specifically approved by the Board and/or is specifically permitted within particular districts. Secured, covered and screened areas shall be provided for the collection and on-site storage of trash and recyclables generated by the proposed development. In approving such outdoor display or storage, the Board may place conditions on the area and location of such storage or display, and shall require appropriate screening.

(7) **Landscaping & Screening.** Landscaping shall be designed to enhance the overall appearance of individual properties; integrate new development into its natural and historic surroundings; preserve and enhance the particular identity of individual sites; and to maintain compatibility among neighboring properties and consistency within the community. Landscaping is required in front and side yards, adjacent to parking areas and where rear yards abut residential properties or public roads. Such landscaping shall be prepared in accordance with the following standards:

Tree Plantings

- a. Maximum effort shall be made to save existing trees, especially those that are mature or determined to be of special horticultural or landscape value, during all phases of site development and construction. The Board may require that existing trees to be saved shall be replaced with large tree specimens (up to 6" caliper) in the event of death during or after site development.

- b. Landscaping plans shall emphasize the use of both deciduous and coniferous shade trees in available yard area, especially front and side yards and parking areas. Shade trees shall be placed to interrupt the facades of buildings, to visually reduce the scale and bulk of large buildings, to integrate the site with the surrounding landscape and to enhance environmental quality (e.g., wildlife habitat, soil stabilization, air quality, energy conservation). Shade trees are especially important in instances where street trees are not practical because of site constraints. Shade trees shall:
 - i. be a minimum of 2.5" - 3.0" caliper (trunk diameter), measured at a height of 5 feet, or, in the case of coniferous trees, be a minimum of 4' - 6' in height, unless otherwise specified by the Board upon consideration of site conditions;
 - ii. reach a minimum height of 50 feet at maturity (unless located directly beneath an overhead utility line);
 - iii. be a relatively long lived species (60+ years) with a high tolerance for soil compaction and drought; and
 - iv. be a species indigenous to the region (providing it meets other standards of this section).
- c. Landscaping plans shall emphasize the use of street trees along road frontage in commercial districts, and along well traveled roads. In instances where a planting strip is required along road frontage, or where front yard area is available for planting along the edge of the right-of-way, at least one street tree shall be planted for each thirty linear feet (30') of landscaping strip or frontage (excluding driveways). Such trees shall be planted along the edge of the road right-of-way, and shall:
 - i. be a minimum of 2.5" - 3.0" caliper (trunk diameter), measured at a height of 5 feet, unless otherwise specified by the Board upon consideration of site conditions;
 - ii. be an appropriate species of nursery stock deciduous shade tree – not flowering ornamental or conifers – with a high tolerance for road salt, soil compaction and drought;
 - iii. be a relatively long lived species (60+ years);
 - iv. reach a minimum height of 50 feet at maturity, although where a street tree must be located under an overhead utility line, it may be a species that will not exceed the height of the lowest line at maturity;
 - v. be a species indigenous to the region (providing it meets other standards of this section); and
 - vi. in the event that the Town has developed a street tree plan for a district or road segment, the Board may require that tree planting be consistent with that plan.
- d. Flowering ornamental trees should be used to compliment shade trees in instances where large yard areas exist, and where space limitations prevent the planting of shade trees.

Planting Beds

- e. Landscaping beds should enhance the general appearance of the site, define planting strips and buffer areas; such beds are not to be considered a substitute for tree plantings, lawn or green space. Beds shall be designed so that mulch and soil remains contained within the bed.
- f. Beds should be planted with a diversity of hardy flowering and evergreen perennials, should be designed to minimize the amount of exposed mulch or soil during the growing season and to create a naturalized appearance. Inorganic mulches and ground covers shall not be used.

- g. A mix of evergreen and flowering shrubs and bushes should be used adjacent to buildings, within planting beds and to compliment shade trees and other landscaping features. Landscaping plans should emphasize species that are indigenous to Vermont.
- h. Lawns as opposed to large mulched areas are the preferred landscaping design. Required front yard landscaping shall be primarily lawn area with trees and other plants. Large mulched areas are prohibited. Dyed or artificially colored mulches are prohibited.

Screening

- i. Development shall provide sufficient screening when the Development Review Board determines that adequate screening is not provided by topographical or other barriers. Screening shall be required in the following cases:
 - i. where more intensive land uses are proposed to abut less intensive uses;
 - ii. adjacent to garbage collection and utility areas, satellite antennas, outdoor storage, and loading and unloading areas and other outdoor utilities and facilities; and
 - iii. when the project adversely impacts adjacent properties (e.g., lighting, outdoor storage, etc.), and when contiguous land uses and activities will adversely impact on the development (e.g., roads or incompatible uses).
- j. Screening should provide a year-round visual screen, particularly from roads. A diversity of materials should be used to create an interesting, naturalized screen rather than a large expanse of uninterrupted, uniform material. Materials may include fencing, shade trees, evergreen and flowering shrubs, rocks, mounds or combinations thereof to achieve the same objectives.
- k. Arrangement of screening shall provide protection to adjacent properties and avoid damage to existing plantings. If re-contouring of the site is proposed, the side slope shall be used for plantings. A 4:1 slope is recommended.

Parking Areas

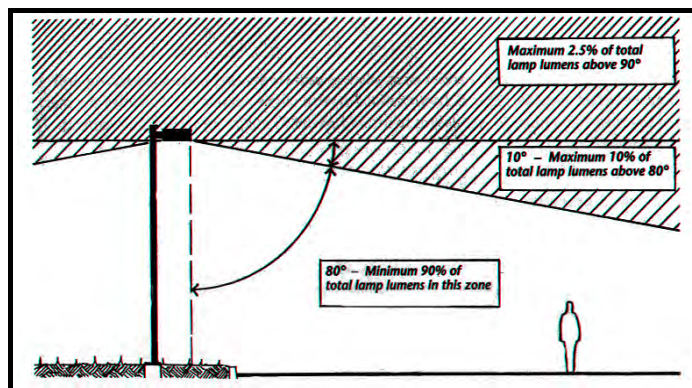
- l. Within and contiguous to parking areas, landscaping shall emphasize the use of shade trees to provide a tree canopy, provide separation between parking spaces to avoid large expanses of parking and minimize the visibility of parking areas from off-site. Suitable locations for shade trees include along walkways, in center islands, in between parking spaces and clustered in appropriate locations.
- m. Parking shall be bordered with a buffer area landscaped in a manner that integrates the parking area together with the overall landscaping plan for the site, reduces the visibility of the parking area from off-site, provides suitable locations for shade trees, and meets the standards set forth in Section 3.10(C)(6).
- n. All landscaping in parking lots and on the street frontage shall be placed so that it will not obstruct visibility when moving from the parking area onto the road.
- o. All plantings shall be maintained and adequate provision made for snow removal from parking spaces and lanes.

Maintenance & Survival

- p. All plantings shall be installed according to accepted horticultural standards. Plant species should be hardy for zone four (4) or harder as defined in University of Vermont Extension Service's "Landscape Plants for Vermont". Sizes of trees and plantings shall be specified and shall be appropriate in terms of function and size.
- q. Dead and dying plants and trees shall be replaced by the owner within one year of death. No buildings, structures, storage or materials, or parking shall be permitted within defined buffer or landscaped areas and such areas shall be maintained and kept free of all debris.
- r. The Development Review Board may require that adequate surety, in the form of a letter of credit, performance bond or escrow account, be secured to ensure the completion of the landscaping. The Board shall have the option of using such surety to complete the work if the applicant, for any reason, does not finish the landscaping by the time specified as a condition of receiving permits for the project.

(8) Lighting. To ensure appropriate lighting while minimizing its undesirable effects, the following general standards apply to outdoor lighting in the Town of Bennington with the exception of temporary holiday lighting which is exempt:

- a. In addition to information regarding exterior lighting fixtures, including fixture type, mounting location and height, illumination levels and distribution, and color, submitted as part of the application, a lighting plan, prepared by a qualified engineer or lighting expert, shall be required for larger projects.
- b. Outdoor lighting fixtures shall be limited to recessed, shielded or cutoff fixtures so that the distribution of the light meets the Illuminating Engineering Society of North America's (IESNA) standard for a cut-off fixture. Lighting should not result in excessive shadows and a high contrast between illuminated areas and dark areas (see figure).



- c. All outdoor lighting shall be kept to the minimum required for safety, security and intended use, consistent with the character of the neighborhood and zoning district in which it is located. Unless specific lighting standards are established elsewhere in these regulations (e.g., gas stations under Section 4.10), when determining appropriate levels of illumination for specific applications the Board shall apply the standards set forth in Table 5.2. For situations not addressed in Table 5.2, the Board shall consider technical resources, such as The Outdoor Lighting Manual for Vermont Municipalities and publications of the Illuminating Engineering Society of North America (IESNA), when determining appropriate levels.
- d. Outdoor lighting fixtures should include timers, dimmers, and/or sensors to reduce energy consumption and eliminate unneeded lighting.
- e. Electrical service to outdoor lighting fixtures shall be buried.

- f. The use of street or security lighting is only permitted if unusual or hazardous conditions require it. Security lighting, where deemed necessary by the Board, shall be shielded and aimed so that illumination is directed only on to the designated area and not cast on other areas.

Table 5.2 Bennington Lighting Standards			
Lighting Context	Minimum Illumination Level (at darkest spot) Footcandle	Uniformity Ratio	Maximum Mounting Height
Parking Lots - PC & I Districts	no less than 0.2/ no greater than 0.3	4:1	20 feet
Parking Lots - other districts	no less than 0.2/ no greater than 0.3	4:1	16 feet
Sidewalk/Walkway Lighting	no less than 0.1/ no greater than 0.2	4:1	12 feet
	Avg. Horizontal Illumination Level on Ground and Avg. Illumination Level on Vertical Surface		
Security Lighting - I District	1.5 max	n/a	20 feet
Security Lighting - other districts	1.0 max	n/a	16 feet
Canopy Lighting	See Section 4.10		

- g. With the exception of buildings having exceptional symbolic (e.g., places of worship and/or public buildings) or historic significance to the community, exterior building facades shall not be illuminated. The Board may approve the exterior illumination of buildings with symbolic or historic significance, provided the maximum illumination on any vertical or angular roof surface does not exceed 5.0 foot candles; fixtures are carefully aimed and shielded so that light is only directed onto the building surface; and lighting fixtures are mounted on or near the building, preferably directed downward, and are designed to “wash” the facade with light.
- h. Outdoor fixtures shall only be illuminated during the hours of operation for non-residential uses unless specifically approved by the Development Review Board.
- (9) **Protection of Natural Resources.** Proposed development shall not have an adverse impact on important natural resources or fragile features located on the parcel, including wetlands, steep slopes, rivers and streams, critical wildlife habitat and habitat diversity, groundwater source protection areas, and/or floodplains identified in the town plan or through field investigation. The Board may require the following protection measures to ensure the protection of natural resources and fragile features:
- a. the establishment of buffer areas;
 - b. permanent protection through conservation easements or other deed restrictions in accordance with Section 7.11;

- c. the designation of development envelopes to ensure that activities incidental to the operation of the conditional use, including clearing and yard area, do not adversely impact identified resources; and/or
- d. the preparation and implementation of management plans for protected resources and associated buffer areas.

(10) **Erosion Control.** Erosion and stormwater will be managed in accordance with Section 3.12 and Section 7.9.

(11) **Surface Water Protection.** Streams, rivers, ponds and wetlands shall be protected in accordance with Section 3.14.

(12) **Signs.** All signs must comply with the Bennington Sign Ordinance and State Statute. In addition, internally illuminated signs are prohibited in all districts with the exception of the Planned Commercial (PC) District and Industrial (I) District.

(C) **District Standards.** In addition to the standards set forth above, development and uses shall comply with all standards for the district in which the development or use is located, as established in Article 2, including all supplemental district standards for the particular district.

(D) **Specific Use Standards.** In addition to the standards set forth above, specific use standards, as established in Article 4, shall apply to all specified use. In the event that a standard included in Article 4 is in conflict with another provision of these regulations, the most restrictive shall apply.

(E) **Historic Bennington Design Review District.** Proposed uses and development located within the Historic Bennington Design Review District shall be reviewed in accordance with the standards and procedures set forth in Table 2.4. In the event that a development or use also requires review under this Article, the Board shall apply the standards set forth above and in Table 2.4 in accordance with the procedures set forth in Section 5.2.

(F) **Flood Hazard Overlay District.** Proposed uses and development located within the Flood Hazard Overlay District shall be reviewed in accordance with the standards and procedures set forth in Table 2.18. In the event that a development or use also requires review under this Article, the Board shall apply the standards set forth above and in Table 2.18 in accordance with the procedures set forth in Section 5.2.

ARTICLE 6. SUBDIVISION REVIEW

Section 6.1 Applicability

(A) In accordance with the Act, whenever any subdivision of land is proposed that is not specifically exempted from these provisions under Subsection (B), the subdivider or his/her authorized agent shall apply for and secure approval of the proposed subdivision prior to undertaking:

- any construction, building development or land clearing (excluding forestry or agricultural activities exempted under Section 9.2); or
- any sale, conveyance or lease of any subdivided portion of a property; or
- the issuance of any permit for any land development involving land to be subdivided; or
- the filing of a subdivision plat with the Town Clerk.

Subdivision of Land: the division of any parcel of land into two or more parcels for the purposes of sale, conveyance, lease, or development. The term "subdivision" includes resubdivision involving the adjustment of boundaries between two or more existing parcels.

Such approval shall be granted in accordance with the procedures outlined in Table 6.1 and as provided below.

(B) **Minor & Major Subdivisions.** For the purposes of these regulations, subdivisions shall be classified by the Administrative Officer, following an initial meeting with the subdivider, as minor or major subdivisions in accordance with the following:

- (1) **Minor Subdivisions** shall include lot line or boundary adjustments; amendments to an approved subdivision plan that will not substantially change the nature of any previous subdivision or conditions of approval; or any subdivision creating 2 or more but less than 5 lots, which does not otherwise qualify as a major subdivision.
- (2) **Major subdivisions** shall include any subdivision creating 5 or more lots over a period of 5 years or 2 or more lots served by a Class 4 road or located within the Forest Reserve District; or planned unit or planned residential development that meets the definition of a subdivision.

(C) **Coordination with Planned Unit or Planned Residential Development Review.** Subdivision applications for Planned Unit or Planned Residential Developments (PUDs and PRDs) shall be reviewed as major subdivisions under this Article. PUDs and PRDs shall meet the standards set forth in Article 8, as well as subdivision standards included in Article 7, unless otherwise waived by the Development Review Board.

(D) **Waiver Authority.** In accordance with the Act, the Development Review Board may waive, subject to appropriate conditions: application requirements, preliminary subdivision plan review and associated public hearing requirements, and development review standards set forth in Article 7. The request for a waiver shall be submitted in writing by the applicant with the subdivision application. It shall be the responsibility of the applicant to provide sufficient information to justify the waiver. In granting such waivers, the Board shall require such conditions as will in its judgement substantially achieve the objectives of any waived requirements.

Article 6. Subdivision Review

Table 6.1 Subdivision Review At A Glance	
Steps in the Process:	Responsibility of:
Sketch Plan [all subdivisions]:	
1. Submission of sketch plan, including any waiver requests	Applicant; at least 15 days prior to a regularly scheduled Development Review Board meeting
2. Development Review Board meeting	Attendance of applicant or designee required
3. Classification of subdivision as minor or major; written recommendations re: sketch plan	Development Review Board; within 30 days of completion of sketch plan review
Minor Subdivision [residential < 5 lots]:	
1. Submission of final subdivision plan, including any waiver requests, proposed plat and supporting documentation	Applicant; within 6 months of the date of sketch plan approval
2. Development Review Board public hearing	Development Review Board; within 30 days of receipt of the final subdivision plan
3. Subdivision/plat approval	Development Review Board; within 45 days of the hearing adjournment date
4. Final plat recording in the town records	Applicant; within 90 days of the date of subdivision approval
5. Submission of as-built drawings	Applicant; upon completion
Major Subdivision [other than minor]:	
1. Submission of preliminary subdivision plan including any waiver requests, supporting documentation	Applicant; within 6 months of the date of sketch plan approval
2. Development Review Board public hearing	Development Review Board; within 30 days of receipt of the preliminary subdivision plan
3. Preliminary subdivision/plat Approval	Development Review Board; within 45 days of the hearing adjournment date
4. Submission of final subdivision plan, including supporting documentation	Applicant; within 6 months of the date of preliminary plan approval
5. Final Development Review Board public hearing	Development Review Board; within 30 days of receipt of the final subdivision plan
6. Final subdivision/plat Approval	Development Review Board; within 45 days of the hearing adjournment date.
7. Final plat recording	Applicant; within 90 days of the date of final subdivision and plat approval
8. Submission of as-built drawings	Applicant; upon completion

Section 6.2 Administrative Review of Boundary Adjustments

(A) Applications for boundary adjustments which are determined by the Administrative Officer to not result in the creation of a non-conforming lot, or the significant increase of the development density of one or more lots, may be exempted from sketch plan review requirements and proceed immediately to final plat approval which may be granted by the Administrative Officer. All other boundary adjustments shall be reviewed in accordance with Section 6.3.

Section 6.3 Sketch Plan Review [applying to all applications for subdivision]

(A) **Application Requirements.** The applicant shall submit to the Administrative Officer, at least 15 days prior to a regularly scheduled Development Review Board meeting, one original and 9 copies of the proposed sketch plan that include the information for sketch plan applications specified in Table 6.2 including associated fees.

(B) **Initial Meeting.** The applicant and/or an authorized representative shall attend an initial meeting with the Development Review Board, to be held at a regularly scheduled meeting, to discuss the sketch plan and pending subdivision application. At this meeting the Development Review Board may request any additional information as needed to act on the sketch plan.

(C) **Action on Sketch Plan.** Within 30 days of the initial meeting (which may include multiple meeting dates at the discretion of the Development Review Board), the Board shall, based on the information provided, issue in writing:

- (1) a determination of whether the subdivision is a minor subdivision to be reviewed under Section 6.5, or major subdivision to be reviewed under Sections 6.4 and 6.5;
- (2) the granting or denial of requested waiver provisions;
- (3) a preliminary determination of whether or not the proposed subdivision plan generally conforms to applicable subdivision review standards under Article 7, or would be in conflict with the municipal plan and other municipal regulations currently in effect;
- (4) recommendations for proposed changes in subsequent submissions, including any requests for additional studies or supporting documentation.

(D) **Effect of Sketch Plan Determinations.** Development Review Board determinations and associated recommendations shall remain in effect for 6 months from the date of issuance, unless otherwise approved or extended in the written determinations issued by the Development Review Board. Within 6 months of the determination by the Development Review Board, the applicant may apply to the Development Review Board for preliminary plan review under Section 6.4 (for major subdivisions) or final plan and plat approval under Section 6.5 (for minor subdivisions).

Section 6.4 Preliminary Plan Review [applying only to major subdivisions]

(A) **Application Requirements.** For the sketch plan to remain valid, within 6 months of the date of action on a sketch plan by the Development Review Board, the applicant shall submit an application and associated fees for preliminary plan and plat approval to include, unless otherwise specified or waived by the Development Review Board under Section 6.3(C), 1 original and 9 copies of the information required for preliminary plan review as specified in Table 6.2.

(B) **Public Hearing.** Within 30 days of the Administrative Officer's determination that the preliminary plan application is complete, the Development Review Board shall schedule a public hearing on the preliminary plan, warned in accordance with subsection 9.8(C).

(C) **Preliminary Plan Approval.** Within 45 days of the date of adjournment of the public hearing, the Development Review Board shall approve, approve with modifications, or disapprove the preliminary plan and associated plat based on a determination of whether or not the preliminary plan conforms to applicable subdivision review standards under Article 7, or would be in conflict with the town plan and other municipal regulations in effect. The Development Review Board may also require, as a condition of approval, the submission of proposed changes or modifications resulting from further study. Approval, conditions of approval, or grounds for disapproval shall be set forth in a written notice of decision. The approval of a preliminary plan shall be effective for a period of 6 months from the date of written notice of approval, unless otherwise approved or extended by the Development Review Board in the written notice of decision.

(D) **Phasing.** At the time that the Development Review Board grants preliminary plan approval it may require the plat to be divided into two or more phases to ensure project conformity with the town plan and capital budget and program currently in effect. Conditions may be imposed upon the filing of application for final plat approval for each phase as the Board deems necessary to ensure the orderly development of the plat and to avoid overburdening town facilities and services.

(E) **Effect of Preliminary Plan Approval.** Approval of the preliminary plan shall not constitute approval of the final subdivision plan and plat. Subsequent to the approval of the preliminary plan, the Development Review Board may require the submission of all applicable approvals of municipal officials and/or agencies having jurisdiction over the project (e.g., Select Board, Health Officer), and such state and federal agencies as may be required by law. Upon receipt of evidence of approval of the preliminary plan by said agencies, if required, and the expiration of all relevant appeal periods, the applicant may apply to the Development Review Board for final plan approval under Section 6.5.

Section 6.5 Final Plan Approval [applying to all applications for subdivision]

(A) **Application Requirements.** For prior approvals to remain valid, within 6 months of the date of sketch plan approval for minor subdivisions, or preliminary plan approval for major subdivisions, unless otherwise waived by the Development Review Board, the subdivider shall submit an application for final subdivision plan approval, including plat approval. If the subdivider fails to do so, s/he will be required to resubmit for minor subdivisions a new sketch plan, or for major subdivisions a new preliminary plan, for approval subject to any new zoning and subdivision regulations. The application for final subdivision plan and plat approval shall include associated fees and, unless otherwise specified or waived by the Development Review Board under 6.3(C), 1 original and 9 copies of the information for final plan and plat review specified under Table 6.2. Final subdivision plats shall be prepared and certified by a land surveyor licensed by the State of Vermont.

Table 6.2 Subdivision Application Requirements			
	Sketch Plan	Preliminary Plan	Final Plan
(A) Application Information			
Application Form	1 original & 9 copies	1 original & 9 copies	1 original & 9 copies
Application Fee	✓	✓	✓
Name of project, if any	✓	✓	✓
Name, address of applicant (landowner and/or subdivider)	✓	✓	✓
Written description of proposed development plans, including number and size of lots; general timing of development	✓	✓	✓
Waiver request, in writing [optional]	✓	✓	
Names, addresses of all adjoining property owners*	✓		
Evidence of written notification to adjoining of intent to subdivide; to include copies of any waiver request*	✓		
(B) Plan/Plat Mapping Requirements			
	Sketch	Draft Plat	Final Plat
Materials	Paper	Paper	Mylar
Date	✓	✓	✓
Preparer Information, Certifications by Land Surveyor and, if appropriate, Engineer	✓	✓	✓
Scale (minimum 1 inch = 200' unless otherwise specified by Board)	✓	✓	✓
North Arrow, Legend	✓	✓	✓
Project boundaries and property lines	Drawn	Drawn	Surveyed
Existing and proposed lot lines, dimensions	Drawn	Drawn	Surveyed
Adjoining land uses, roads and drainage	✓	✓	✓
Zoning district designations and boundaries	✓	✓	✓
Location of all natural/fragile features, including, but not limited to, wetlands, flood hazard areas, slopes with a gradient of 15% or greater; and surface waters and associated buffer areas.	✓	✓	✓
Location of all "Rural Conservation Resources" outside of the urban core, to include critical wildlife habitat; scenic features identified in the Town Plan; primary agricultural soils and existing farmland, historic sites and features, including stone walls; and prominent hills and ridgelines.	✓	✓	✓
Existing and proposed elevations, contour lines*		5' interval	5' interval
Existing and proposed roads, paths, parking areas, associated rights-of-way or easements	Drawn	Drawn	Surveyed
Proposed building envelopes	✓	✓	✓

Table 6.2 Subdivision Application Requirements (cont.)

(B) Plan/Plat Mapping Requirements (continued)	Sketch	Draft Plat	Final Plat
Proposed utilities, water and wastewater systems and associated rights-of-way or easements*	✓	✓	✓
Road profiles; road, intersection and parking area geometry and construction schematics*		✓	✓
Proposed landscaping and screening*		✓	✓
Proposed conservation buffer and/or easement areas*		✓	✓
Monument locations*			✓
(C) Supporting Information & Documentation	Sketch Plan	Preliminary Plan	Final Plan
Site location map showing proposed subdivision in relation to major roads, drainage ways, and adjoining properties	✓	✓	✓
Statement of compliance with the town plan and applicable local regulations	✓	✓	✓
Engineering reports (water and wastewater systems)		✓	✓
Existing and proposed traffic generation rates, volumes*		Estimated	Documented
Off-site easements (e.g., for water, wastewater, access)*	Description	Draft	Final
Proposed phasing schedule*	Description	Draft	Final
Proposed covenants and/or deed restrictions*	Description	Draft	Final
Proposed homeowner or tenant association or agreements*	Description	Draft	Final
Proposed performance bond or surety*		Description	Final
(D) As may be required by the Development Review Board			
Stormwater and erosion control plan			
Grading plan (showing proposed areas of cut and fill)			
Open space management plan			
Site reclamation plan (for subdivisions involving extraction)			
Traffic impact analysis (current and proposed traffic volumes, capacities, levels of service, proposed improvements)			
Fiscal impact analysis (analysis of fiscal costs and benefits to the town)			
Environmental impact assessment (analysis of potential environmental impacts, proposed mitigation measures)			
Other		As required under sketch plan approval	As required under sketch plan or preliminary approval

* Upon written request may be waived by the Development Review Board.

(B) **Public Hearing.** In accordance with the Act, within 30 days of the date that the Development Review Board deems that a final plan application is complete, the Board shall hold a public hearing on the final plan and associated plat, warned in accordance with subsection 9.8(C). Copies of the hearing notice shall also be sent, at least 15 days prior to the hearing date, to the regional planning commission, and to the clerk of an adjacent municipality in the case of a plat located within 500 feet of a municipal boundary.

(C) **Final Plan Approval.** In accordance with the Act, within 45 days of the date of adjournment of the public hearing, the Development Review Board shall approve, approve with conditions, or disapprove the final subdivision plan, based on a determination of whether or not the plan and associated plat conform to subdivision review standards under Article 7, or would be in conflict with the town plan and other municipal regulations in effect. Failure to act within such 45 day period shall be deemed approval, as certified by the Town Clerk. Approval, conditions of approval, or grounds for disapprovals, and provisions for appeal under Section 9.5, shall be set forth in a written notice of decision. Copies of the notice of decision shall be sent to the applicant and any other interested parties appearing at the public hearing within the 45 day period.

(D) **Effect of Final Plan Approval.** The approval by the Development Review Board of a final subdivision plan and associated plat shall not be construed to constitute acceptance by the town of any street, easement, utility, park, recreation area, or other open space shown on the final plat. Such acceptance may be accomplished only by a formal resolution of the Selectboard, in accordance with state statute. Each approval for a final plan shall contain a time limit within which all improvements shall be completed, not to exceed 3 years unless otherwise required or extended by the Development Review Board.

Section 6.6 Plat Recording Requirements [applying to all approved subdivisions]

(A) In accordance with the Act, within 180 days of the date of receipt of final plan approval under Section 6.5(C), the applicant shall file 2 copies of the final subdivision plat, 1 mylar copy and 1 paper copy, for recording with the town in conformance with the requirements of 27 V.S.A., Chapter 17. Approved plats not filed and recorded within this 180 day period shall expire.

(B) Prior to plat recording, the plat must be signed by the Chair or Vice Chair of the Development Review Board.

(C) For any subdivision which requires the construction of roads or other public improvements by the applicant, the Board may require the subdivider to post a performance bond or comparable surety to ensure completion of the improvements in accordance with approved specifications.

(D) The municipality shall meet all recording requirements for final subdivision plan approval as specified for municipal land use permits under Section 9.8.

Section 6.7 Certificate of Subdivision Compliance

If specifically required by the Development Review Board as a condition of final subdivision plan approval, prior to any development of an approved subdivision plan that requires application for a zoning permit the subdivider shall submit a Certificate of Subdivision Compliance in accordance with Section 9.4.

Section 6.8 Revisions to an Approved Plat

No changes, modifications, or other revisions that alter the plat or conditions attached to an approved subdivision plan shall be made unless the proposed revisions are first resubmitted to the Development Review Board and the Board approves such revisions after public hearing. In the event that such subdivision plan revisions are recorded without complying with this requirement, the revisions shall be considered null and void.

ARTICLE 7. SUBDIVISION STANDARDS

Section 7.1 Application of Standards

(A) The Development Review Board shall evaluate any minor or major subdivision of land as defined in Article 10 in accordance with the standards set forth in this Article. Where these standards conflict with other provisions of these regulations, the more stringent shall apply.

(B) Pursuant to the Act and subsection 6.1(D), the Board may waive subdivision review standards, subject to appropriate conditions. Any request for a waiver shall be submitted in writing by the applicant at the time of application. In granting such waivers, the Board shall require such conditions that will, in its judgement, substantially secure the objectives of any waived or varied requirements.

(C) The Board may require the subdivider to submit additional information to determine conformance with the following standards. The Board may also, in light of findings based on these standards, require the modification or phasing of a proposed subdivision, or measures to avoid or mitigate any adverse impacts.

(D) The Board may require from the subdivider a performance bond in an amount sufficient to cover the full cost of constructing any public improvements that the Board may require in approving a subdivision under these standards. Such performance bond shall be submitted prior to final plan approval under Section 6.4.

Section 7.2 General Standards

(A) **Conformance with the Town Plan & Other Regulations.** Subdivisions of land shall conform with all applicable requirements of these regulations, the policies of the Bennington Town Plan as most recently adopted, the municipal capital budget and program and all other municipal bylaws and ordinances currently in effect.

(B) **Density & Lot Lay-out.** Density, lot size and layout shall conform to zoning district standards, and general standards pertaining to frontage, lot and yard requirements, unless modified or waived by the Development Review Board under planned residential and planned unit development provisions, in accordance with Article 8. In addition:

- (1) Lower densities of development may be required by the Board based on site limitations.
- (2) Lot layout shall be appropriate for the intended use, and reflect the purpose of the district in which the lots are located.
- (3) Corner lots shall have sufficient width to permit a front yard setback from each road.
- (4) Side lot lines shall be generally at right angles to straight roads, or radial to curved roads.
- (5) Lots with irregular shapes (curves, jogs, dog-legs, etc.) shall not be created unless warranted by conditions of topography, the location of natural features, or existing roads.
- (6) Boundary adjustments involving one or more non-conforming lots may be permitted providing the boundary adjustment does not increase the degree of non-conformance.

(C) **Establishment of Development Envelopes.** All lots shall have a designated development envelope to identify and limit the location of principal and accessory structures, parking areas, and associated site development (excluding road and utility rights-of-way or easements) on one or more portions of a lot. The

size and shape of the development envelope shall at minimum be determined by district setback requirements; unless otherwise specified in these regulations. The Development Review Board may require the identification of specific building footprints if, in their judgement, such information is necessary to meet the standards set forth in these regulations.

(D) Disclosure of Subsequent Development Plans. Whenever subdividers submit a proposal for development on a minor portion of a parcel, they shall provide a general indication of the intended use of the remaining portion of the land in accordance with the following requirements.

- (1) Such indication shall include at minimum a written description of the proposed type and intensity of use, access, and schedule for the development of the remainder of the parcel.
- (2) For major subdivisions, including but not limited to phased and/or planned unit developments, a master plan for the entire parcel may be required which identifies fragile features and, if applicable, rural conservation resources; proposed development areas; the general location of proposed infrastructure, including road, utility and green space corridors; and an estimate of the type, density, and timing of future development.

Section 7.3 Protection of Natural/Fragile Features

(A) Suitability of Land for Subdivision. All land to be subdivided shall, in the judgement of the Development Review Board, be of such a character that it can be used for intended purpose(s), as stated in the application, without danger to public health or safety, the environment, neighboring properties, the character of the area or district in which it is located.

(B) Wetlands, Floodplains & Surface Waters. Subdivision boundaries, lot layout and development envelopes shall be located and configured to avoid any adverse impact to wetlands, floodplains and surface waters, including streams, rivers and all shoreline as defined in Article 10. Methods for avoiding such impacts include but may not be limited to the following:

- (1) Lot boundaries shall be configured to prevent the fragmentation of these features unless appropriate legal mechanisms are put in place to ensure permanent protection.
- (2) Development envelopes and the layout of roads, driveways and utilities shall be located and sized to exclude these features, except as provided under subsection (3), below.
- (3) Buffer areas sufficient in width to protect the identified feature(s) shall be designated in accordance with Section 3.14; disturbance within buffer areas shall be limited to the standards set forth in subsection 3.14(D).
- (4) Notwithstanding the standards set forth in Section 3.14, the Board may waive or modify standards related to the protection of wetlands and surface waters within the Downtown (D) District provided that:
 - a. The waiver or modification will result in a more efficient use of land and will better maintain the purpose and character of the district than would otherwise be possible without the waiver or modification; and
 - b. Appropriate steps are taken to reduce the impact of the waiver or modification of the standards on the identified feature through such mitigation measures that may be practical.

(C) **Natural Areas.** Subdivision boundaries, lots and development envelopes shall be located and configured to avoid adverse impacts to important natural areas identified in the Bennington Town Plan, by the Vermont Natural Heritage Program, or through site investigation. For any subdivision encompassing all or a portion of an identified natural area, the Development Review Board shall require the submission of a management plan to identify potential impacts to the identified natural area(s) and land management techniques that will be implemented to ensure the long term protection of the resource.

(D) **Historic & Cultural Resources.** Subdivision boundaries, lot layout and development envelopes shall be located and configured to minimize adverse impacts to historic and archaeological sites and resources identified in the Bennington Town Plan, by the Vermont Division for Historic Preservation, or through site investigation. Methods to minimize adverse impacts include but may not be limited to the following:

- (1) Historic features, including stone wall and cellar holes, should be preserved and integrated into the subdivision design (e.g., driveways may follow stone walls) to the extent practical.
- (2) Prior to development on sites that have been identified as being archaeologically sensitive in the Town Plan or through site investigation, the Development Review Board may require a site assessment to identify the presence and relative value of archaeological resources on the site, and to document the archaeological resource and/or recommend strategies for its protection.
- (3) The subdivision of land shall be designed to maintain the historic context of the site, as defined by historic structures located on the property and in the immediate vicinity of the site, and to minimize the impact of new development on the historic and architectural integrity of historic resources. Subdivision boundaries, lots and the location of development envelopes should be configured to reflect the historic settlement pattern of nearby historic structures or clustered to minimize the contrast between contemporary and historic development.

(E) **Steep Slopes.** Development envelopes shall be located to exclude these features. Any development envelope which encompasses land with a gradient greater than 15% shall meet the standards set forth in Section 3.12. Excavation, filling and development on slopes in excess of 20% shall be prohibited.

Section 7.4 Preservation of Rural Character

(A) **Subdivisions outside the Urban Growth Center.** Outside of the Urban Growth Center, as designated in the *Bennington Town Plan*, subdivisions shall be designed and laid out to achieve the purpose and desired settlement pattern of the district in which they are located. To that end, subdivisions outside of the urban core shall meet the following standards to protect identified “rural conservation resources,” in addition to the other provisions of these regulations.

(B) **Prominent Hillside & Ridgelines.** Subdivision boundaries, lots and development envelopes shall be located and configured to avoid the placement of structures in locations with high visibility from surrounding areas, especially public roads and important community vantage points (e.g., public parks and recreation areas, historic sites). Methods for avoiding such adverse impacts include but may not be limited to the following:

Article 7. Subdivision Standards

- (1) Development Envelopes shall be located and configured so that the height of any structure placed on the site after subdivision will not visually exceed the height of the adjacent tree canopy serving as the visual backdrop to the structure, and shall be located down-slope of ridgelines and prominent hills.
- (2) On wooded sites, forest cover shall be maintained or established adjacent to proposed structures to interrupt the facade of buildings, provide a forested backdrop to structures, and/or soften the visual impact of new development as viewed from public roads and properties. The Board shall consider the location of proposed structures relative to existing vegetation, and may require additional planting and/or limit the amount of clearing adjacent to proposed development to provide screening and maintain a forested backdrop. A tree cutting, landscaping and/or forest management plan may be required to ensure that ridges and hill tops remain wooded, and trees remain standing immediately adjacent to buildings to visually interrupt facades and reduce reflective glare, as viewed from off site. Such a plan shall address specific measures to be taken to ensure the survival and, if necessary, replacement of designated trees during or after site development and the installation and maintenance of all site improvements.
- (3) On ridgelines and prominent hillsides that have been cleared prior to subdivision, the Board shall consider the location of development envelopes and associated development relative to potential visibility and the availability of less visible locations on the site. The location of development shall be restricted to minimize visibility as viewed from town roads and properties; and additional landscaping may be required to screen development and reduce visibility.
- (4) Access roads and utility corridors, shall use or share existing accesses and rights-of-way where feasible; follow existing contours as closely as possible to achieve angled ascents, and avoid areas of steep slope.

(C) **Wildlife Habitat.** Subdivision boundaries, lots and Development Envelopes shall be located and configured to minimize adverse impacts on critical wildlife habitat, including travel corridors, identified in the Bennington Town Plan, by the Vermont Department of Fish & Wildlife, or through site investigation. Methods for avoiding such adverse impacts include but may not be limited to the following:

- (1) Development envelopes shall be located to exclude identified wildlife habitat, including deer wintering areas and other critical habitats. A buffer area of adequate size shall be established to ensure the protection of critical habitat. In determining the appropriate buffer area, the Development Review Board may consult with the Vermont Fish and Wildlife Department.
- (2) To avoid the fragmentation of wildlife habitat, including core habitat and connecting travel corridors, the Board may require the submission of a wildlife habitat assessment, prepared by a wildlife biologist or comparable professional, to identify the function and relative value of impacted habitat and provide recommended management strategies to maintain or enhance those values and function. The Board may also consult with Vermont Fish and Wildlife Department staff prior to issuing a decision.
- (3) Roads, driveways and utilities shall be designed to avoid the fragmentation of identified natural areas and wildlife habitat.

(D) **Forest Resources.** Subdivisions of land located within the Forest Reserve District shall, to the extent practical, be configured to allow for ongoing forest management of the parcel after subdivision. Lot

boundaries and development envelopes should be laid out to avoid unnecessary fragmentation of distinct timber stands, and provision for forest management access should be a consideration of the final plan.

(E) **Farmland/Open Land.** Subdivision boundaries, lots and development envelopes shall be located and configured to avoid adverse impacts to prime and statewide agricultural soils, other productive farmland and open land. Methods for avoiding such adverse impacts include but may not be limited to the following:

- (1) Development envelopes shall be located at field and orchard edges or, in the event that no other land is practical for development, on the least fertile soils in order to minimize the use of productive agricultural land, impacts on existing farm operations, and disruption to the scenic qualities of the site.
- (2) Buildings and associated building lots should be clustered to avoid the fragmentation of productive farmland/open land.
- (3) Vegetated buffer areas may be required to buffer agricultural operations from other uses to minimize land use conflicts.
- (4) Access roads, driveways and utility corridors shall be shared to the extent feasible; and, where sites include linear features such as existing roads, tree lines, stone walls, and/or fence lines, shall follow these to minimize the fragmentation of agricultural land and visual impacts.

(F) **Other Scenic Resources.** Subdivision boundaries, lots and development envelopes shall be located and configured to avoid adverse impacts to scenic resources, including those identified in the Bennington Town Plan. Methods for avoiding such adverse impacts include but may not be limited to the following:

- (1) Subdivisions within view of scenic roads, as identified in the Bennington Town Plan, shall be designed to avoid adverse impact to the scenic resources.
- (2) Development envelopes located within view of scenic roads, including all state highways, or within scenic viewsheds shall be located to avoid prominent placement within the foreground or background of the viewshed; rather, development should be placed within the middle ground of the view to the extent practical.
- (3) When evaluating the impact of proposed subdivisions on scenic resources, the Development Review Board may consider the Vermont Agency of Natural Resources publication *Vermont's Scenic Landscapes: A Guide for Growth and Protection* (1991).

(G) **Open Space.** Subdivisions outside of the urban core should provide for open space in accordance with the standards set forth in Section 7.11.

Section 7.5 Urban Settlement Patterns (within Urban Growth Center)

(A) **Subdivisions within the Urban Growth Center.** Within the urban growth center, as designated in the *Bennington Town Plan*, subdivisions shall be designed and laid out to achieve the purpose and desired settlement pattern of the district in which they are located. To the extent feasible, subdivisions shall:

Article 7. Subdivision Standards

- (1) Maintain and extend desired settlement patterns, including lot area and configuration, road layout, and building locations, for the neighborhood or district in which they are located;
- (2) Incorporate the following features in the subdivision design:
 - i. pedestrian orientation of the site, including the pattern building envelopes;
 - ii. functional and visual integration with neighboring properties, especially if the site is adjacent to historic sites, districts or neighborhoods;
 - iii. well defined streetscapes and an interconnected network of streets; and
 - iv. sidewalks and pathways to facilitate pedestrian circulation.
- (3) Establish well defined streetscapes, characterized by an interconnected network of streets bounded by a combination of sidewalks, street trees and consistent building setbacks.
- (4) Include adequate provision for open space and common areas, where practical, which should serve as a central organizing feature within the subdivision, such as a green or park.
- (5) Promote in-fill development at a scale and density consistent with standards for the district within which the parcel is located.

Section 7.6 Community Services and Facilities

(A) **Municipal Facilities and Services.** A proposed subdivision shall not create an undue burden on municipal facilities or create an unreasonable demand for public services. The Development Review Board will consider whether the anticipated tax return from the proposed development is equal to or exceeds the cost of anticipated municipal services and facilities directly attributable to the proposed development, and whether the proposed development will place an unreasonable burden on the ability of local governmental units to provide municipal, governmental, or educational services and facilities. A fiscal impact analysis and/or the phasing of development in accordance with a duly adopted capital budget and program may be required as appropriate, the cost of which is to be borne by the applicant.

(B) **Fire Protection Facilities.** Adequate water storage or distribution facilities for fire protection within the subdivision shall be provided to the satisfaction of the Development Review Board. Where appropriate, or where required by the Board, fire hydrants, dry hydrants, or ponds shall be installed by the subdivider. The applicant shall submit documentation from the Bennington (Rural or Village) Fire Department as to the adequacy of emergency access and fire protection facilities.

(C) **Parks & Playgrounds.** The Development Review Board, pursuant to the Act] may require the dedication of up to 15% of the plat area for a park, playground, trail or pathway or other recreation purposes for use by residents of the subdivision. All such land shall be of a reasonable character for park or other recreational uses, and included as designated open space under Section 7.11.

Section 7.7 Water Supply & Wastewater Disposal

(A) **Connection to Municipal Facilities.** All developments within the Urban Growth Center and the Rural Residential District shall connect to Municipal Water and/or Sewer systems, and make upgrades to such systems that are deemed necessary by the Town of Bennington Water and Sewer Department, unless such connection(s) is discouraged or prohibited in the Town Plan. Connections to municipal water and/or sewer systems may be waived in the RR District if the Development Review Board determines that such

Article 7. Subdivision Standards

connections are not available. Such connections shall not be allowed for new development in the Rural Conservation, Forest and Agriculture Districts.

(B) **Water Supply.** Water supply systems shall be designed and built to meet all applicable state and municipal requirements. There shall be no adverse impact on existing water supplies from the proposed water supply for the subdivision. The Development Review Board shall require evidence that adequate water supply is available through an existing or proposed system prior to granting final approval. The Board may require as a condition of approval, or as a condition of issuing zoning permits, that the subdivider provide the results of water samples tested by the Vermont Health Department.

(C) **Wastewater Disposal Capacity.** Wastewater systems shall be designed and built to meet all applicable state and municipal requirements, in addition to the following: Options for wastewater disposal include:

- (1) **On-Site Disposal Systems.** Individual on-site septic systems shall meet all municipal regulations for design, installation and maintenance, including any standards specific to a particular zoning district as set forth in Article 2.
- (2) **Connection to Existing System.** Where connection to an existing wastewater system is required, the subdivider shall provide evidence as to the adequacy of the system to meet the needs of the proposed development. The subdivider will be required to provide such pumping and other facilities as may be necessary. The Board also may require that the subdivider provide, or to have installed, at his expense, larger lines, pumping, storage and other facilities outside of the subdivision, if required specifically to meet the requirements of the proposed development.

(D) **Waivers.** In the event that the subdivider is proposing the creation of a lot(s) not requiring water or wastewater systems, the Board may waive all provisions of these regulations pertaining to water and wastewater disposal, providing that the plan recorded with the Town Clerk clearly indicates that the intended use of the lot(s) will not require water or wastewater disposal systems, and the subdivider submits an affidavit to the Board stating his/her intent which will be incorporated as a condition of subdivision approval.

Section 7.8 Roads & Pedestrian Access

(A) **Applicability of Road Standards.** The following standards apply to all proposed public roads and to private roads serving four or more lots. In addition, these standards may be applied to private roads serving three or fewer lots when the Development Review Board determines such standards are necessary to provide suitable access to, or accommodate, anticipated future subdivision. Acceptance of private roads by the town is subject to the approval of the Bennington Selectboard pursuant to state law for the laying out of public rights-of-way. Construction of roads to these standards in no way ensures such acceptance.

(B) **Road Design.** All roads serving proposed subdivisions shall generally conform to the dimensional and geometric design standards for local roads and streets contained within the *Vermont State Standards for the Design of Transportation Construction, Reconstruction and Rehabilitation on Freeways, Roads and Streets*, dated October, 1997, or as most recently amended. Minimum design standards include the following:

- (1) Rights-of-way for all roads shall be a minimum of 50 feet in width.

Article 7. Subdivision Standards

- (2) To ensure adequate safety and service, the width of travel lanes and shoulders shall be based on average daily traffic (ADT) and design (anticipated posted) speeds. The design standards for urban and village roads (roads serving any subdivision located inside of the urban core as defined in the Bennington Town Plan) shall be appropriate to serve the anticipated traffic. Generally, travel lane width shall be from seven to eleven feet in width, with narrower travel lanes appropriate for residential areas with low traffic volume and little or no truck traffic. Wider lanes may be required for roads with moderate and high traffic volumes and truck traffic, including roads serving commercial and industrial developments. New roads located within historic neighborhoods or districts shall be compatible with the historic character of the district.
- (3) Roads located within the urban core shall include granite or concrete curbing offset between one and two feet from the travel lane, unless on-street parking is allowed or required by the Board, in which case the curb shall be setback between eight and nine feet from the travel lane.
- (4) To ensure adequate safety and service, the width of travel lanes and shoulders shall be based on average daily traffic (ADT) and design (anticipated posted) speeds. The design standards for rural roads (roads serving any subdivision located outside of the urban core as defined in the Bennington Town Plan) are included in Table 7.1. standards set forth in Table 7.1 shall be considered the maximum standards, although the Development Review Board may modify such standards in situations in which such modification is warranted to ensure pedestrian and vehicular safety, and when the strict application of the standards would adversely impact the scenic character and/or natural resources or features located on the site.

Table 7.1 Lane and Shoulder Widths for Rural Roads							
Design Volume (ADT)	0-25	25-50	50-100	100-400	400-1500	1500-2000	2000+
Design Speed (mph)	Width of Lane/Shoulder (ft)						
25	7/0	8/0	9/0	9/2	9/2	10/3	11/3
30	7/0	8/0	9/0	9/2	9/2	10/3	11/3
35	7/0	8/0	9/0	9/2	9/2	10/3	11/3
40	7/0	8/0	9/2	9/2	9/2	10/3	11/3
45	---	---	9/2	9/2	9/2	10/3	11/3
50	---	---	9/2	9/2	10/2	10/3	11/3

Source: Vermont State Standards for the Design of Transportation Construction, Reconstruction and Rehabilitation on Freeways, Roads and Streets, October 1997.

- (5) Lower design and posted speeds may be considered to avoid and/or minimize impacts to historic, architectural, scenic, natural or other resources; to avoid excess costs of construction; or to better comply with the town plan.
- (6) Wider travel lanes and/or shoulders may be required as appropriate to road function (i.e., for on-street parking, collector and arterial roads), or to safely accommodate shared use by bicycles.

- (7) All roads (including roadway extensions) serving four or more houses must have at least two means of ingress and egress (Permanent dead end roads and cul-de sacs shall be prohibited). Roadway extensions that increase the number of parcels served by a road to 4 or more parcels shall comply with this requirement. However, a dead end road serving four or fewer houses may be permitted if deemed necessary by the Board due to physical site limitations or safety considerations. No such dead end road shall be permitted without a suitable turn around at its terminus ("T" or "Y" configurations suitable to topography are allowed, as well as a cul-de-sac with a radius of not less than 30 feet may also be considered as appropriate).
- (8) Roads shall logically relate to topography to minimize site disturbance, including the amount of cut and fill required, and to produce usable lots, reasonable grades and safe intersections in relation to the proposed use of the land to be served by such roads. Road grades should be consistent with local terrain. Maximum road grade shall not, for any 50 feet section, exceed an average grade of 10%.
- (9) Roads shall be designed and laid out to:
- (a) maximize connectivity within the subdivision and to adjoining parcels and road networks,
 - (b) avoid adverse impacts to natural, historic, cultural and scenic resources;
 - (c) be consistent with existing road patterns within the district or neighborhood within which the subdivision is located;
 - (d) follow existing linear features, such as utility corridors, tree lines, hedgerows and fence lines, and
 - (e) avoid fragmentation of farmland and other rural conservation resources identified under Section 7.4.

(C) Road Construction Standards. Road construction, including specifications relating to the crown, grade, sub-base and surfacing, shall conform to the Vermont Agency of Transportation's *Standard A-76*, as most recently amended.

(D) Intersections. In addition to access requirements under Section 3.3, a new or relocated road shall be located so that:

- (1) Minimum corner and sight stopping distances are provided in relation to design speed and road type, in accordance with the standards set forth in the Vermont Agency of Transportation's *Vermont State Standards for the Design of Transportation Construction, Reconstruction and Rehabilitation on Freeways, Roads and Streets*, dated October 1997, or as most recently amended.
- (2) It intersects the existing road at an angle that is as close to 90 degrees as possible.
- (3) The intersection grade does not exceed 3% for a distance of 35 feet from the edge of the travel lane.
- (4) No structure or planting is situated to impair corner visibility (see Section 3.3).

(E) Drainage & Stormwater. A stormwater drainage system shall be provided which is designed to control and accommodate stormwater collected on all proposed roads and/or parking areas in accordance with Section 7.9.

(F) Coordination with Adjoining Properties. The arrangement of roads and driveways in the subdivision shall provide for the continuation of roads of adjoining subdivisions and for proper projection of roads through adjoining properties which are not yet subdivided, in order to make possible necessary

Article 7. Subdivision Standards

fire protection, movement of traffic and the construction or extension of needed utilities and public services. Where, in the opinion of the Development Review Board, topographic or other conditions make such continuance undesirable or impracticable, the above conditions may be modified.

(G) **Highway Access.** In accordance with statute and Section 3.3, all road access (i.e. curb-cuts) shall be subject to the approval of the Vermont Agency of Transportation in the case of state highways and the Town of Bennington in the case of town roads. Access to all lots created by subdivision, and to all buildings or other land development located thereon, shall be only from a permitted access road or driveway. All subdivisions shall meet access management requirements set forth in Section 3.3.

(H) **Traffic & Road Capacity.** Traffic to be generated by the proposed subdivision shall not result in unreasonable traffic congestion or exceed the capacity of roads and intersections in the vicinity of the subdivision. The Board may request the preparation of a traffic impact study to identify impacts and mitigation measures necessary to ensure road safety and efficiency, the cost of which is to be borne by the applicant. The implementation of mitigation measures, including required road improvements necessitated by the subdivision, shall be the responsibility of the applicant as follows:

- (1) Where an existing access road is inadequate or unsafe, the Development Review Board may require the subdivider to upgrade the access road to the extent necessary to serve additional traffic resulting from the subdivision and to conform to these standards.
- (2) In situations where a development may require the realignment, widening or an increase in the capacity of an existing road, or where the town plan or capital program indicates that such improvements may be required in the future, the subdivider may be required to reserve land for such improvements.
- (3) In the case of subdivisions requiring construction of new roads, any existing road that provides either frontage to new lots or access to new roads shall meet these standards.
- (4) Where a subdivision requires expenditures by the Town to improve existing road(s) to conform to these standards, the Development Review Board shall not approve such subdivision until the Select Board certifies that funds for the improvements have been ensured. The subdivider may be required to contribute to any or all of the expenses involved with road improvements necessitated by the project.

(I) **Road Names & Signs.** Roads shall be named in accordance with the Bennington Road Naming Policy, and shall have specific historic, cultural or geographical relevance. Said names shall be identified on signs designed and located in accordance with the town policy, and shall be clearly depicted on the final plat. Road name signs shall be installed by the applicant.

(J) **Driveways.** Driveways serving three or fewer lots shall meet the following, in addition to the standards set forth in Section 3.3:

- (1) Driveways providing access to a lot without frontage on a public road shall have a 50' right-of-way (clear of any structures or other obstructions) to the lot from the public street. In such cases, the driveway shall be deemed a public street only for the purpose of determining lot dimensions.

Article 7. Subdivision Standards

- (2) At a minimum, all driveways servicing 2 or 3 parcels shall be constructed to Agency of Transportation standard A-21 for Class 3 Town Highway (unpaved) and have (at least) a “T” or “Y” turnaround.
- (3) Driveways should be laid out to follow existing linear features, such as utility corridors, tree lines, hedgerows and fence lines; to avoid the fragmentation of farmland and other rural conservation resources identified under Section 7.4, and to avoid adverse impacts to natural, cultural and scenic features.
- (4) The use of common or shared driveways is encouraged and may be required in order to minimize the number of access points in accordance with Section 3.3.

(K) **Modification of Road Standards.** In the case of unusual topographic conditions or other circumstances which would make the strict adherence to these standards a substantial hardship, the Board may modify the strict application of one or more of these standards providing the applicant can demonstrate that the proposed road is accessible by emergency response vehicles, does not pose any threat to the safety of motorists or pedestrians, will not result in unreasonable maintenance requirements for landowners, and is designed in a manner that is consistent with other applicable standards of these regulations.

(L) **Parking & Transit Stops.** Parking areas shall be included within designated development envelope areas, in accordance with the requirements of Section 3.10. For major subdivisions located on existing or proposed public transit routes, sheltered transit stops, which may include centrally located park and ride areas and bike racks to serve the development, will be incorporated in subdivision design. Major residential subdivisions shall also incorporate one or more sheltered school bus stops as appropriate. The design and location of such shelters shall be subject to Development Review Board approval (such shelters are not subject to district setback requirements).

(M) **Pedestrian Access.** Unless specifically waived by the Development Review Board, the Board shall require pedestrian rights-of-way to facilitate pedestrian circulation within the subdivision and to ensure access to adjoining properties or uses or public facilities.

- (1) Unless specifically waived, the Board may require, in order to facilitate pedestrian access from a subdivision to schools, parks, playgrounds, public facilities, or other nearby roads, sidewalks and/or trails, perpetual unobstructed easements at least 20 feet in width. Easements shall be indicated on the plat.
- (2) For subdivisions located within the urban growth center as designated in the Bennington Town Plan, sidewalks shall be required along internal streets of subdivisions, arteries within or bordering the subdivision, and to connect to existing sidewalks on adjoining properties. Sidewalks shall be required on both sides of all new roads and on at least one side of all existing roads accessing the property and/or providing a connection to new sidewalks with existing sidewalks.

(N) **Legal Requirements.**

- (1) Every subdivision plat shall show all proposed road and pedestrian rights-of-way, as required under these regulations, regardless of whether the proposed right-of way is intended to be accepted by the town. In the event that the right-of-way is not intended for acceptance by the town, the mechanism

by which the right-of-way is to be maintained, owned and/or conveyed shall be clearly documented through an easement recorded in the Bennington Land Records

- (2) Documentation and assurance shall be provided that all proposed roads and rights-of-way will be adequately maintained either by the subdivider, a homeowners' association or through other legal mechanisms. Such documentation shall be in a form approved by the Board and filed in the Bennington Land Records. The Board may require applicants to pay for review of legal documents by the Town's Attorney.

Section 7.9 Stormwater Management & Erosion Control

(A) Temporary and permanent stormwater management and erosion control measures shall be incorporated into subdivision design and layout to control surface runoff, sedimentation and water pollution on-site and downstream from the proposed subdivision. Factors to be considered in determining the types of controls necessary shall include pre-development site and runoff conditions, vegetation and ground cover, slope and drainage patterns, soil types (i.e., hydric soils), the percentage of land covered in impermeable surfaces, types of pollutants generated, distances to streams and other surface waters, and impact on adjoining properties.

(B) The Development Review Board may require the preparation and implementation of stormwater management and/or sedimentation and erosion control plans and associated analyses to ensure that site improvements, including excavation, road and driveway construction and site clearing and grading, will not unduly impact neighboring properties or surface waters. Such plans, if required, shall be prepared by a licensed Vermont engineer, be based upon Best Management Practices (BMPs) for managing stormwater and controlling erosion, as defined by the Vermont Agency of Natural Resources, and shall include provisions for the inspection and long-term maintenance of stormwater management and erosion control facilities.

(C) If a subdivision will result in changes in flow type, flow channel, increased stormwater discharge or flooding in areas not owned or controlled by the applicant, the applicant must secure appropriately sized easements for all areas of flow or flooding on affected properties. Suitable land use restrictions will be included in easements to prevent any activity that may affect drainage across the area.

(D) Areas exposed during construction shall be protected in accordance with standards of the Vermont Department of Environmental Conservation, the U.S. Natural Resource Conservation Service or other appropriate regulatory body. Permanent vegetation and erosion control measures shall be established according to a schedule as required by the Development Review Board. The Board also may require the phasing of construction to reduce the amount of land disturbed at any one time, and may stipulate deadlines for the installation of temporary and permanent erosion control or stabilization measures.

Section 7.10 Utilities

(A) **Location.** All utilities systems, existing and proposed, throughout the subdivision shall be shown on the final plat, and be located as follows:

- (1) All utility systems, which may include but not be limited to electric, gas, telephone, fiber optics, and television cable, shall be located underground throughout the subdivision, unless deemed unreasonable and prohibitively expensive by the Development Review Board.

- (2) The subdivider shall coordinate subdivision design with the utility companies to insure adequate and suitable areas for under or above ground installation, both for the proposed subdivision, and areas adjacent to the subdivision.
- (3) Utility corridors shall be shared with other utility and/or transportation corridors where feasible, and be located to minimize site disturbance and shall meet all requirements for the protection of fragile features under Section 7.3 and the preservation of rural character under Section 7.4.

(B) **Easements.** Easements of sufficient width shall be provided so as to serve both the proposed subdivision and existing and anticipate development outside the subdivision. Such easements shall be shown on the final plat.

Section 7.11 Open Space & Common Land

(A) **Intent.** Subdivisions shall be designed to preserve open space areas and/or common land for parks, recreation, greenways, trails designated in the Town Plan, viewshed and historic site protection and/or to preserve fragile features identified under Section 7.3 and rural conservation resources under Section 7.4.

(B) **Preservation of Open Space.** Provision shall be made for the preservation of open space. The location, size and shape of lands set aside to be preserved for open space shall be approved by the Development Review Board, in accordance with the following:

- (1) Designated open space may include the portion of a single lot outside of the development envelope which is characterized by one or more of the above referenced features and/or may encompass the contiguous boundaries of the above referenced feature located on multiple lots outside the development envelope of such lots.
- (2) The location, shape, size and character of the open space shall be suitable for its context and intended use. Planned residential and planned unit developments must also meet open space requirements under Article 8.
- (3) Provisions shall be made to enable open space designated for agriculture and forestry to be used for these purposes. Management plans for farmland, forests, wildlife habitat, natural areas, shorelands and buffers may be required by the Development Review Board as appropriate to ensure their long-term protection and management.
- (4) Areas preserved for agricultural and forestry use should be of a size that retains their eligibility for available tax abatement programs.
- (5) Open space land shall be located so as to conform with and extend existing areas sharing similar characteristics or natural features and resources on adjacent parcels.
- (6) Sewage disposal areas and utility and road rights-of-way or easements, access and parking areas shall not be counted as open space areas, except where the applicant can prove, to the satisfaction of the Development Review Board, that they will in no way disrupt or detract from the values for which the open space is to be protected. Stormwater management practices or facilities that require, incorporate or establish open space areas may be counted as open space.
- (7) Open space shall be designed to accommodate trails and pathways identified in the Town Plan.

(C) **Creation of Common Land.** Land held in common for the preservation and maintenance of open space; the maintenance and protection of shared facilities, such as community wastewater systems, community water supplies, recreation or community facilities, or recreation, including road and trails rights-of-way, may be held under separate ownership from contiguous parcels and shall be subject to the legal requirements set forth below.

(D) **Legal Requirements.** The Development Review Board may require that protected open space be dedicated, either in fee or through a conservation easement approved by the Board, to the Town of Bennington, a community association comprising all of the present and future owners of lots in the subdivision, and/or a non-profit land conservation organization. At a minimum, designated open space shall be indicated with appropriate notation on the final plat. Land held in common shall be subject to deed restrictions stipulating the permitted and restricted use of such lot, and establishing the person or entity responsible for maintenance and long term stewardship. All costs associated with administering and maintaining open space and/or common land shall be the responsibility of the applicant and subsequent land owners.

Section 7.12 Signs

Signs will be regulated in accordance with the Bennington Sign Ordinance, however, the Development Review Board may place more restrictive conditions regarding the size, height, number, illumination and location of signs than those specified under that ordinance or by state regulations in order to maintain the visual character of the area and ensure the safety and efficiency of pedestrian and vehicular circulation.

ARTICLE 8. PLANNED RESIDENTIAL DEVELOPMENTS (PRDs) & PLANNED UNIT DEVELOPMENTS (PUDs)

Section 8.1 Purpose

(A) In accordance with the Act, Planned Residential Developments (PRDs) and Planned Unit Developments (PUDs) are encouraged in designated districts to:

- (1) increase density, reduce lot size and/or facilitate the adequate and economical provision of streets and utilities in a cost effective manner;
- (2) cluster development to avoid the fragmentation of productive forest, farmland and wildlife habitat, conserve energy and enhance and preserve Bennington's rural character as described in the Bennington Town Plan;
- (3) accommodate new development in a manner that maintains the town's historic settlement patterns, and protects significant natural, cultural and scenic features, as described in the Bennington Town Plan;
- (4) provide opportunities for a diversity of housing types, and promote affordable housing in appropriate locations;
- (5) allow for compact, village-scale mixed-use development within growth centers designated in the Bennington Town Plan; and/or,
- (6) encourage creative design and layout of development and an efficient use of land.

(B) To achieve the objectives set forth in this section, the Development Review Board may modify applicable general area and general dimensional requirements required elsewhere in these regulations simultaneously with the approval of a subdivision plan and associated plat. Such modifications shall be made in accordance with the following provisions.

Section 8.2 Coordination with Other Review Processes

(A) Applications for PRDs and PUDs shall be reviewed simultaneously with application for major subdivision review in accordance with the requirements and procedures set forth in Article 6.

(B) Approval granted under this section for a PUD or PRD that involves the development of one or more uses requiring Development Review Board approval in accordance with Article 5 shall not exempt the proposed development from both review processes, although applications for PRDs or PUDs may be reviewed concurrently with the standards and procedures set forth in Article 5.

(C) At the time of PRD or PUD approval, the Development Review Board shall include in its decision a clear indication of all approved modifications of development standards, and may include conditions related to the location, scale, density, intensity and/or overall design of future development within the PRD or PUD.

Section 8.3 Planned Residential Developments (PRDs)

(A) **Applicability.** Planned Residential Development (PRD) provisions may be applied, at the request of the applicant, to any sized parcel to be subdivided within any district, with the exception of the Forest, POS, Agricultural, Industrial and Planned Airport Districts. Any change to an approved PRD shall require an amendment to the prior approval in accordance with this section. PRDs apply only to residential developments.

Article 8. Planned Residential & Planned Unit Developments

(B) Application Requirements. Applications for PRD shall be submitted simultaneously with applications for major subdivision review in accordance with the requirements set forth in Article 6. In addition to the information required for sketch plan review under Section 6.3, applications for PRDs must include the following:

- (1) A statement setting forth the nature of all proposed modifications or changes of existing land use and development regulations and the standards and criteria which the applicant proposes for the development, including standards for the design, bulk and spacing of buildings and sizes of lots and open spaces; and
- (2) A brief summary of the project and how it meets the standards set forth in this section.

(C) General Standards. In addition to the subdivision standards set forth in Article 7, PRDs shall meet the following:

- (1) The overall density of the project shall not exceed the number of dwelling units permitted, in the Development Review Board's judgment, if the land were subdivided into lots in accordance with the standards for the district(s) in which the land is situated, except where specifically permitted in these regulations and as permitted below:
 - a. a density bonus of up to 25% of the permitted overall density may be permitted in any district in instances in which not less than 75% of the total acreage involved is set aside as open space in accordance with Section 7.11; or
 - b. a density bonus of 25% of the permitted overall density may, in accordance with the Act, be permitted in instances in which not less than 20% but not more than 30% of the total number of dwelling units created are affordable housing units, as defined in Article 10.
- (2) The PRD shall reflect an effective and unified treatment of the development possibilities of the project site. A greater concentration or intensity of residential development may be located within some portion(s) of the site provided there is an offset by a lesser concentration in another portion(s) or an appropriate reservation of open space on the remaining land in accordance with Sections 7.11.
- (3) The PRD shall be consistent with the goals and policies of the *Bennington Town Plan* and all applicable subdivision standards set forth in Article 7 and all supplemental standards for the district in which the proposed PRD is located, as established in Article 2.

(D) Rural Standards. In addition to the general standards set forth under subsection (C), PRDs within the Rural Residential (RR), Rural Conservation (RC) and Agricultural (A) Districts shall be designed to blend new development into the historic, agricultural landscape and maintain important natural, scenic and cultural resources as described in the *Bennington Town Plan*. To this end, PRDs shall be designed in accordance with the standards described below:

- (1) PRDs should replicate Vermont's traditional agrarian landscape, characterized by a variety of building scales reminiscent of farmsteads and small hamlets with a well-defined edge between the clustered dwellings and surrounding open space.
- (2) A minimum of 50% of the parcel shall be set aside as open space in accordance with section 7.11. Such open space should, to the extent practical, maximize the preservation of rural resources identified in Section 7.4.

Article 8. Planned Residential & Planned Unit Developments

(3) Within the Rural Residential District, each dwelling unit shall have a separate and distinct exterior entrance.

(4) Two-family and multi-family dwellings are not permitted within the Rural Conservation District.

(E) **Urban Growth Center Standards.** In addition to the general standards set forth under subsection (C), PRDs within the urban growth center, as designated in the *Bennington Town Plan*, shall be designed so that the layout and configuration of the lots and placement of buildings are consistent with the pattern and scale of development characteristic of historic residential neighborhoods, particularly areas characterized by contiguous buildings listed on the *Vermont Historic Sites & Structures Survey*. At a minimum, PRDs located within the urban core shall be designed in the following manner:

(1) Building envelopes should be established so that buildings front upon and are oriented toward roads or common areas.

(2) Roads and driveways shall be laid out in a manner that reflects village-scale street design characterized by narrow travel lanes and a well defined streetscape comprised of street trees, sidewalks and/or a consistent building setback.

(3) Adequate provision for open space and common areas shall be included in the design of the PRD which should serve as a central organizing feature within the PRD, such as a green or park.

(4) Multi-family dwellings are not permitted within the Village Residential District.

Section 8.4 Planned Unit Developments (PUDs)

(A) **Applicability.** Planned Unit Development (PUD) provisions may be applied, at the request of the applicant to any land to be subdivided or developed in any zoning district excluding the Forest Reserve, Agricultural, Rural Conservation and Planned Airport Districts.

(B) **Application Procedure.** Applications for PUD shall be submitted simultaneously with applications for major subdivision review in accordance with the requirements set forth in Article 5. In addition to the information required for sketch plan review under Section 6.3, applications for PUDs must include the following:

(1) A statement setting forth the nature of all proposed modifications or changes of existing land use and development regulations and the standards and criteria which the applicant proposes for the development, including standards for the design, bulk and spacing of buildings and sizes of lots and open spaces; and

(2) A brief summary of the project and how it meets the standards in this section.

(3) Additional information required by the Development Review Board to determine whether the proposed mix of uses, density and scale and intensity of uses will meet the standards set forth in Article 5, Article 7, and below.

(C) **General Standards.** In addition to the subdivision standards set forth in Article 7, PUDs shall meet the following:

Article 8. Planned Residential & Planned Unit Developments

- (1) The overall density shall not exceed the number of units, bedrooms or uses permitted in the Development Review Board's judgment if the land were subdivided in accordance with the standards for the district(s) in which such land is situated.
- (2) The PUD is an effective and unified treatment of the development possibilities of the project site, and the development plan shall make appropriate provision for preservation of fragile features, as defined in Section 7.3.
- (3) Uses shall be limited to those which are allowed in the zoning district in which the proposed PUD is located.
- (4) A greater concentration or intensity of development may be located within some portion(s) of the site provided there is an offset by a lesser concentration in another portion(s) or an appropriate reservation of open space on the remaining land in accordance with Section 7.11.
- (5) 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 parcel in common ownership.
- (6) The PUD shall be consistent with the goals and policies of the *Bennington Town Plan*, all applicable subdivision standards set forth in Article 7 and any specific supplemental requirement for the district within which the PUD is located as established in Article 2.
- (7) The PUD shall be designed to maximize vehicular and pedestrian integration with adjacent uses and parcels. Driveway and road connections to adjacent parcels should, to the extent practical, be incorporated into the project design. Pedestrian facilities shall be laid out to serve as an interconnected network of sidewalks, pathways and trails, as appropriate to site conditions. Provision for safe and efficient transit access may also be required.
- (8) Site design and landscaping shall be compatible with neighboring properties. In instance in which a PUD abuts a residential property, greater setback requirements for structures and parking areas and appropriate screening may be required.
- (9) All proposals shall demonstrate the extent to which they protect and utilize renewable energy resources through such means as developing southfacing slopes in lot layout and enabling solar access to all future buildings.
- (10) Service areas, maintenance facilities and associated features that are closed to the public shall not be oriented toward existing or planned commercial or residential structures unless facing similar features.
- (11) In instances in which an applicant proposes development of a portion of a larger parcel, or development of a parcel contiguous to another parcel(s) in common or affiliated ownership, a general indication of the intended use of the remaining (undeveloped) portion of the land shall be submitted for Development Review Board review.
- (12) All PUDs, including office parks and industrial parks located within the Industrial District, shall comply with the standards set forth in subsection (D), below.

Article 8. Planned Residential & Planned Unit Developments

(D) **Office Park & Industrial Park Standards.** In addition to the standards set forth in subsection (C), all PUDs located within the Industrial District shall comply with the following standards:

- (1) The PUD shall be designed to establish well defined streetscapes, characterized by an interconnected network of streets bounded by a combination of sidewalks, street trees and consistent building setbacks, as opposed to large-scale buildings surrounded by expansive parking areas.
- (2) The PUD shall be characterized by an integrated, campus-style site design and coordinated architectural design in which building facades and entrances relate to one another; buildings are designed to provide a sense of permanence through the use of quality construction and materials; buildings avoid monolithic design (e.g., through the articulation of exterior walls and variations in building height and roof lines).

Section 8.5 Open Space & Common Land Standards for PRDs & PUDs

(A) PRDs and PUDs shall make adequate provision for the protection of open space and common land in accordance with the standards set forth in Section 7.11, and the following provisions. The location, shape, size, and character of the designated open space and common land shall be suitable for the development, considering its size, density, topography, and the number and type of units proposed.

ARTICLE 9. ADMINISTRATION & ENFORCEMENT

Section 9.1 Municipal Land Use Permits & Approvals

(A) No land development or subdivision of land, as defined herein, may commence in the Town of Bennington until all applicable municipal land use permits and approvals have been issued as provided for in the Act; or the development is specifically exempted from the provisions of these regulations under Section 9.2. Such permits and approvals issued under these regulations include:

Municipal Land Use Permit: a zoning, subdivision, site plan, or building permit or approval, any of which relate to land development as defined in statute, which has received final approval from the applicable board, commission or officer of the municipality; or a septic or sewage system permit issued under any municipal ordinance; or a certificate of completion or subdivision compliance; or any amendments of the above.

- (1) **Zoning Permits**, issued by the Administrative Officer under Section 9.3, for all land development as defined, including signs.
 - (2) **Design Approvals**, issued by the Development Review Board in accordance with the standards and procedures set forth in Table 2.4 for development within the Historic Central Bennington Design Review District, Table 2.5 for development within the Downtown Form-Based-Design Area, Table 2.6 for development within the Mixed Use Form-Based-Design Area, Table 2.7 for development within the Residential Form-Based-Design Area, Table 2.10 for development within the Planned Commercial District, and Table 2.14 for development within the Rural Conservation District;
 - (3) **Development Review Board Approvals**, issued by the Development Review Board under Article 5 for all uses specified in Article 2 as requiring such approval;
 - (4) **Demolition Approvals**, issued by the Development Review Board in accordance with Section 3.2 and Article 5;
 - (5) **Subdivision Approvals**, issued by the Development Review Board under Article 6, for the subdivision of land;
 - (6) **Planned Residential & Planned Unit Development Approvals**, issued by the Development Review Board for PRDs and PUDs under Article 8, in association with subdivision approval; and
 - (7) **Certificates of Completion or Subdivision Compliance**, issued by the Administrative Officer under Section 9.4, for development which has received a zoning permit or subdivision approval.
- (B) Additional permits or approvals may be required for land development under other municipal ordinances currently in effect, including but not limited to:
- (1) **Access (curb cut) permits**
 - (2) **Sign permits**
 - (3) **Building permits (including septic permits)**
 - (4) **Water supply/sewer allocations**

Information regarding additional approvals may be obtained from the Administrative Officer.

Section 9.2 Exemptions

(A) No zoning permit shall be required for the following:

Article 9. Administration & Enforcement

- (1) The subdivision of land for which subdivision approval is required under Article 6. Subsequent development on subdivided lots shall require a zoning permit in accordance with these regulations.
 - (2) Structures that are less than 8 feet in height, including fences or walls, which are not covered by a roof and are not intended as shelter or housing for persons, animals or materials; however, no fence, wall, hedge, shrubbery or other obstruction in excess of 3 feet in height, as measured above the nearest portion of the traveled way, shall be placed or allowed to grow at a street intersection in a manner that interferes with corner or sight distances for vehicular traffic, in accordance with Section 3.3.
 - (3) Electric light poles, telephone or telegraph poles owned and maintained by a public utility, excluding utilities service extended to serve proposed land development or subdivisions, which may be regulated with regard to location and installation in accordance with Article 5 and/or Article 7.
 - (4) Highway and railroad bridges.
 - (5) Signs specifically exempted under the Bennington Sign Ordinance.
 - (6) Normal maintenance and repair of an existing structure, utilities or infrastructure that does not result in any change to the footprint or height dimensions of the structure, or a change in use.
 - (7) Customary and incidental residential driveway and utility maintenance, gardening and other yard improvements.
 - (8) Garage sales, yard sales, auctions or other such temporary sale events which do not exceed 3 consecutive days, nor more than 12 days in any calendar year.
 - (9) Accepted Agricultural Practices (AAPs) and Accepted Management Practices (AMPs), including farm structures but not dwellings, as defined by the Commission of Agriculture, Food and Markets in accordance with the Act; however written notification, including a sketch plan of the structure showing setback distances from road rights-of-way, property lines, and surface waters shall be made to the Administrative Officer prior to any construction as required under AAPs.
 - (10) Accepted management practices (AMPs) for silviculture s defined by the Commissioner of Forests, Parks, and Recreation, in accordance with the Act. Cutting associated with site development and yard and view clearing associated with seasonal camps located within the Forest District does not constitute silviculture and shall be regulated in accordance with the standards set forth in Table 2.16.
 - (11) Public utility power generating plants and transmission facilities regulated under 30 V.S.A. Section 248. Such facilities, however, should conform to policies and objectives specified in the Bennington Town Plan.
- (B) Notwithstanding the exemptions listed in subsection (A), above, any new construction or alteration to an existing structure within the Historic Central Bennington Design Review District shall be reviewed in accordance with the procedures and standards set forth in Table 2.4.

Section 9.3 Zoning Permit

(A) **Application Requirements.** An application for a zoning permit shall be submitted to the Administrative Officer on forms provided by the town, to be accompanied by fees as established by the Selectboard. In addition, the application shall include as applicable:

- (1) A sketch plan, drawn to scale, that accurately depicts:
 - property and zoning district boundaries,
 - name and address of property owner and applicant,
 - abutting landowners,
 - lot dimensions,
 - the location, footprint, and height of existing and proposed structures and additions,
 - the location of existing and proposed easements, rights-of-way, utilities and services,
 - the location of existing and proposed driveways and curb cuts, and
 - required setback distances from property boundaries, road rights-of-way, and surface waters.

Applications requiring the preparation of a site development plan in accordance with Section 5.2 are not required to submit a separate sketch plan under this subsection.

- (2) Application materials as required for Development Review Board approval under Article 5, flood hazard area approval under Table 2.18 and/or design review under Tables 2.4, 2.5, 2.6, 2.7, 2.10 and 2.14.
- (3) For proposed development subject to state agency referral requirements, a brief report describing the proposed use, location, and potential effects of such use on the municipal and regional plan currently in effect.
- (4) Any other information required by the Administrative Officer to determine compliance with these regulations.

(B) **Issuance of a Zoning Permit.** A zoning permit shall be issued by the Administrative Officer only in accordance with the Act and the following provisions:

- (1) No zoning permit shall be issued by the Administrative Officer for any structure or use that requires approval of the Development Review Board or Selectboard until such approval has been obtained.
- (2) For uses requiring state agency referral, no zoning permit shall be issued until the expiration of 30 days following the submission of a report to the appropriate state agency or department in accordance with the Act.
- (3) Within 30 days of receipt of a complete permit application, including all application materials, fees, state agency responses, and associated municipal approvals, the Administrative Officer shall either issue or deny a permit in writing in accordance with the Act. Approvals shall include certification by the Administrative Officer that the proposed structure or use complies with all provisions of these regulations. Denials shall include a statement of the time in which appeals may be made under Section 9.5. If the Administrative Officers fails to act within the 30 day period, a permit shall be deemed to be issued on the 31st day.
- (4) Within 3 days of issuance, the Administrative Officer shall deliver a copy of the permit to the Listers and post a copy, at the Town Office, for a period of 15 days from issuance.

Article 9. Administration & Enforcement

(C) Effective Dates.

- (1) No zoning permit shall take effect until the time for appeal under Section 9.5 has passed, or in the event that a notice of appeal is properly filed, until final adjudication of the appeal. Permits shall remain in effect for one year from the date of issuance, unless the permit specifies otherwise. All development authorized by the zoning permit and associated approvals shall be completed within this period, or the zoning permit shall become null and void.
- (2) The Development Review Board may grant an extension of a zoning permit for a period of one year from the date of expiration. Applications for permit extensions shall be made in writing, including a description of the specific reasons and circumstances justifying the extension, to the Administrative Officer prior to the expiration date of the permit. The request will be submitted to the Board for consideration at the next available regular meeting as an agenda item.
- (3) Extension requests which include a request to amend a site development plan approved by the Board under Article 5 may be considered in accordance with subsection (2), although the written request for amendment shall include 10 sets of revised plans and supporting documentation regarding the proposed amendment.

Section 9.4 Certificates of Completion & Subdivision Compliance

(A) **Certificate of Completion.** In accordance with the Act, a certificate of completion issued by the Administrative Officer shall be required prior to the use or occupancy of any land or structure, or part thereof, for which a zoning permit has been issued.

- (1) Upon the completion of permitted improvements, but prior to occupancy of the land or structure, the applicant shall submit a written request to the Administrative Officer for a certificate of completion.
- (2) Within 14 days of receipt of the application for a certificate of completion, the Administrative Officer will inspect the premises to ensure that all work has been completed in conformance with the zoning permit and associated approvals, including all applicable permit conditions. If the Administrative Officer fails to either grant or deny the certificate of completion within 14 business days of the submission of an application, the certificate shall be deemed issued on the 15th business day.
- (3) If additional municipal access, building, and/or water or wastewater connection permits are required, a certificate of completion shall not be issued by the Administrative Officer until evidence of such permits or approvals has been filed with the Administrative Officer.

(B) **Certificate of Subdivision Compliance.** The Development Review Board may require, as a condition of subdivision approval, that a certificate of subdivision compliance be obtained to ensure that public and private improvements have been installed in accordance with the conditions of subdivision approval prior to any further land development

- (1) The application for a certificate of subdivision compliance shall be submitted to the Administrative Officer with as-built plans drawn to scale which show the location of all monuments, utilities, structures, roadways, easements, and other improvements as constructed.

Article 9. Administration & Enforcement

- (2) Within 14 days of receipt of the application for a certificate of subdivision compliance, the Administrative Officer will inspect the subdivision to ensure that all work has been completed in conformance with the conditions of approval. If the Administrative Officer fails to either grant or deny the certificate of compliance within 14 business days of the submission of an application, the certificate shall be deemed issued on the 15th business day.

Section 9.5 Appeals

(A) **Decisions of the Administrative Officer.** In accordance with the Act, any applicant or other **interested person** may appeal a decision or act of the Administrative Officer by filing a notice of appeal with the Secretary of the Development Review Board, or the Town Clerk if no Secretary has been elected, within 15 days of the date of such decision or act.

- (1) The Development Review Board shall hold a public hearing on a notice of appeal within 60 days of its filing, in accordance with the Act. The Board shall give public notice of the hearing under Section 9.8(C), and mail a copy of the hearing notice to the appellant not less than 15 days prior to the hearing date.
- (2) A decision on appeal, to include written findings of fact, shall be rendered within 45 days after hearing completion, in accordance with the Act. The Development Review Board may reject an appeal without hearing, and render a decision within 10 days of the filing of a notice of appeal, if the Board determines that the issues raised by the appellant have been decided in an earlier appeal, or are based on substantially or materially the same facts, by or on behalf of the appellant. Copies of the decision shall be mailed to the appellant and hearing participants, and filed with the Administrative Officer and Town Clerk.

(B) **Decisions of the Development Review Board.** In accordance with the Act, any **interested person** who has participated in a regulatory proceeding before the Development Review Board, may appeal the decision of the Development Review Board within 30 days of such decision to the Vermont Environmental Court. Notice of appeal shall be filed by certified mail with fees to the environmental court and by mailing a copy to the Administrative Officer who shall supply a list of interested persons to the appellant within five working days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person.

(C) **Notice of Appeal.** Pursuant to the Act, a notice of appeal shall be in writing and include:

Interested Person. As prescribed by the Act, an interested person means any one of the following:

- A person owning title to property, or a municipality or solid waste district empowered to condemn it or an interest in it, affected by a bylaw, who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.
- The Town of Bennington or any adjoining municipality.
- A person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under this chapter, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality.
- Any ten persons who may be any combination of voters or real property owners within Bennington or an adjoining municipality who, by signed petition to the appropriate municipal panel, allege that any relief requested by a person under this title, if granted, will not be in accord with the policies, purposes, or terms of the Bennington Town Plan or these Land Use and Development Regulations.
- Any department and administrative subdivision of Vermont owning property or any interest in property within Bennington or an adjoining municipality, and the Vermont Agency of Commerce and Community Development.

Article 9. Administration & Enforcement

- the name and address of the appellant;
- a brief description of the property with respect to which the appeal is taken;
- a reference to applicable bylaw provisions;
- the relief requested by the appellant, including any request for a variance from one or more provisions of these regulations; and
- the alleged grounds why such relief is believed proper under the circumstances.

Section 9.6 Variances

(A) The Development Review Board shall hear and decide upon requests for variances pursuant to the Act and appeal procedures under Section 9.5. **The Board may grant a variance, and render a decision in favor of the appellant, only if *all* of the following facts are found, and the findings are specified in its written decision:**

- (1) 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 unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located;
- (2) that because of such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is necessary to enable the reasonable use of the property;
- (3) that the 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, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and
- (5) that the variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

(B) On an appeal for a variance from the provisions of these regulations that is requested for a structure that is primarily a renewable energy resource structure, the Board may grant such variance only if it finds that all of the facts listed in the Act are found in the affirmative and specified in its decision

(C) **Variances within the Flood Hazard Area.** In addition to requirements under subsection (A), variances for development within the Flood Hazard Overlay District shall be granted by the Development Review Board only:

- (1) in accordance with the Act and the criteria for granting variances found in CFR, Section 60.6 of the National Flood Insurance Program;
- (2) upon determination that during the base flood discharge the variance will not result in increased flood levels; and

Article 9. Administration & Enforcement

- (3) upon determination that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- (D) In granting a variance, the Development Review Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect. In no case shall the Board grant a variance for a use which is not an allowed use within the zoning district, or which results in an increase in allowable density.
- (E) All applications for a variance must include a written memorandum detailing evidence supporting a positive finding on all “five facts” specified in Section 9.6A.

Section 9.7 Violations & Enforcement

- (A) **Violations.** The commencement or continuation of any land development, subdivision or use which is not in conformance with the provisions of these regulations shall constitute a violation. All violations will be pursued in accordance with the Act. Each day that a violation continues shall constitute a separate offense. The Administrative Officer shall institute in the name of the town any appropriate action, injunction or other proceeding to enforce the provisions of these regulations. All fines imposed and collected for violations shall be paid over to the town.
- (B) **Notice of Violation.** Pursuant to the Act, no action may be brought under this Section unless the alleged offender has had at least 7 days notice by certified mail that a violation exists. The warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the 7 days and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the 7 days. Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of the bylaw after the 7-day notice period and within the next succeeding 12 months.
- (C) **Limitations on Enforcement.** The town shall observe any limitations on enforcement relating to municipal permits and approvals as set forth in the Act. Enforcement proceedings must be instituted within 15 years from the date the 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. No enforcement proceeding may be instituted to enforce an alleged violation of a municipal land use permit or approval issued after July 1, 1998 unless the permit or a notice of permit has been recorded in the town land records in accordance with subsection 9.8(D).

Section 9.8 Municipal Administrative Requirements

- (A) **Appointments.** The following appointments shall be made in association with the administration and enforcement of these regulations as provided for in the Act:
- (1) **Administrative Officer.** The Administrative Officer shall be appointed in accordance with the Town of Bennington Charter. The Administrative Officer shall literally administer and strictly enforce the provisions of these regulations, and in doing so shall inspect developments, maintain records, and perform other associated tasks as is necessary and appropriate. The Administrative Officer shall also, on behalf of the town, coordinate a unified effort in administering its development review programs.
- (2) **Development Review Board.** Development Review Board members and alternates shall be appointed by the Select Board for specified terms in accordance with the Act. The Board shall adopt rules of procedure and rules of ethics to guide its official conduct in accordance with the

Article 9. Administration & Enforcement

requirements of the Act, Vermont's Open Meeting Law; and shall have all powers and duties as set forth in the Act to administer the provisions of these regulations, including but not limited to the power to hear and decide:

- applications for subdivision approval,
 - applications for demolition approval,
 - applications for site plan and/or conditional use approval (referred to as "Development Review Board approval" throughout these regulations),
 - applications for design approval,
 - applications for planned residential or planned unit development,
 - appeals from any decision, act or failure to act by the Administrative Officer; and
 - requests on appeal for variances.
- (3) **Application Review Panel.** The Development Review Board may appoint an Application Review Panel, comprised of Board members, to serve in an advisory capacity regarding specified review procedures. Such panel may provide the Development Review Board with proposed findings and/or conditions of approval prior to a warned hearing. In such instances, the Application Panel shall schedule a public meeting for the purpose of reviewing the application and associated materials, receiving testimony of the applicant and interested persons, and preparing a recommendation to the Development Review Board regarding Board action.
- (B) **Fee Schedule.** The Selectboard shall establish a schedule of fees to be charged in administering these regulations, with the intent of covering the town's administrative costs. Applicants also shall be required to pay for reasonable costs of independent technical reviews of their application that are determined by the Development Review Board to be necessary to conduct a comprehensive review.
- (C) **Hearing Notice Requirements.**
- (1) **Public Hearings.** Pursuant to the Act, any notice required for public hearing under these regulations shall be given by the publication of the date, place and purpose of the hearing in a newspaper of general circulation in the town, and the posting of the notice in three or more public places within the town, including the posting of a notice within view from the public right-of-way nearest to the property for which the application is being made, not less than 15 days prior to the hearing date. Notice of the hearing also shall be sent by mail to the applicant at least 15 days prior to the public hearing. Posting of the notice within view of the public right-of-way as described above shall be the responsibility of the applicant.
- (2) **Subdivision Hearings.** For hearings associated with the review of subdivision plats, in addition to notice requirements under Subsection (C)(1), notice also shall be sent to the regional planning commission, and, for plats located within 500 feet of a municipal boundary, to the clerk of the adjoining municipality, at least 15 days prior to the public hearing.
- (3) **Notification of Abutters.** Written notice of application and hearing also shall be sent, by the applicant, to all abutting property owners. All properties adjacent to a property that is subject to review, including those properties separated by a street or intersection from the property under review, shall be considered abutting properties. The names and address of abutting property owners shall be determined by reference to the Town of Bennington Grand List or the Town of Bennington Land Records.

Such notice shall be sent at least 15 days prior to the hearing date by first class mail, postage prepaid, and state the following:

Article 9. Administration & Enforcement

- a. the identity and location of the project that is subject to review,
- b. the permits and approvals sought by the applicant, along with relevant bylaw sections,
- c. a copy of the notice of hearing received from the town under subsection (1),
- d. where additional information may be obtained, and
- e. that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal.

At least 2 days before the Development Review Board hearing, the applicant shall deliver to the Administrative Officer a certification, signed by the applicant, that all abutting property owners have been notified in compliance with this section.

- (4) **Application Review Panel meetings.** Meetings of the Application Review Panel shall be open to the public, with notice given a minimum of 24 hours in advance of the meetings.
- (D) **Recording Requirements.**
 - (1) Pursuant to the Act, within 30 days after the issuance or denial of a municipal land use permit, or within 30 days of the issuance of any notice of violation, the Administrative Officer shall deliver either the original, a legible copy, or a notice of the permit, denial or violation to the Town Clerk for recording in the land records of the town as provided in 24 V.S.A. §1154.
 - (2) For development within the Flood Hazard Area Overlay District, the Administrative Officer shall also maintain a record of:
 - a. all permits issued for development in areas of special flood hazard;
 - b. the elevation, in relation to mean sea level, of the lowest floor, including basement, or all new or substantially improved buildings;
 - c. the elevation, in relation to mean sea level, to which buildings have been floodproofed;
 - d. all floodproofing certifications required under this regulation; and
 - e. all variance actions, including the justification for their issuance.

ARTICLE 10. DEFINITIONS

Section 10.1 Terms & Usage

(A) Except where specifically defined here or in the Act, or unless otherwise clearly required by the context, all words, phrases and terms in these regulations shall have their usual, customary meanings.

(B) In the interpretation of words and terms used, defined, or further described here, the following shall apply:

- (1) the specific controls the general;
- (2) the present tense includes the future tense;
- (3) the word "shall" is mandatory; the word "may" is permissive;
- (4) the word "structure" includes "building;"
- (5) the word "road" includes "street" and "highway,"
- (6) the word "lot" includes "parcel," and
- (7) the word "person" includes a partnership, corporation, or other entity.

(C) For the purposes of flood hazard area regulation under Article 2, National Flood Insurance Program definitions contained in 44 CFR Section 59.1 are hereby adopted by reference and shall be used to interpret and enforce these regulations. Definitions of commonly used terms are provided in Section 10.2.

(D) Any interpretation of words, phrases or terms by the Administrative Officer may be appealed to the Development Review Board under Section 9.5. In such cases, the Board shall base its decision upon the following definitions, state statute, and the need for reasonable and effective implementation of these regulations. The Board shall publish and update from time to time such written interpretation, to ensure consistent and uniform application of the provisions of these regulations.

Section 10.2 Definitions

Abandon: The cessation of a use or activity, or the cessation of construction, use, occupation or maintenance of a building or structure, without intent to resume.

Accepted Agricultural Practices (AAPs): Accepted practices for agriculture, including farm structures other than dwellings, as currently defined by the Commissioner of Vermont Department of Agriculture, Food and Markets in accordance with the Act (see Section 9.2).

Accepted Management Practices (AMPs): Accepted silvicultural (forestry) practices as currently defined by the Commissioner of the Vermont Department of Forests, Parks and Recreation in accordance with the Act (see Section 9.2).

Accessory Apartment (Also known as Accessory Dwelling Unit, ADU): A secondary dwelling unit established in conjunction with and clearly subordinate to a single family dwelling, which is retained in common ownership, is located within or appurtenant to the single family dwelling, and which otherwise meets applicable criteria of these regulations (see Section 4.2). This definition is limited to the definition of accessory apartments (dwelling units) as specified in the Act, except as specifically modified under Section 4.2. See also Dwelling, Two-Family.

Accessory Dwelling Unit (ADU): See Accessory Apartment.

Accessory Structure: A structure which is: 1) detached from and clearly incidental and subordinate to the principal use or structure on a lot, 2) located on the same lot as the principal structure or use, or on an

Article 10. Definitions

adjoining lot under the same ownership, or control; and is 3) clearly and customarily related to the principal structure or use. An accessory structure shall not be attached to the principal building by any overhead porch, breezeway, or other roofed structure. See also Accessory Use.

Accessory Use: A use which is customarily incidental to, subordinate to, and reasonably necessary to the principal use on the same lot, or on an adjoining lot under the same ownership or control.

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

Adaptive Reuse: The use of an historic building or structure for other than its originally intended use or purpose, in a manner which maintains its historic features and character, in accordance with the requirements of these regulations (see Section 4.4).

Administrative Officer: the Bennington Zoning Administrator (see Section 9.8).

Administrator: the Federal Insurance Administrator.

Adult Cabaret: An adult-oriented business establishment that regularly features dancing or other live entertainment which emphasizes the exhibition of specified sexual activities and/or specified anatomical areas for the observation of patrons (see Section 4.5). See also Adult Oriented Business, Specified Anatomical Areas, Specified Sexual Activities.

Adult Media: Magazines, books, videotapes, movies, slides, cd-roms, or other devices used to record computer images, or other media that are distinguished or characterized by the emphasis on matter depicting, describing or relating to specified anatomical areas and/or specified sexual activities, including hard-core material. See also Media, Hard Core Material.

Adult-Oriented Business: An establishment catering to patrons 18 years of age or older, which devotes a substantial portion of its business activity, as defined herein, to sexually-oriented materials or entertainment (see Section 4.5). See also Adult Cabaret, Adult Retail, Adult Theater.

Adult Retail: An adult-oriented business establishment that devotes a substantial portion of its business, as defined herein, to the sale and/or rental of adult media, and/or sexually-oriented toys and novelties, in accordance with the requirements of these regulations (see Section 4.5). See also Adult Media, Adult Oriented Business.

Adult Theater: An adult-oriented business establishment which presents motion pictures, films, video tapes, cable television, or any other such visual media, of which a substantial portion of the total presentation time is devoted to the showing of visual, sexually-oriented adult media depicting, describing or relating to specified anatomical areas and/or specified sexual activities for observation by patrons (see Section 4.5). See also Adult Media, Adult Oriented Business, Specified Anatomical Areas, Specified Sexual Activities.

Affordable Housing: In accordance with the Act, housing that is either: (1) owned by its inhabitants, whose gross annual household income does not exceed 80 percent of the county median income, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including principal, interest, taxes and insurance, is not more than 30 percent of the household's gross annual income; or (2) rented by its inhabitants whose gross annual household income does not exceed 80 percent of the county median income, as defined by the United States Department of

Article 10. Definitions

Housing and Urban Development, and the total annual cost of the housing, including rent, utilities, and condominium association fees, is not more than 30 percent of the household's gross annual income.

Affordable Housing Development: In accordance with the Act, a housing development of which at least 20 percent of the units are affordable housing units.

Agriculture: Land which is used for raising livestock, the growing and harvesting of crops, orchards, tree farms, maple sugar stands, riding and boarding stables, nurseries and greenhouses, farm structures, and as an accessory use, the wholesale or retail sale of agricultural products grown on the premises where it is produced. For the purposes of these regulations, agriculture does not include slaughterhouses. See also Accepted Agricultural Practices, Farm Structure, Manufacturing.

Agricultural Retail. The retail sale of apples, Christmas trees, flowers, nursery stock and other agricultural products (as defined by the Vermont Commissioner of Agriculture) (see section 4.9).

Aircraft Sales & Service: The use of land, hangars or other structures for the storage, sale, rental, and/or servicing of aircraft.

Airport: Land and structures designated, pursuant to state and federal regulations, for the landing, taking off, storage, fueling and maintenance of aircraft, including terminals, towers, runways, taxiways, storage hangars, tie-down areas, other associated structures and open areas, and air passenger and freight services and facilities. See also Aircraft Sales & Service, Flight Instruction.

Alteration: Structural change, relocation, or addition to a building or structure, excluding normal maintenance and repair. Alterations shall include any construction that changes the number of dwelling units, or increases the size of a building or structure in terms of its height, length, width, footprint, or gross floor area. See also Improvement, Substantial Improvement.

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

Application Review Panel: A subcommittee of the Development Review Board which is authorized under these regulations to conduct a preliminary review of an application requiring board approval, as specified by the Board; to hold public meetings; and to make recommendations regarding the application for full board consideration.

Approval: A decision issued by the Bennington Development Review Board or Administrative Officer, as appropriate, within the statutory time limit, or in the event of the Board's failure to act within the specified time limit, a certification of such failure to act issued by the Town Clerk, as attached to the permit application and recorded in the land records of the town.

Area of Shallow Flooding: A designated AO or AH Zone on the Flood Insurance Rate Map (FIRM) having a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where the velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard: Land in the floodplain which is subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the Flood Hazard Boundary

Article 10. Definitions

Map (FHBM). After detailed rate making is completed in preparation for the Flood Insurance Rate Map, Zone A is refined into Zones A, AO, AH, A1-30, AE, or A99.

Artist Studio: Work space for individuals engaged in the application, teaching or performance of one of the fine arts or an applied art or craft. See also Gallery, Home Occupation.

Assisted Living Residence: a program facility that combines housing, health and supportive services to support resident independence and aging in place. At a minimum, assisted living residences shall offer, within a homelike setting, a private bedroom, private bath, living space, kitchen capacity, and a lockable door. For the purpose of this Bylaw, an assisted living residence(s) that does not include on-site facilities (structures) for support services shall be considered a dwelling unit.

Bank: A bank or savings and loan establishment.

Bar: See Restaurant.

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

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

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

Board: The Bennington Development Review Board, as established under the Act, unless otherwise specified.

Boarding House: See Rooming House.

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

Building: (1) Any structure having a roof, supported by columns, walls or other means, that is intended or used for the shelter, housing or enclosure of persons, animals, goods, materials or equipment; and/or (2) for development within the Flood Hazard Overlay District, this definition shall also include a gas or liquid storage tank that is principally above ground. A structure such as a breezeway which connects two otherwise detached buildings will not by itself cause two separate dwellings to be considered a two-family dwelling. See also Structure.

Building Area: The ground area enclosed by the walls of a building, including the area of the walls themselves, together with the area of all covered porches and other roofed portions.

Building Coverage: The percentage which the aggregate area of all buildings on the lot bears to the area of the lot. Also see Building Area.

Building Facade: A structure's entire exterior elevation, including wall, face, parapet, windows, doors, awning or canopy; the "**principal or primary facade**" shall be the exterior facade(s) that fronts a street (s), and which typically includes the main public entrance to the building.

Building Footprint: See Building Area.

Building Height: See Height.

Building Line: A line parallel to a street right-of-way at a distance equal to the required front setback, or at a greater distance when otherwise legally established by the municipality or by private covenant.

Building Orientation: The location on a lot of a building or other structure in relation to roads, rights-of-way, and building or street lines.

Camp: See Seasonal Camp.

Camper: Any vehicle intended or used as temporary sleeping, camping or living quarters, but not for permanent residential occupancy, which is mounted on wheels, a truck or a camper body, or towed by a motor vehicle. This definition includes recreation vehicles, tent trailers, and motor homes, but specifically excludes mobile homes (see Section 4.6). See also Seasonal Dwelling, Mobile Home.

Car Wash: A building or part of a building where mechanical equipment is used for washing motor vehicles. This definition includes both automated and self-service facilities. See also Motor Vehicle Sales & Service.

Cemetery: Land used or dedicated to the burial of the dead, which may include as accessory structures mausoleums, columbariums, and maintenance facilities, but specifically excludes crematoriums. An individual or family burial plot on private land, registered with the Bennington Town Clerk in accordance with state law, is exempted from this definition.

Change of Use: Any use which differs substantially from an established use based on the type, intensity, or magnitude of use. For example, this may include a change from one category of use to another (e.g., from a residential to commercial use), or from an accessory to a principal use, or from seasonal to year-round use, or any change in the character of a business activity (e.g., retail to wholesale).

Church: See Place of Worship.

Civic Center: a publicly- or privately-owned and operated facility with space and/or grounds for and with the primary purpose of hosting conferences, exhibitions, festivals, performances and sporting events. Civic Centers do not include theaters which are facilities designed primarily for performances only, or indoor recreational facilities which are smaller in scale and are primarily designed for single use commercial amusement.

Clearcutting: A timber harvesting method in which all or most trees within a contiguous area are removed, for forestry purposes to regenerate an even aged stand under conditions of full sunlight.

Club: See Private Club and Nightclub.

Clearing: The removal of vegetation as part of site preparation, for the installation of driveways, utilities, water, wastewater and drainage systems, building sites and construction or yard areas.

Article 10. Definitions

College: An educational institution authorized by the state to award post-secondary degrees (e.g., associate, baccalaureate or higher degrees).

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

Commission: The Bennington Planning Commission, as created under the Act, unless otherwise specified.

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

Community Care Facility: A residential care facility licensed by the state (including a Level III or IV residential care facility) which provides up to 24-hour supervision, personal care services, and limited medical services to seven or more individuals who are in need of care, protection and/or assistance to sustain the activities of daily living including facilities serving patients with Alzheimers and similar disorders. This definition shall also include facilities with assisted living residences (see definition). See also Correctional Home, Group Home.

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

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

Compatible: The siting, design, and arrangement of buildings or other created or natural elements of a development are sufficiently consistent in scale, character and siting with other buildings or created or natural elements in the area, so as to avoid abrupt or severe differences.

Condominium: A building, or group of buildings, in which dwelling units, offices, or floor area are owned individually, and the structure, common areas, and facilities are owned and managed by all the owners (a condominium association) on a proportional, undivided basis. Common elements typically include, but may not be limited to: land, plumbing and wiring, major utility systems, shared or public interior areas, exterior walls, parking areas, roads, and recreational facilities.

Contiguous: Sharing a common lot line (parcel boundary). Tracts or lots of land which are divided by state or municipal highway rights-of-way, or surface waters with a drainage area greater than 10 square miles, shall not be deemed contiguous.

Contractor's Yard: A general construction or heavy equipment business which involves the outdoor storage of materials, equipment and/or vehicles, for business activities that take place off-site. Customary accessory structures and/or uses may include a small office, and storage and maintenance facilities for equipment and vehicles.

Contributing Structure: Building that possess integrity of location, design, setting, materials, workmanship, feeling and association as determined by the Vermont Division for Historic Preservation.

Correctional Facility: A secure care facility, licensed by the state, for the safe custody and rehabilitation of persons confined as a result of the legal process. See also Correctional Home.

Correctional Home: A secure care facility, licensed by the state, which houses between two and eight residents excluding staff, and is maintained and operated primarily for persons, including children placed under the supervision of a state or federal agency or department, who have been placed on probation, released on parole, or admitted for correctional or rehabilitative purposes. This definition includes supervised half-way houses, and dormitories or housing facilities associated with private rehabilitation/treatment centers or facilities. It specifically excludes Group Homes for the disabled or handicapped, as otherwise defined herein. See also Correctional Facility, Group Home.

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

Cultural Facility: A museum, botanical or zoological garden, or other establishment which offers programs or exhibits of cultural, educational, historical, or scientific interest, and is not operated as a commercial use. The term cultural facility specifically excludes “theaters”, “Civic Centers” and “Indoor Recreation “as defined herein.

Curb Cut: A defined area of vehicular ingress and/or egress between property and an abutting road right-of-way. See also Driveway.

Day Care Facility: A state registered or licensed day care facility other than home child care, including any place operated as a business or service on a regular or continuous basis, whether for compensation or not, whose primary function is the protection, care, and supervision of more than six (6) persons outside their homes for periods of less than twenty-four (24) hours a day by a person other than the person's own parent, guardian or relative. See also Community Care Facility, Home Child Care.

Dead-End Street: Any road or portion of a road which may be accessed from only one direction. This definition shall include so-called loop roads, cul-de-sac and no outlet streets that are accessed from only one direction.

Density: The number of dwelling units, principal uses or structures permitted per area of land, excluding land area within designated road rights-of-way.

Development: See Land Development.

Development Envelope: The three dimensional space within which all structures must be built on a lot. The development envelope is defined by maximum height requirements and minimum yard setbacks, unless otherwise specified in these regulations.

Discontinued: Cessation of a use or activity, or the construction, use, occupation or maintenance of a building or structure, regardless of intent to resume for a period of time specified under these regulations.

District: A zoning district established under the provisions of these regulations and the Act.

Drive-through: A business establishment which includes a driveway approach or parking spaces for motor vehicles to serve patrons while in the motor vehicle rather than within a building or structure.

Driveway: A minor, private travel way, serving up to three parcels, which provides vehicular access from an adjoining road to a parking space, garage or other structure. See also Street.

Dry Cleaner: An establishment for the purpose of receiving fabric goods to be cleaned by the use of solvents, which may also include dry dyeing, spot and stain removal, pressing, and/or the delivery of such goods.

Dwelling, Multi-Family: A building containing separate dwelling units for three or more families, having separate or joint entrances, and each with its own sanitary facilities and kitchen.

Dwelling, Single (One) Family: A detached building designated for or occupied solely as a dwelling by one family and equipped with sanitary facilities and not more than one kitchen. See also Group Home, Home Child Care, Home Occupation, Mobile Home.

Dwelling, Two Family: A detached building designated for or occupied solely as a dwelling by two families, living independently of each other, each unit having separate or joint entrances, and each with its own sanitary facilities and kitchen. See also Accessory Apartment.

Dwelling Unit: One or more rooms designed, occupied or intended for occupancy as separate living quarters, with full cooking, sleeping, and sanitary facilities provided for the exclusive use of a family or individual maintaining a household. See also Family.

Easement: The legal authorization given by a property owner to another person or party for the use of any designated part of his or her property for a specified purpose.

Educational Facility: See School.

Elderly Housing: Dwellings in one or more buildings, each unit of which is specifically designed and intended for occupancy by at least one person who is 55 years of age or older. Such housing may include, as accessory structures or uses, congregate dining and recreational facilities, and assisted living services. See also Community Care Facility.

Extraction (of Earth Resources): A use involving the on-site removal of surface and subsurface materials, including soil, sand, gravel, stone, rock or organic substances other than vegetation, from land or water. Customary extraction operations include sand and gravel pits, rock quarries, and accessory operations such as the crushing, screening, and temporary storage of materials on-site (see Section 4.8).

Family: Any number of individuals related by blood, adoption, marriage, or civil union, or up to five unrelated persons, living together as a household.

Farm Demonstration Center: Educational or cultural events, such as demonstrations, tours and related activities which involve the general public visiting operating agricultural operations on a commercial basis.

Farm Structure: In accordance with the Act, any building for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with agriculture or accepted agricultural practices. This includes a silo or a farm stand for the sale of agricultural products principally produced on the farm, but specifically excludes other types of farm stands and dwellings for human habitation. See also Accepted Agricultural Practices, Agriculture, Farmstand.

FIA: The Federal Flood Insurance Administration.

Flight Instruction: A commercial aviation service or facility authorized to provide flying lessons.

Flood Hazard Area: Those lands subject to flooding from the 100-year flood, as defined in the existing or subsequently revised “Flood Insurance Study for the Town of Bennington, Vermont” and the Flood Hazard Boundary Map (FHBM) or subsequent Flood Insurance Rate Map (FIRM), published by the Flood Insurance Administration, and available at the Bennington Town Office.

Flood Hazard Boundary Map (FHBM): An official map for the Town of Bennington, issued by the Flood Insurance Administration, where the boundaries of flood and mudslide (i.e., mudflow) related erosion areas having special hazards are designated as Zone A, M, and/or E.

Flood Insurance Study: An examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations.

Flood Proofing: Any combination of structural and nonstructural additions, changes or adjustments to structures which reduce or eliminate flood damage to real estate or improve real property, water and sanitary facilities, structures, and their contents.

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

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

Funeral Home: A building used for the preparation and display of the deceased, including crematoriums, and associated memorial services prior to burial or cremation.

Furlough House: See Correctional Home.

Gallery: An establishment engaged in the display, sale, or loan, of art and craft work, excluding noncommercial museums and art galleries. See also Artist Studio, Cultural Facility.

Garage (Residential): A structure that is accessory to a residential dwelling used for parking and storage of vehicles owned and operated by residents of the dwelling and that is not a commercial enterprise open to the general public.

Gas Station: An establishment where motor vehicle fuels, lubricants, and related products are sold, and which has facilities for the fueling or recharging of motor vehicles. This definition specifically excludes motor vehicle sales, service, car washes, the sale of food or unrelated convenience or grocery items, and restaurant seating, which otherwise may be allowed in designated zoning districts subject to review as a Mixed Use. See also Car Wash, Mixed Use, Motor Vehicle Sales, Motor Vehicle Service (see Section 4.10).

Gift/Craft Shop: a retail establishment for the sale of tourist oriented products such as craft and art items and handcrafted products produced on-site. The area used for production of handcrafted products must be accessory to the retail use. Total retail floor area shall be limited to 2,500 sq. ft.

Golf Course: A tract of land for playing the game of golf which is improved with tees, greens, fairways, and hazards, and may include a clubhouse, shelter or maintenance shed as an accessory structure(s) (see

Article 10. Definitions

Section 4.11). This definition includes driving ranges, but specifically excludes miniature golf and “chip and putt” establishments. See Miniature Golf.

Group Home: A state licensed residential care home serving not more than 8 persons who have a handicap or disability as defined in 9 V.S.A. Section 4501. In accordance with the Act, a group home, as defined, shall be considered by right to constitute a permitted single family residential use of property, except that no such home shall be so considered if it locates within 1,000 feet of another group home. For the purposes of these regulations, the definition of Group Home shall not include shelter homes or correctional homes, as defined herein. See also Community Care Facility, Correctional Home, Shelter Home.

Hard Core Material: Media characterized by sexual activity that includes one or more of the following: erect male organ; contact of the mouth of one person with the genitals of another; penetration with a finger or male organ into any orifice in another person; open female labia; penetration of a sex toy into an orifice; male ejaculation; or the aftermath of male ejaculation. See also Adult Media, Media.

Hazardous Waste Management Facility: A building or structure authorized by the state for the storage and/or disposal of highly combustible, explosive, corrosive, toxic, noxious or otherwise hazardous materials.

Height (Building, Structure): The elevation of a building or structure as measured vertically from the average (of the highest and lowest) finished grade at the foundation or base to the highest point of flat or mansard roofs (including the top of a parapet), or to the mean level between the eaves and the ridge for gable, hip or gambrel roofs (see Section 3.7).

Historic Structure: Any contributing structure that is listed on the *National Register of Historic Places* or the *Vermont Historic Sites and Structures Survey for the Town of Bennington*, or has been determined by the Vermont Division for Historic Preservation to be eligible for listing on either the state survey or national register.

Home Child Care: In accordance with the Act, a state registered or licensed child care home serving 6 or fewer children on a full-time basis, and up to 4 additional children on a part-time basis, which is conducted within a single family dwelling by a resident of that dwelling. A child care home as defined shall be considered a permitted use of a single family dwelling, subject to the issuance of a zoning permit. See also Day Care Facility, Home Occupation.

Home Occupation: Use of a minor portion of a single family dwelling, by one or more residents of the dwelling, for an occupation which is clearly incidental to the use of the dwelling for residential purposes, which is customary in a residential area and does not change the character of the area or neighborhood (see Section 4.13). This definition includes a state registered child care home, but specifically excludes commercial stables or kennels, general retail sales, restaurants and tea rooms, group musical or dance instruction, motor vehicle repair shops, motor vehicle sales, machine shops, contractor’s yards, and similar types of use. See also Home Child Care.

Hospital: An institution authorized by the state to provide primary and emergency health services and medical or surgical care to persons, primarily inpatients, suffering from illness, disease, injury, or other physical or mental conditions; and including, as an integral part of the institution, related facilities such as laboratories, outpatient facilities, training facilities, medical offices, central service facilities, and staff residences.

Hotel (Motel): A facility, consisting of a building or group of buildings, which offers transient lodging accommodations to the general public, and additional services such as dining and meeting rooms,

entertainment, and recreational facilities. This definition includes lodging facilities such as motels and tourist cabins (auto courts), but specifically excludes bed and breakfasts and campgrounds. A hotel or motel is not a dwelling unit. See also Bed & Breakfast, Campground.

Improvement: Any physical addition, alteration or modification to real property, including but not limited to a building, structure, parking facility, wall, deck, fencing, or landscaping. See also Alteration, Substantial Improvement.

Industrial Park: A parcel of land that is planned, developed, and managed as an integrated facility for a number of individual industrial uses, and supporting accessory structures and uses, with consideration given to common facilities, infrastructure, services, and open space, and aesthetics and compatibility.

Industrial Use: See Manufacturing, Research & Development Facility.

Junk Motor Vehicle: A discarded, dismantled, wrecked, scrapped or ruined motor vehicle or parts thereof, or a motor vehicle, which is allowed to remain unregistered and/or uninspected for a period of thirty (30) days from the date of discovery by the Administrative Officer. This definition specifically excludes one on-premise utility vehicle per lot.

Junk Yard: (1) Any place of outdoor storage or deposit, whether in connection with another business or not, of two or more junk motor vehicles, whether for the purpose of reclamation, reuse and/or resale of used parts and materials, or for any other purpose; (2) a lot or building where one or more wrecked or disabled motor vehicles are stored for more than ninety (90) days regardless of intent; (3) any place of outdoor storage or deposit of dilapidated, damaged or scrapped material of any kind. This definition shall specifically exclude state certified recycling, solid waste and hazardous waste management facilities, and municipally-operated or licensed impoundment facilities.

Kennel: The boarding, breeding, raising, grooming, or training of four or more dogs, cats, or other household pets of any age for a commercial use and/or which are not owned by the owner or occupant of the premises. See also Home Industry, Veterinary Clinic.

Land Development: The construction, demolition, reconstruction, conversion, structural alteration, relocation or enlargement of any building or structure, or of any mining, excavation, or landfill, any change in use of any building or other structure, or land or extension of use of land, unless specifically exempted from these regulations (see Section 9.2). This definition shall include the construction and/or installation of roads, utilities and site improvements. See also Subdivision.

Level of Service: (1) A measure of the relationship between public service and facility capacity and the demand for public services and facilities; (2) for traffic, the operating conditions that a driver will experience while traveling on a particular street or highway, including frequency of stops, operating speed, travel time, traffic density and vehicle operating costs.

Lot: (1) A plot or parcel of land occupied or capable of being occupied by one principal building or use and the accessory buildings or uses customarily incident to it, including such open spaces as are required by these regulations. In the case of multiple dwellings and public, institutional, commercial, industrial, or agricultural buildings, a group of buildings on the same or contiguous premises, all under the same ownership, may be considered as occupying the same lot. A lot must have its principal frontage on a street or highway, or such other means of access as determined by law, and provisions of these regulations; (2) a portion of land in a subdivision or plat that is separated from other portions by a lot (property) line. See also Contiguous.

Lot Area: The total land area within the boundaries (lot lines) of a lot, exclusive of any land area designated for a road, or a right-of-way or driveway providing access to another parcel, as measured to the boundary of such right-of-way or easement.

Lot, Corner: A lot at the intersection of and abutting on two or more streets where the angle of intersection is not more than 135 degrees, or where the intersection is rounded by a curve having a radius of less than one hundred feet.

Lot, Interior: A lot other than a corner lot or through lot.

Lot, Through: A lot other than a corner lot which abuts two or more streets which do not intersect at the lot.

Lot Coverage: That portion (percentage) of a lot area which is covered by buildings, structures and other man-made improvements, such as parking and loading areas, access roads, service areas, tennis courts, and other impermeable surfaces, which prevent the infiltration of stormwater. Lawn areas are specifically excluded from this definition. See also Building Coverage.

Lot Depth: The mean horizontal distance from the street line of the lot to its opposite rear line measured at right angles to the building front line.

Lot Line: The established division line between lots or between a lot and a street.

Lot Line, Front: All dividing lines between a street and a lot shall be considered front lot lines.

Lot Line, Rear: The line or lines bounding a lot at the rear and approximately parallel to and at the maximum distance from the front lot line.

Lot Line, Side: The line or lines bounding a lot which extends from the street towards the rear in a direction approximately perpendicular to the street. In the case of corner lots, or through lots, all lines extending from streets shall be considered side lot lines.

Lot Size: See Lot Area.

Lot Width: The distance between side lot lines, measured at right angles to lot depth, at the required front lot line. For the purpose of this measurement only, the front lot line which has the least dimension shall be considered the front lot line, and lot lines adjacent thereto shall be considered as side lot lines.

Lowest Floor: The lowest floor of the lowest enclosed area (including basement). An unfinished floor or flood resistant enclosure, used solely for parking 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 applicable federal (Section 60.3) non-elevation design requirements.

Manufactured Home: A single family dwelling, transportable in one or more sections, which is placed on a permanent foundation and is connected to required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on the site for more than 180 consecutive days. For insurance purposes, and the other provisions of these regulations, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles. See also Single Family Dwelling, Mobile Home.

Manufacturing: The processing, treatment and/or conversion of raw, semi-finished or finished materials into a different form or state, including the physical assembly, from standardized parts, of a distinct or finished product that differs from its individual components. This definition does not include the processing of agricultural goods raised on the premises, which falls under the definition of agriculture. See also Manufacturing, Light; Research & Development Facility.

Manufacturing, Light: A custom workshop where the manufacturing and/or assembly of small quantities of materials or goods is performed by tradesmen or craftsmen requiring manual, mechanical and/or artistic skills. See also Manufacturing.

Mean Sea Level: The standard datum to which base flood elevations shown on Flood Insurance Rate Maps, shorelines, and typical contour elevations are referenced.

Media: Anything printed or written, or any picture, drawing, photograph, motion picture, film, videotape or videotape production, or pictorial representation, or any electrical or electronic reproduction of anything that is or may be used as a means of communication. Media includes but shall not necessarily be limited to books, newspapers, magazines, movies, videos, sound recordings, cd-roms, other magnetic media, and undeveloped pictures. Also see Adult Media.

Medical Clinic: A building or part thereof used for the medical, dental, surgical, or therapeutic treatment of patients on an out-patient basis. This definition excludes the professional office of a doctor located in his or her residence. See also Home Occupation, Hospital.

Miniature Golf: A theme-oriented recreation facility, typically comprised of 9 or 18 putting greens, each with a “cup” or “hole,” where patrons pay a fee to move in consecutive order from the first hole to the last. See Golf Course.

Minimum Lot Frontage: The minimum percentage of the lot width along a front lot yard that must be occupied with buildings.

Mixed Use: A building or parcel containing two or more uses which are otherwise allowed within the district in which the building or parcel is located (see Section 4.16). See also Accessory Use, Principal Use.

Mobile Home: A prefabricated dwelling unit which is (1) designed for continuous residential occupancy with connection to a permanent water supply and sewage disposal system; and (2) is designed to be moved on wheels, as a whole or in sections. In accordance with the Act, a mobile home shall be considered a single family dwelling, and cannot be excluded from a zoning district except on the same terms and conditions as conventional housing is excluded. See also Camper, Modular Home, Single Family Dwelling.

Mobile Home Park: A parcel of land under single or common ownership or control which contains, or is designed, laid out or adapted to accommodate two or more mobile homes.

Modular Home: A prefabricated building or part thereof, to be used for dwelling purposes, which is transported to a building site on a flat bed trailer or other vehicle, and which is to be located on a permanent foundation and connected to a permanent water supply and sewage disposal system. In accordance with the Act, a modular home cannot be excluded from a zoning district except on the same terms and conditions as conventional housing is excluded. See also Mobile Home.

Motel: See Hotel.

Motor Vehicle Sales: A building, lot or portion thereof used for the sale and/or rental of automobiles, trucks, motorcycles, motorized recreational vehicles, or other motor vehicles. This definition specifically excludes motor vehicle service, which may be allowed in designated zoning districts subject to review as a Mixed Use. See also Mixed Use, Motor Vehicle Service.

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

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

Neighborhood Grocery Store: A retail establishment for the sale of food and convenience items, with limits on total floor area as specified for the district in which it is located. The sale of gasoline and liquor is specifically prohibited, and the sale of tobacco products and/or alcoholic beverages shall not, in combination, comprise greater than 15% of the available floor space or 15% of the stock in trade. See also Gas Station, Retail Establishment.

Neighborhood Market: A retail establishment for the sale of food (including prepared foods and deli items) and convenience items, with a total floor area of no more than 3,000 square feet. The sale of gasoline and liquor is specifically prohibited, and the sale of tobacco products and/or alcoholic beverages shall not, in combination, comprise greater than 15% of the available floor space or 15% of the stock in trade.

New or Changed Use: Any use which differs from the present use of a premises. See also Change of Use.

Night Club: An entertainment facility for dancing, concerts or other live performances, usually consisting of a bar or lounge and perhaps a restaurant.

Noncomplying Structure: A structure or part thereof lawfully in existence as of the effective date of these regulations, but not in compliance with the provisions of these regulations, including but not limited to building bulk, height, setbacks, area, yards, density or off-street parking or loading requirements, where such structure complied with all applicable laws, ordinances, and regulations prior to the enactment of these regulations.

Nonconforming Use: The use of a land or structure lawfully in existence as of the effective date of these regulations, which does not conform with these regulations, including but not limited to allowed uses within the district in which it is located, where such use conformed to all applicable laws, ordinances and regulations prior to the enactment of these regulations.

Office (Professional, Business): A room, suite of rooms or building principally used for conducting the affairs of a business, profession, or service industry. This definition specifically excludes office space which is associated with home occupations, or is clearly accessory to another allowed principal use. It also specifically excludes medical clinics (as defined elsewhere in this section) and/or the on-premise retail sale of goods and services. See also Home Occupation.

Office Park: A parcel of land that is planned, developed, and managed as an integrated facility for a number of individual office buildings, and supporting accessory structures and uses, with consideration given to common facilities, infrastructure, services, and open space, and aesthetics and compatibility.

Open Space: The area of a lot, outside of approved development envelopes, that is not occupied by structures, buildings, roads, rights-of-way, recreational facilities (other than ballfields, trails and similar unimproved facilities), or parking lots. Open space may or may not be held in common.

Parcel: Any contiguous land owned or controlled by a person. See also Lot.

Parking Space: An on- or off-street area, other than a loading or service area, which is to be used exclusively as a temporary storage space for one licensed private motor vehicle (see Section 3.10). See Open Space, Public Parking Facility.

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

Personal Service Establishment: A business which provides services of a personal nature, including but not limited to: laundry services, beauty and barber shops, shoe repair, copy services, and photographic studios. Dry cleaners are specifically excluded from this definition. Also see Dry Cleaner, Retail Establishment.

Petroleum Bulk Storage Facility: An establishment consisting of above and/or below ground storage tanks and associated accessory structures, which is primarily engaged in the bulk storage and distribution of petroleum, gasoline, fuel oil, gas, or other similar petroleum products.

Place of Worship: A building used solely for purposes of assembly and worship by a legally established and recognized religious institution. This definition also includes such customary accessory structures such as parish houses.

Planned Residential Development (PRD): An area of land, controlled by an individual, to be developed as a single entity for a number of dwelling units; the plan for which does not correspond in general lot size, bulk, or type of dwelling, density, lot coverage, and required opens space under these regulations except as a planned residential development. See also Major Subdivision, Planned Unit Development.

Planned Unit Development (PUD): An area of land, controlled by an individual, to be developed as a single entity for a number of dwelling units and commercial and industrial uses; the plan for which does not correspond in general lot size, bulk, or type of dwelling, density, lot coverage, and required opens space under these regulations except as a planned unit development. See also Major Subdivision, Planned Residential Development.

Article 10. Definitions

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

Post Office: A facility operated by the United States Postal Service which is open to the public and provides for the collection and distribution of mail.

Pre-existing: A use or structure that was legally in existence as of the effective date of these regulations.

Premises: A lot, parcel, tract or plot of land together with the buildings and structures thereon.

Principal Structure: A building or other structure in which is conducted the principal use of the lot or parcel on which the building is located. See also Accessory Structure, Structure.

Principal Use: The primary or predominant use of a lot or parcel. See also Accessory Use, Mixed Use.

Principally: 51% or more, unless otherwise specified.

Private Club: The premises owned or occupied by a membership-based corporation organized under the laws of the State of Vermont for fraternal, social, educational, recreational or cultural enrichment, the principal activity of which is not carried on as a business, and the benefits of which are available only to members and their guests; including but not limited to a subordinate lodge or local chapter of any national fraternal order, or an unincorporated association or corporation whose officers and members consist solely of veterans of the armed forces of the United States.

Public: Owned, leased, held, used, and/or controlled exclusively for public purposes by the Town of Bennington, or any other department or branch of government, or publicly-regulated utility, unless otherwise specified.

Public Building: A building defined in Title 18 V.S.A., Section 1301, including but not limited to dwellings of two or more units, places of employment, motels, restaurants, places of public assembly, stores, shops, offices, manufacturing and industrial facilities, and lodging establishments such as boarding houses, rooming houses, tourist homes, cabins, etc.

Public Facility: A utility or other facility owned, leased, held, used, and/or controlled exclusively for public purposes by a municipal, state or federal government, regulated utility or railroad. Such facilities include, but may not be limited to: municipal buildings and garages, water and wastewater facilities, power generation and transmission facilities, reservoirs, solid and hazardous waste management facilities, institutional facilities, recreational facilities and telephone, cable and electrical distribution lines. Public facilities and utilities, including distribution and service lines to individual uses, are allowed within all zoning districts unless otherwise specified, or specifically excluded, under district standards. See also Public Building, Public Improvement, Public Park, School, Telecommunications Facility. This definition specifically does not include correctional facility, correctional home, secure care facility or shelter home.

Public Improvement: Any improvement which shall be owned and/or maintained by the Town of Bennington or other department or branch of state or federal government.

Public Park: An outdoor recreational, educational or resource management facility, including a playground, that is owned, leased, held, used, and/or controlled exclusively for public purposes by the Town of Bennington, or any other department or branch of state or federal government.

Public Parking Facility: A separate, off-street parking area, garage or similar structure, owned, leased, held, used and/or controlled exclusively for public use, and is the principal use of a lot.

Public Sewer: A sanitary wastewater system, including collection and treatment facilities, which is owned and operated by the Town of Bennington or another municipal or other governmental unit.

Public Street: A street (road) which is constructed within the boundaries of an officially deeded and municipally accepted public right-of-way (town highway), or a designated state highway. See also Street.

Public Water Supply: A water supply system, including collection, treatment and distribution facilities, owned and operated by the Town of Bennington or a municipality or another governmental unit, or by a corporation authorized and regulated by the State of Vermont for purposes of public water supply.

Reasonable Use: A use of real property which is allowed within the district in which the property is located, which provides some (but not necessarily all potential) benefit to the owner, and which does not lead to unreasonable interference with another's use of property, or with the natural flow of water. Reasonable use does not mean highest and best use; nor does it include accessory uses, structures, or additions which may be customary, but are not necessary, to the existing or intended principal use (e.g., a garage or swimming pool).

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

Recreation, Indoor: A building or structure designed, equipped and used for commercial amusement. This includes, but may not be limited to bowling alleys, pool halls and arcades, but specifically excludes movie theaters, performing arts centers, civic centers and similar uses. See also Community Center; Civic Center; Cultural Facility; Theater.

Recreation Vehicle: See Camper.

Recreation Vehicle Park: A parcel upon which sites are located and maintained for occupancy by recreational vehicles of the general public as temporary living quarters for recreation and/or vacation purposes (see Section 4.7).

Research & Development Facility: An establishment, consisting of a building or group of buildings, for carrying out scientific investigations in the natural, physical or social sciences, which may include laboratory testing, engineering, product development, and pilot plant operations, but not facilities for the manufacture or sale of products except as incidental to the principal research.

Restaurant: An establishment that serves food and beverages to persons seated primarily within the principal building. This includes taverns, bars, cafes, tea rooms, and outdoor cafes. It also may include take-out service, but does not include service delivered to customers who are in motor vehicles. See also Restaurant, Drive-through.

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

Retail, Large-Scale: Any single retail building having a total enclosed floor area of 50,000 square feet or more.

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

Ridgeline: The uppermost point of a ridge, hill, cliff, slope or face. It may coincide with the top (highest elevation) of a rock cliff or, where the bedrock is not exposed, the most obvious break in slope associated with the underlying bedrock. The term does not include intermediate terraces, steps, or elevations along the face of a slope.

Road: See Street.

Scenic Area (Feature): An open area or vista, within view of one or more public vantage points, which includes natural and/or cultural features that are considered visually significant.

School: A public, private or parochial institution, other than a college, licensed by the State of Vermont to provide educational instruction to students. Such facilities may also include accessory recreational and dining facilities, and be used as officially designated, temporary emergency shelters. See also College. This definition specifically excludes facilities that primarily serve students with behavioral, substance abuse or similar problems.

Screening: The use of planted vegetation, fencing, walls, natural topography or earthen berms to visually shield or obscure a structure or use from neighboring structures, properties, rights-of-way, and/or designated public vantage points.

Seasonal Camp: A building (or camper), not exceeding 720 square feet in building area nor 20 feet in building height, which has no permanent foundation and is not served by public utilities. A seasonal camp shall not be used as a primary or secondary residence, but rather as a temporary shelter for occasional use in connection with an outdoor recreational activity such as hunting or fishing. See also Camper.

Secure Care Facility: A facility in which residents are physically detained or otherwise under the direct supervision of staff, and are prevented through various means from leaving the facility except under supervised conditions, either by staff or others. See also Correctional Facility, Correctional Home.

Service Station: See Gas Station, Motor Vehicle Service.

Setback: The horizontal distance from a street, lot line, boundary or other delineated feature (e.g., a stream bank, shoreline, or wetland area), to the nearest part of a building, structure, or parking area on the premises. In the case of a setback from a street, the distance shall be measured from the road right-of-way. See also Street.

Sexually Oriented Toys or Novelties: Instruments, devices or paraphernalia either designed as representations of human genital organs or female breasts, or designed or marketed primarily for use to stimulate human genital organs.

Shelter Home: A residential facility used to temporarily house homeless or abused persons.

Article 10. Definitions

Sign: Any structure, display, device, or representation, which is designed or used to advertise, direct to, or call attention to any thing, person, business activity or place, and is visible from any public highway or other public vantage point. This definition does not include the flag, pennant, or insignia of any nation, state, or municipality.

Silviculture: See Forestry.

Solid Waste Management Facility: A facility certified by the state under 10 V.S.A. chapter 59 for the collection, storage, recycling, transfer and/or disposal of solid waste, but excluding junked motor vehicles and scrap metal stored in junk yards as defined herein, and hazardous wastes. See also Hazardous Waste Management Facility, Junk Yard.

Specified Anatomical Areas: (1) Less than completely and opaquely covered: human genitals, pubic region, buttock, and female breast below a point immediately above the top of the areola; and (2) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified Sexual Activities: Human genitals in a state of sexual stimulation or arousal, or acts of human masturbation, sexual intercourse, sodomy, or fondling, or other erotic touching of human genitals, pubic region, buttock, or female breast.

Stream: Any surface water course in the Town of Bennington as depicted by the U.S. Geological Survey on topographic maps or as identified through site investigation; excluding artificially created irrigation and drainage channels (see also Stream Channel).

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

Street (Road): A town or state highway, or other right-of-way that provides access to four or more parcels, as shown on a subdivision plat approved by the Development Review Board. The word "street" shall mean the entire right-of-way. If the boundary of the right-of-way has not been surveyed and so recorded, the boundary shall be deemed to be 25 feet from the center line of the traveled way. See also Driveway, Public Street.

Street Line: The property line dividing the street right-of-way and the lot.

Streetscape: (1) An area that may either abut or be contained within a public or private road right-of-way or access that may contain sidewalks, street furniture, landscaping, street trees and similar features; (2) the street edge, or vertical face, formed by building facades, trees, and screening walls or fences, that is aligned along a road and forms a pedestrian-scaled space.

Structure: An assembly of materials on the land for occupancy or use, including but not limited to a building, mobile home or trailer, sign, wall or fence (see Exemptions under Section 9.2).

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

Article 10. Definitions

Subdivision: The division of any parcel of land into two or more parcels for the purposes of immediate or future sale, conveyance, lease, or development. The term “subdivision” includes resubdivisions, amended subdivisions, lot line (boundary) adjustments, and the division of land held in common among several owners. See also Parcel; Subdivision, Major; Subdivision, Minor.

Subdivision, Major: All subdivisions other than minor subdivisions, including but not limited to a subdivision and/or subsequent resubdivision of a parcel(s) to create five or more lots, any subdivision served by a class 4 road or located in the Forest District, and all planned residential and planned unit developments. See also Subdivision; Subdivision, Minor.

Subdivision, Minor: (1) Lot line or boundary adjustments between pre-existing lots which do not create additional or nonconforming lots, (2) the subdivision of land into four or fewer lots, each of which meets the frontage requirements for the zoning district in which it is located, or (3) amendments to an approved subdivision (including a the resubdivision of a subdivided parcel) which do not substantially alter the nature of the approved subdivision, result in the creation of a total of more than four lots, or violate the original conditions of approval. See also Subdivision; Subdivision, Major.

Substantial Expansion: Development that expands an existing structure such that more than 1,000 square feet of new floor space and/or 2,000 square feet of site disturbance are created.

Substantial Improvement: Any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds fifty percent of the market value of the structure either: (a) before the improvement or repair is started, or (b) if the structure has been damaged and restored, before the damage occurred. For the purpose of administering flood hazard area regulations, this definition excludes the improvement of a structure to comply with existing municipal or state health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions; or any alteration of a structure listed on the state or National Register of Historic Places, provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

Substantially Completed: The completion of a permitted building or structure to the extent that it may be safely occupied for its intended use.

Taxi Garage: A facility for servicing, repairing and/or fueling passenger automobiles, vans or buses associated with a commercial taxi or bus service. This does not include a taxi stand or bus shelter for the pick-up of passengers, which may be allowed as accessory to another use, or as designated by the municipality (e.g., within a public right-of-way).

Telecommunications Facility: A support structure which is primarily for communication or broadcast purposes and which will extend vertically 5 feet, or more, in order to transmit or receive communication signals for commercial, industrial, municipal, county, state or other governmental purposes; and/or associated telecommunications equipment, and ancillary facilities that provide access to and/or house such equipment (see Section 4.19).

Temporary Shelter: See Shelter Home.

Theater: A building or part of a building devoted to showing motion pictures or for dramatic, dance, musical or other live performances.

Town Highway: See Public Road.

Transit Facility: A building, structure, or area designed and intended for use by persons changing transportation modes, including but not limited to bus and train stations, taxi stands, and park-and-ride facilities. See also Public Parking Facility.

Trucking/Shipping Terminal: The use of a premises as a relay station for the loading, unloading, and transfer of freight and cargo to other vehicles or modes of transportation. This may include containerized freight handling facilities, rail truck services, or the local pick-up, delivery and temporary storage of goods incidental to the primary function of the freight shipment operation.

Undevelopable Land: Land which is unsuitable for physical development, including the erection of structures, as specified in these regulations. Such land includes, but may not be limited to: specified flood hazard areas; land with slopes in excess of 20 percent; regulated wetland areas; critical habitat areas; and land within designated surface water, wetland, or habitat buffer areas. This definition shall not prohibit agricultural, forestry, open space and recreational uses which are exempt from or may otherwise be approved under these regulations. See also Open Space.

University: See College.

Use: (1) The purpose for which a building, structure, or parcel of land is designed, intended, occupied or used; (2) any activity carried out upon any premises or within any structure upon a premises.

Variance: Permission to depart from the literal requirements of these regulations. Such permission is limited to departures from zoning requirements relating to frontage, setback, yard, coverage and height requirements (see Section 9.6). See also Noncomplying Structure, Nonconforming Use.

Veterinary Clinic: A building or part thereof used for the care, diagnosis, treatment and temporary boarding of animals. Boarding of animals is only allowed in association with treatment procedures. See also Kennel.

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

Wetlands: Those areas of the Town of Bennington which are inundated by surface or groundwater with a frequency sufficient to support vegetation or aquatic life that depend on saturated or seasonally saturated soil conditions for growth and reproduction. These shall include, but may not be limited to, wetlands shown on the most recent Vermont Significant Wetland Inventory maps (VSWI maps) issued by the state, or National Wetland Inventory (NWI) maps as most recently modified by the state, which are classified as, or contiguous to, Class One or Class Two wetlands.

Yard, Front: The open space between the building and the front lot line, extending the full length of the lot, or, in the case of a corner lot, extending along all streets.

Yard, Required: So much of the front, rear or side yard, as required by the applicable provisions of these regulations.

Yard, Side: The open space between the building and a side lot line, extending the full length of the lot excluding the area defined as the front yard.

Yard Depth, Width: The depth of front and rear yards, and the width of side yards, as measured perpendicularly to the respective lot lines.

Yard Sale: The casual sale of personal property open to the general public and generally denoted by the terms “garage sale,” “attic sale,” “lawn sale,” “flea market,” “barn sale” or similar phrase.