

Proposed revisions to the Marlboro Zoning Regulations

Beginning on the next page are proposed revisions to the Marlboro Zoning Regulations, prepared by the Marlboro Planning Commission.

KEY TO PROPOSED REVISIONS:

Text in gray highlight: Proposed additions or changes.

Proposed Regulations begin on next page >>

ZONING REGULATIONS TOWN OF MARLBORO, VERMONT

Adopted March 1974
Revised May 1997
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Revised March 2003
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**Proposed Revisions
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TABLE OF CONTENTS

ARTICLE I - GENERAL PROVISIONS..... 5

Section 100 - Enactment 5

Section 110 - Intent..... 5

Section 115 - Affordable housing 5

Section 120 - Application of Regulations..... 5

Section 130 - Interpretation..... 5

Section 140 - Amendments..... 5

Section 150 - Separability 5

Section 160 - Effective Date..... 6

Section 161 - Prohibited Uses or Structures 6

ARTICLE II - ADMINISTRATION AND ENFORCEMENT..... 7

Section 201 - Administrative Officer 7

Section 202 - Zoning Permits 7

Section 203 - Development Review Board..... 8

Section 204 - Site Plan Review.....10

Section 205 - Violations and Enforcement11

ARTICLE III - ESTABLISHMENT OF ZONING DISTRICTS AND ZONING MAP..... 12

Section 300 - Purpose of Zoning Districts.....12

Section 301 - Establishment of Zoning Districts.....12

Section 302 - Design Review District12

Section 305 - Rural Residential (RUR)12

Section 306 - Village (VIL).....14

Section 307 - Agricultural / Forest Production (AGR/F).....15

Section 308 - Conservation Priority (CONS).....17

Section 309 - Commercial (COM-W and COM-E).....18

Section 310 - Educational (EDU)21

Section 311 - Use Table22

Section 320 - Official Zoning Map24

Section 330 - Interpretation of District Boundaries.....25

Section 331 - Overlay Districts.....25

Section 340 - Unused.....25

Section 350 - Wildlife Habitat Overlay District (WH).....25

Section 351 - Establishment of District Boundaries25

Section 352 - Use Regulations and Development Subject to Review26

Section 353 - Exemptions.....26

Section 354 - Standards and Special Requirements for Development Activities in the Wildlife Habitat Overlay District.....26

Section 355 - Consultation with an Environmental Consultant.....27

Section 356 - Review and Decision by the Development Review Board.....28

Section 360 - Shoreland Overlay District (SL)29

Section 361 - Classification of Shorelands: General Description29

Section 362 - Shoreland Regulations29

Section 370 - Surface Water Buffer Overlay District.....29

Section 371 - Surface Water Buffer Overlay District Description.....29

Section 372 - Surface Water Buffer Overlay Standards:30

Section 373 - Pre-Existing Structures Along Named Water Bodies32

Section 380 - Flood and Fluvial Erosion Hazard Regulations & Flood and Fluvial Erosion Hazard Area Overlay District32

Section 381 - Statement of Purpose32

Section 382 - Applicability.....33

Section 383 - Flood and Fluvial Erosion Hazard Area Overlay District.....33

Section 384 - Development Review in the Flood and Fluvial Erosion Hazard Area Overlay District34

Section 385 - Development Standards.....37

Section 386 - Application Submission Requirements.....40

Section 387 - Procedures.....40

Section 388 - Administration.....41

Section 389 - Enforcement and Penalties42

Section 390 - Definitions.....42

ARTICLE IV - GENERAL REGULATIONS..... 47

Section 400 - Requirements of the Act.....47

Section 401 - Existing Small Lots.....47

Section 402 - Required Frontage On, or Access To, Public Roads or Waters.....47

Section 403 - Special Public Use Exceptions.....47

Section 404 - Equal Treatment of Housing.....47

Section 405 - Extraction of Soil, Sand, or Gravel48

Section 410 - Calculation of Required Lot Area and Setbacks.....48

Section 411 - Lots in Two Zoning Districts.....49

Section 412 - Buildings on Lots.....49

Section 413 - Nonconformities49

Section 414 - Front Yard Setback on Highways with less than 50-Foot Rights-of-Way.....49

Section 415 - Location of Driveways49

Section 420 - Erosion and Sediment Control49

Section 425 - Landscaping Requirements.....50

Section 430 - Gasoline or Motor Vehicle Service Stations and Vehicle Services50

Section 435 - Off-street Parking and Loading Space Requirements50

Section 440 - Primitive Camps51

Section 441 - Campgrounds51

Section 450 - Home Enterprises.....52

Section 452 - Signs.....52

Section 453 - Allowed Off-Premises Signs52

Section 454 - Allowed On-Premises Signs.....53

Section 455 - Prohibited Signs.....53

Section 456 - Sign Exceptions.....54

Section 458 - Visibility At Intersections.....54

Section 459 - Fences55

Section 460 - General Performance Standards.....55

Section 470 - Renewable Energy Systems.....56

Section 475 - Steep Slopes Standards.....60

ARTICLE V – PLANNED UNIT DEVELOPMENT..... 62

Section 500 - Planned Unit Development (PUD).....62

Section 501 - Purpose62

Section 502 - Definition62

Section 504 - Permitted Uses.....62

Section 505 - Application and Review Procedures62

Section 506 - General and Specific Standards62

Section 507 - Density Bonus for Affordable Housing.....63

Section 508 - District Regulations' Waivers63

Section 509 - Open Space.....64

Section 510 - Density Requirements for Planned Unit Development64

ARTICLE VI – TELECOMMUNICATIONS FACILITIES..... 65

Section 600 - Title65

Section 605 - Statement of Purpose65

Section 610 - Authority65

Section 611 - Consistency with Federal Law.....65

Section 615 - Telecommunications Facilities Definitions.....65

Section 616 - Administration, Enforcement and Appeals.....66

Section 620 - Permitted and Prohibited Locations66

Section 625 - Small Scale Facilities.....67

Section 630 - Application Requirements for Wireless Telecommunications Facilities not Covered Under Section 62567

Section 635 - Site Plan Requirements for Wireless Telecommunications Facilities not Covered Under Section 62568

Section 637 - Independent Consultants69

Section 640 - Collocation Requirements69

Section 645 - Access Roads and Above Ground Facilities70

Section 650 - Tower and Antenna Design Requirements70

Section 652 - Balloon Test71

Section 655 - Amendments to Existing Wireless Telecommunications Facility Permit71

Section 660 - Tower Lighting and Signage; Noise Generated by Facility71

Section 665 - Temporary Wireless Communications Facilities.....71

Section 670 - Continuing Obligations72

Section 675 - Facility Removal.....72

Section 680 - Maintenance Requirements72

Section 685 - Insurance Requirements72

Section 690 - Fees.....72

Section 695 - Enforcing Agent73

Section 696 - Severability73

Section 697 - Glossary of Telecommunications Terms73

ARTICLE VII - DEFINITIONS 77

ARTICLE VIII - OFFICIAL ZONING MAP 85

Zoning Map - 1 of 4, Zoning Districts.....85

Zoning Map - 2 of 4, Wildlife Habitat Overlay.....85

Zoning Map - 3 of 4, Flood and Fluvial Erosion Hazard Area Overlays85

Zoning Map - 4 of 4, Shoreland and Surface Water Buffer Overlays85

◆ ◆ ◆ END OF TABLE OF CONTENTS ◆ ◆ ◆

ARTICLE I - GENERAL PROVISIONS

Section 100 - 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 Regulations for the Town of Marlboro which are set forth in the text and maps that constitute these Regulations. These Regulations shall be known as the "Town of Marlboro Zoning Regulations."

Section 110 - Intent

It is the intent of these Regulations to provide for orderly community growth and to further the purposes and goals established the Act.

Section 115 - Affordable housing

It is the intent of the Town of Marlboro to facilitate the creation of affordable housing. For this purpose these Regulations provide for multi-unit or multi-family housing as Conditional Uses in certain districts to facilitate construction of affordable housing, especially as starter homes for families. These Regulations also provide for density bonuses for Planned Unit Development projects that include affordable residential units (see Article V). The affordable housing provisions of these Regulations are intended to:

1. Provide for residential development that meets the needs of Marlboro's population, including housing for low and moderate income individuals and families, in accordance with the Act;
2. Increase opportunities for homeownership and rental units;
3. Allow for development of a variety of affordable housing types including single and two family dwellings and multi-family units;
4. Ensure that affordable housing units will remain affordable and available into the future; and
5. Encourage mixed income development

Section 120 - Application of Regulations

The application of these Regulations is subject to the requirements and limitations of the Act. Except as hereinafter provided, no "Land Development" or "Development" as such terms are defined by these Regulations may be commenced in the Town of Marlboro unless in conformity with the Regulations herein specified for the district in which it is located. Any use not permitted by these Regulations shall be deemed prohibited.

Section 130 - Interpretation

Except as provided for in the Act, and where these Regulations specifically provide to the contrary, it is not intended to repeal, annul or in any way to impair any regulations or permits previously adopted or issued, provided however that where these Regulations impose a greater restriction upon use of a structure or land than are required by any other statute, ordinance, rule, regulation, permit, easement, or agreement, the provisions of these Regulations shall control.

Section 140 - Amendments

These Regulations may be amended according to the requirements and procedures established in the Act.

Section 150 - Separability

The invalidity of any provision of these Regulations shall not invalidate any other part.

Section 160 - Effective Date

These Regulations shall take effect in accordance with the voting and other procedures contained in the Act.

Section 161 - Prohibited Uses or Structures

Unless a use or structure is expressly permitted by these Regulations or is a nonconforming, pre-existing use or structure, it is prohibited.

✧ ✧ ✧ **END OF ARTICLE I** ✧ ✧ ✧

ARTICLE II - ADMINISTRATION AND ENFORCEMENT

Section 201 - Administrative Officer

The Administrative Officer, hereinafter referred to as the Zoning Administrator, is appointed to administer the Zoning Regulation, as provided for in the Act. The Zoning Administrator shall enforce literally the provisions of these Regulations, and in so doing shall inspect land developments, maintain records of his or her actions, report periodically to the public and the governing body, and perform all other necessary tasks to carry out the provisions of these Regulations and the duties of the office.

1. Application for all permits shall be made to the Zoning Administrator.

Section 202 - Zoning Permits

Zoning Permits are required to assure the public and the applicant that development in Marlboro is in conformance with Zoning Regulations.

After the effective date of these Regulations, no land or building developments as herein defined may commence, nor shall any land or structure be used, be extended in any way, or be occupied, unless a Zoning Permit has been duly issued by the Zoning Administrator, as provided for in the Act.

1. The Zoning Administrator shall issue a Zoning Permit only if all of the following requirements are met:
 - a. The proposed land or building development complies with current Marlboro Zoning Regulations;
 - b. Zoning Permit and/or Division of Land application form, as established by the Development Review Board, has been properly completed and submitted;
 - c. The Zoning Permit fee, as established by the Board of Selectmen in accordance with the Act, has been paid;
 - d. All state and town health requirements have been complied with and proof thereof submitted;
 - e. All applicable local reviews and approvals have been secured, including but not limited to Site Plan Approval, Conditional Use Permit, Variances, rights of way, and PUD review, where required under the provisions of these Regulations;
 - f. The stipulations of any State or Federal agencies have been satisfied.
2. The Zoning Administrator shall within 30 days of submission of all necessary application data and approvals, either issue or deny a Zoning Permit. If denied, the Zoning Administrator shall notify the applicant in writing, stating the reasons therefore. A decision by the Zoning Administrator may be appealed to the Development Review Board by any interested person as described in Section 203.1 of these Regulations.
3. Permit expiration: Permits expire one year from effective date if the project has not been started and two years from the effective date if the project has not been substantially completed, unless longer times are stated in the permit. Substantially completed means the project can be fully utilized for its permitted purpose. Permits may be renewed, but such renewal takes into account amendments to these Regulations subsequently adopted.
4. Exemptions: Notwithstanding the above, no Zoning Permit shall be required for the following activities of development carried out in conformance with any applicable standards of these Regulations.
 - a. Small accessory buildings associated with residential uses, but not used for human occupancy, which are less than 200 sq. feet of floor area and less than 16 feet in height and are not located within required setback areas or within the Flood and Fluvial Erosion Hazard Area Overlay District. Written notification, including a sketch plan showing structure setback distances from property lines and surface waters, shall be submitted to the Zoning Administrator prior to construction.
 - b. Interior repair or renovation which does not change the lawful use of a structure.
 - c. Exterior repair or renovation which does not involve Substantial Improvement and which does not alter the foundation plan, violate setback provisions, or change the lawful use of a structure. Substantial Improvement means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the improvement or repair is started, or,

- if the structure has been damaged and is being restored, to before the damage occurred. However the term does not include either of the following:
- i. Any project or for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications that are solely necessary to ensure safe living conditions.
 - ii. Any alteration of a "Historic Structure," provided that the alteration will not preclude the structure's continued designation as a "Historic Structure."
- d. Landfill or excavation incidental and accessory to a use of land that is lawful under these Regulations provided that the landfill or excavation does not violate any provision in these Regulations, or constitute a change in the use of land.
 - e. Residential entry stairs, handicap access ramps, and walkways which do not extend into or obstruct public rights of way; stone walls and fences not exceeding 4 feet in height; and mailboxes, clotheslines, and lampposts that do not obstruct public rights of way or interfere with corner visibilities and sight distances for vehicular traffic. This exclusion shall not apply to decks and porches, and shall not apply to stair landings greater than 15 square feet.
 - f. Temporary structures: If a Temporary Structure is to be in place for more than one week, written notification, including a sketch plan showing structure setback distances from property lines and surface waters, shall be submitted to the Zoning Administrator prior to construction.
 - g. Farm structures: A person engaged in farming (see Definitions) shall notify the Zoning Administrator of the intent to build a farm structure and shall abide by all setbacks within these Regulations unless a variance is applied for and approved by the Secretary of Agriculture, Food and Markets. No municipal permit for a farm structure shall be required. For purposes of this section, "farm structure" means a building, enclosure, or fence for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with accepted agricultural or farming practices, including a silo, as "farming" is defined in 10 V.S.A. § 6001(22), but excludes a dwelling for human habitation. (24 V.S.A. § 4413 (d)(1) & (2))
 - h. Livestock, garden, orchard, and dog fences.

Section 203 - Development Review Board

The Board of Adjustment, hereinafter referred to as the Development Review Board is established as provided for in the Act. The rules of procedure, nature of appeal, public notice and all other matters, shall be established as provided in the Act.

1. *Appeals.* An interested person, as defined in the Act may appeal any act or decision within fifteen (15) days of such act or decision, in accordance with the provisions of the Act. An application for an appeal shall be submitted to the Development Review Board and a copy filed with the Zoning Administrator. In accordance with the Act, the Board shall render its decision, which shall include findings of fact, within 45 days after completing the hearing, and shall within that period send to the appellant, by certified mail, a copy of the decision. Appeals of decisions by the Development Review Board are to be made to the Vermont Environmental Court, as provided for in the Act.
2. *Variances.* On a request for a Variance, the Development Review Board shall grant such Variance only if all criteria under the Act are met.
3. *Conditional Use Permit.* No Zoning Permit may be issued by the Zoning Administrator for any use or structure which requires a Conditional Use Permit in these Regulations until the Development Review Board grants such Permit. In considering its action, the Development Review Board shall make findings on the following General Standards and Specific Standards, General Performance Standards (Section 460), hold hearings, and attach conditions if any, as provided for in these Regulations and in the Act. The Development Review Board shall grant a Conditional Use Permit only upon a finding that issuance of said permit shall have no undue adverse effect on the immediate area affected, and on the Town in general.
 - a. *Application.* Site Plans in accordance with Section 204.1 shall accompany the Zoning Permit application for all proposed Conditional Uses.
To obtain a Conditional Use Permit, an Application for Conditional Use must be approved by the Development Review Board and a Site Plan must also be approved by the Development Review Board. It is advisable to submit both the Application for Conditional Use and the Site Plan to the Development

Review Board at the same time. Both approvals may be processed during the same period of time. See Section 204 for Site Plan Review.

The Development Review Board shall, within forty five (45) days of the submission of a completed Application for Conditional Use, hold a public hearing to review the completed application and shall act to approve or disapprove any such requested Conditional Use within forty five (45) days after the adjournment of the final public hearing; and failure to so act within such period shall be deemed approval. Once a decision has been rendered, notification of the decision should be sent to the Zoning Administrator and the applicant within seven (7) days.

b. *General Standards.* The proposed Conditional Use shall not adversely affect:

- 1) The capacity of existing or planned community facilities;
- 2) The character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the Town Plan;
- 3) Traffic on the roads and highways to the vicinity;
- 4) Any bylaws or regulations then in effect;
- 5) Utilization of renewable energy resources.

c. *Specific Standards.* The Development Review Board may impose conditions in order to safeguard the interests of surrounding properties, the neighborhood, or the town as a whole including but not limited to:

- 1) Article III, Section 350 - Wildlife Habitat Overlay District, Section 360 - Shoreland Overlay District, Section 370 - Surface Water Buffer Overlay District, Section 380 - Flood and Fluvial Erosion Hazard Regulations & Flood and Fluvial Erosion Hazard Area Overlay District, and Article IV, General Regulations of these Regulations;
- 2) The area, dimensional and coverage standards for the applicable district;
- 3) Maximum safety of traffic circulation between the site and the street;
- 4) Adequacy of circulation, parking, and loading facilities;
- 5) Adequacy of landscaping, screening, and setbacks with regard to achieving maximum compatibility with and protection of adjacent properties;
- 6) Design and location of structures and service areas.

4. *Waivers.* The Development Review Board may grant a Waiver only to reduce setback dimensional requirements as provided below. Compliance with all other requirements of these Regulations is required. The purpose of a waiver is to allow for development that will not meet current setback regulations and which might not meet the standards for the granting of a variance, but that would not be counter to the purpose of these Regulations or the Town Plan. In addition, waivers may be allowed for structures providing for disability accessibility, fire safety, and other requirements of law, and waivers may be allowed to provide for energy conservation and renewable energy structures. In considering its action, the Development Review Board shall hold hearings, make findings on the following Standards, and attach Conditions if any, as provided for in these Regulations and in the Act. The Development Review Board shall consider the opinion of abutters in deciding whether to grant the waiver. Any waiver granted under this Section shall be limited to the specific property and project to which it has been granted; a waiver on one property or project shall not be construed as a general guideline or standard for any other property or project.

a. *Granting of a Waiver.* To obtain a Waiver, a Waiver Application must be approved by the Development Review Board. The Development Review Board shall, within forty five (45) days of the submission of a completed Waiver Application, hold a public hearing to review the completed application and shall act to approve or disapprove any such requested Waiver within forty five (45) days after the adjournment of the final public hearing; and failure to so act within such period shall be deemed approval. Once a decision has been rendered, notification of the decision should be sent to the Zoning Administrator and the applicant within seven (7) days.

b. *Standards for Granting a Waiver.* The Development Review Board may grant a waiver if the Board finds that the proposed development meets all of the following standards:

1. The waiver requested is in conformance with the Town Plan and the goals set forth in Section 4302 of the Act.

2. The proposed development shall not be detrimental to the public health and welfare, including the safety and maintenance of the Town's highways, traffic patterns, and circulation.
3. The waiver requested is for a use permitted within the district in question as by right (as opposed to a Conditional Use) and the proposed development will still conform to the purpose of the zoning district.
4. Granting of a Waiver shall have no undue adverse effect on the immediate area affected, and on the Town in general.
5. The proposed development does not alter the essential character of the neighborhood in which the property is located; and is compatible in scale and design of structures and the overall existing development pattern of the surrounding area.
6. The proposed development does not adversely impact the use, enjoyment, or development of adjacent property.
7. The proposed development shall not reduce the dimensional requirements by more than the minimum amount necessary.
8. Meeting the dimensional requirements will create an undue hardship on the applicant.
- c. *Specific Standards or Conditions that may be applied.* The Development Review Board may impose conditions in order to safeguard the interests of surrounding properties, the neighborhood, or the town as a whole including but not limited to:
 - 1) The impact of the granting of the Waiver on adjacent properties may be mitigated by design, screening, or other remedy.
 - 2) Adequacy of landscaping, screening, and setbacks with regard to achieving maximum compatibility with and protection of adjacent properties;
- d. *Expiration of Waiver.*
 - 1) Any waiver granted shall expire two (2) years from the date of the written decision granting such approval unless a zoning permit has been issued by the Zoning Administrator for the approved project.
- e. *Appeal of the granting of a Waiver.* See Section 205.5.

Section 204 - Site Plan Review

The Development Review Board shall review and approve or disapprove Site Plans for all development (see definition) other than camps or one- and two-family dwellings that are not Conditional Use, and their accessory uses in accordance with the Act. In the case of Subdivision development, see Town of Marlboro Subdivision Regulations. In reviewing Site Plans, the Development Review Board may impose appropriate conditions and safeguards with respect to the adequacy of parking, traffic access, and circulation for pedestrians and vehicles; landscaping and screening, the protection of the utilization of renewable energy resources; exterior lighting; and other matters, including but not limited to those specified in the Zoning Regulations and other Town ordinances.

The Development Review Board shall, within forty five (45) days of the submission of a completed Application for Site Plan Approval, hold a public hearing to review the completed application and shall act to approve or disapprove any such Site Plan within forty five (45) days after the adjournment of the hearing. Failure to so act within such period shall be deemed approval. Once a decision has been rendered, notification of the decision should be sent to the Zoning Administrator and the Applicant within seven (7) days.

1. *Application For Site Plan Approval.* The applicant shall submit two (2) sets of Site Plans drawn to scale, and supporting data to the Development Review Board, which shall include the following information presented in drawn form and written text:
 - a. Name and address of property owner, and applicant, if different than owner; owners of record of adjoining lands; name and address of person or firm preparing map;
 - b. Property lines, acreage figures, scale of map, north arrow, and date;
 - c. Existing contours and features, including structures, easements and rights-of-way;
 - d. Proposed site grading and location of structures, sewage disposal facilities, water supply, and land use areas;
 - e. Proposed layout of roads, driveways, walkways, traffic circulation and parking spaces;

- f. Existing trees, shrubs and other vegetation to be preserved on the site;
- g. Proposed landscaping and screening.

Section 205 - Violations and Enforcement

1. Violations: The commencement or continuation of any land development, subdivision, or use that is not in conformance with the provision of these Regulations shall constitute a violation. All violations will be pursued in accordance with the Act. Any person who violates any provision of these Regulations shall be fined \$100 dollars for each offense. Each day that a violation continues shall constitute a separate offense. The Zoning Administrator shall institute in the name of the Town of Marlboro any appropriate action, injunction, or other proceeding to enforce the provisions of these Regulations. The Zoning Administrator may consult with and utilize the assistance of the Town attorney or other Town officials in carrying out this responsibility. All fines imposed and collected shall be paid over to the Town.
2. Notice of Violation: Pursuant to the Act, no action may be brought under this Section unless the alleged offender has had at least seven (7) days warning notice by certified mail that a violation exists. The seven-day warning notice shall state that a violation exists, that the alleged offender has the opportunity to cure the violation in seven (7) days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seventh day. A notice of violation shall also state: (a) the regulation, bylaw, or municipal land use permit condition alleged to have been violated; (b) the facts giving rise to the alleged violation; (c) to whom appeal may be taken and the period of time for taking an appeal; and (d) that failure to file an appeal within that period will render the notice of violation the final decision on the violation addressed in the notice. (4 V.S.A. §4451(a) (2)). Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of these Regulations after the seven-day notice period and within the next succeeding 12 months. In default of payment of the fine, such person, the members of any partnership, or the principle officers of such corporation shall each pay double the amount of such fine.
 As used in this section "person" means an individual, partnership, corporation, unincorporated organization, trust, or other legal or commercial entity, including a joint venture or affiliated ownership, a Town or State agency, or individuals and entities affiliated with each other for profit, consideration, or any other beneficial interest derived from real estate except as derived in 24 VSA 4454 (D2).
 Nothing in this section shall prevent any action, injunction or other enforcement proceeding by a Town under any other authority it may have, including a Town’s authority under VSA title 18 relating to the authority to abate or remove public health risks or hazards.
3. Recording Requirements: Within thirty days of the issuance of a Violation, the Zoning Administrator shall deliver either the original or a legible copy of the Notice of Violation to the Town Clerk for recording in the Land Records.
4. Limitations on Enforcement: The Town shall observe any limitations on enforcements 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 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 section 223.
5. An interested person, as defined by the Act, may appeal any decision or act taken by the Zoning Administrator by filing a notice of appeal with the secretary of the Development Review Board or, if no such secretary has been elected, with the Town Clerk. This notice of appeal must be filed within 15 days of the date of that decision or act, and a copy of the notice of appeal shall be filed with the Zoning Administrator. The Development Review Board shall hear the appeal as provided for in the Act.

◆ ◆ ◆ END OF ARTICLE II ◆ ◆ ◆

ARTICLE III - ESTABLISHMENT OF ZONING DISTRICTS AND ZONING MAP

Section 300 - Purpose of Zoning Districts

The purpose of establishing zoning districts in the Town of Marlboro is to further the public health, safety, and welfare of the Town. Specifically, the districts seek to provide an orderly, attractive, compatible, and logical growth pattern by allocating various functional uses to land areas best suited for them.

Section 301 - Establishment of Zoning Districts

The Town of Marlboro is hereby divided into the following Zoning Districts as shown on the official Zoning Map:

| <u>Zoning Districts:</u> | <u>Abbreviation:</u> |
|--|----------------------|
| Rural Residential | RUR |
| Village | VIL |
| Agricultural / Forest Production | AGR/F |
| Conservation Priority | CONS |
| Commercial | COM-W and COM-E |
| Educational | EDU |
| <u>Overlay Districts:</u> | |
| Wildlife Habitat Overlay District | WH |
| Shoreland Overlay District | SL |
| Surface Water Buffer Overlay District | SWB |
| Flood and Fluvial Erosion Hazard Area Overlay District | FFEHA |

Permitted Uses, Conditional Uses, and Area, Dimensional, and Coverage Requirements for all Zoning Districts, in addition to being listed under each Zoning District, are also illustrated in the Use Table, Section 311.

Section 302 - Design Review District

As provided for in the Act, provision is hereby made for establishment of design review districts, subject to an affirmative vote by Town Meeting. Within any design review district no structure may be erected, reconstructed, substantially altered, restored, moved, demolished, or changed in use or type of occupancy without design approval of plans by the Development Review Board.

Section 305 - Rural Residential (RUR)

District Description and Purpose: The Rural Residential District is defined as all land in the Town that is zoned Rural Residential (RUR). Its purpose is to provide for agriculture, forestry, residential, and other compatible uses at densities appropriate to the physical capability of the land and the rural character of the Town.

Permitted Uses (Only if located within 500 feet of a State Highway or Class 2, or 3 town road):

1. Accessory Dwelling Unit.
See Definition (Dwelling Unit, Accessory) for requirement for Conditional Use Permit.
 2. Accessory Uses and Buildings to Permitted Use
 3. Agriculture and Forestry*
 4. Primitive Camp*
 5. Family Child Care Home serving no more than six children
 6. Home Enterprise (See Sec. 450)
 7. Photovoltaic System - Individual, on existing or new structure
 8. Single or Two-Family Dwelling
- * Also a permitted use beyond 500 feet of a State Highway or Class 2, or 3 town road.

Conditional Uses (Only if located within 500 feet of a State Highway or Class 2, or 3 town road):

1. Accessory Dwelling Unit
A Conditional Use Permit shall be required if one or more of the following is involved in the creation of an accessory dwelling unit:
 - a. A new accessory structure,
 - b. An increase in the height or floor area of the existing dwelling, or
 - c. An increase in the dimensions of the parking areas.
2. Accessory Uses and Buildings to Conditional Use
3. Bed & Breakfast - Allowed only if change of use in an existing structure.
4. Cemetery
5. Community Building
6. Dormitory/Hostel
7. Educational Facility (See Sec. 403)
8. Family Child Care Home serving no more than six full-time children and four part-time children. Shall require Site Plan approval based on these Zoning Regulations
9. Home Enterprise (See Sec. 450)
10. Hotel/Motel - Allowed only if change of use in an existing structure
11. Micro Hydro-electric Systems
12. Photovoltaic System - Small, on existing structure
13. Photovoltaic System - Small, on new structure
14. Planned Unit Development
15. Professional Residence-Office
16. Recreation - Active
17. Residential Care Home or Group Home - See Definition (Residential Care Home or Group Home) for detailed explanation of applicability.
18. Telecommunications Facility - See Article VI - Telecommunications Facilities.
19. Wind Energy System - Individual.
20. Wind Energy System - Small.

Conditional Uses (The following Conditional Uses, if located more than 500 feet from any State Highway or Class 2, or 3 town road, shall be Conditional Uses subject to the Wildlife Habitat Overlay District requirements, see Section 350.):

1. Accessory Dwelling Unit.
2. Accessory Uses and Buildings to Permitted Use
3. Home Enterprise (Only if change of use in an existing structure, with no expansion of existing structure.) (See also Sec. 450)
4. Single or Two-Family Dwelling
5. Photovoltaic System - Individual, on existing or new structure
6. Professional Residence-Office (Only if change of use in an existing structure, with no expansion of existing structure.)
7. Telecommunications Facilities - See Article VI - Telecommunications Facilities
8. Wind Energy System - Individual.

Area, Dimensional, and Coverage Requirements

| | |
|--------------------------------------|---|
| Lot Area Minimum: | 2 acres |
| Lot Frontage Minimum: | 200 feet |
| Front Yard Minimum Setback: | 30 feet |
| Side and Rear Yard Minimum Setbacks: | 50 feet each |
| Structure Height Maximum: | Three stories or 35 feet, whichever is less. No height limit for agricultural uses. 150 feet Total Tower Height, Wind Energy System |
| Accessory Use Height Maximum | 25 feet. No height limit for agricultural uses. |
| Building Floor Area Maximum | None |
| Building Footprint Maximum | None |
| Building Coverage Maximum: | 10 percent |

Section 306 - Village (VIL)

District Description and Purpose: The Village District is defined as lands surrounding and inclusive of the existing town center and its corridor approaches. Due to Marlboro's topography and road system, activities traditionally concentrated in the Village District are best suited along a number of road corridors surrounding the existing town center. The purpose of the District is to support and expand the traditional role of the village as the focus of many of the civic, social, and economic activities that support the surrounding community, and to provide for residential, commercial, and governmental uses that serve the needs of the community.

The greater district should include current and future community structures such as the Town school, fire station, library, cemetery, recycling center, Town park, recreation facility, with parking and connecting walking and biking pathways. Homes and structures should be placed on lots with small frontage, clustered along existing roadways with posted and enforced restricted speed limits.

Permitted Uses (Only if located within 500 feet of a State Highway or Class 2, or 3 town road):

- | | |
|--|---|
| 1. Accessory Dwelling Unit. See Definition (Dwelling Unit, Accessory) for requirement for Conditional Use Permit. | 8. Family Child Care Home serving no more than six children |
| 2. Accessory Uses and Buildings to Permitted Use | 9. Home Enterprise (See Sec. 450) |
| 3. Agriculture and Forestry* | 10. Museum/Gallery |
| 4. Assisted Living Facility | 11. Photovoltaic System - Individual, on existing or new structure |
| 5. Bed & Breakfast | 12. Professional Residence-Office |
| 6. Business Office | 13. Single or Two-Family Dwelling |
| 7. Community Building | * Also a permitted use beyond 500 feet of a State Highway or Class 2, or 3 town road. |

Conditional Uses (Only if located within 500 feet of a State Highway or Class 2, or 3 town road):

- | | |
|---|--|
| 1. Accessory Dwelling Unit A Conditional Use Permit shall be required if one or more of the following is involved in the creation of an accessory dwelling unit: a. A new accessory structure, b. An increase in the height or floor area of the existing dwelling, or c. An increase in the dimensions of the parking areas. | 9. Health Care Facility (See Sec. 403) |
| 2. Accessory Uses and Buildings to Conditional Use | 10. Home Enterprise (See Sec. 450) |
| 3. Cemetery | 11. Micro Hydro-electric Systems |
| 4. Conference Center/Retreat Facility | 12. Multi-unit Dwelling |
| 5. Dormitory/Hostel | 13. Municipal or Fire Co. Facility |
| 6. Educational Facility (See Sec. 403) | 14. Planned Unit Development |
| 7. Family Child Care Home serving no more than six full-time children and four part-time children. Shall require Site Plan approval based on these Zoning Regulations | 15. Religious Institution (See Sec. 403) |
| 8. Child Care Facility serving more than six full-time and four part-time children, which shall be subject to all applicable municipal bylaws | 16. Photovoltaic System - Small, on existing structure |
| | 17. Residential Care Home or Group Home - See Definition (Residential Care Home or Group Home) for detailed explanation of applicability. |
| | 18. Restaurant and/or Bar |
| | 19. Retail Store - Less than 1,600 sf retail area |
| | 20. State Facility (See Sec. 403) |
| | 21. Telecommunications Facility - See Article VI - Telecommunications Facilities. In the Village District, a Telecommunication Facility is only allowed if it is concealed within an existing building. |

Conditional Uses (The following Conditional Uses, if located more than 500 feet from any State Highway or Class 2, or 3 town road, shall be Conditional Uses subject to the Wildlife Habitat Overlay District requirements, see Section 350.):

1. Accessory Dwelling Unit.

2. Accessory Uses and Buildings to Permitted Use
3. Bed and Breakfast (Only if change of use in an existing structure, with no expansion of existing structure.)
4. Home Enterprise (Only if change of use in an existing structure, with no expansion of existing structure.)
5. Photovoltaic System - Individual, on existing or new structure.
6. Professional Residence-Office (Only if change of use in an existing structure, with no expansion of existing structure.)
7. Single or Two-Family Dwelling

Area, Dimensional, and Coverage Requirements

| | |
|--------------------------------------|---|
| Lot Area Minimum: | ¼ acre |
| Lot Frontage Minimum: | 50 feet |
| Front Yard Minimum Setback: | 10 feet |
| Side and Rear Yard Minimum Setbacks: | 10 feet each |
| Structure Height Maximum: | Three stories or 35 feet, whichever is less. No height limit for agricultural uses. 150 feet Total Tower Height, Wind Energy System |
| Accessory Use Height Maximum | 25 feet. No height limit for agricultural uses. |
| Building Floor Area Maximum | None |
| Building Footprint Maximum | None |
| Building Coverage Maximum: | 25 percent |

Additional Standards

- Building Design - Commercial Building design to be compatible with the architecture of the neighborhood.
- Building Materials - Siding to be wood, brick, stone, or aluminum or vinyl clapboard- style siding.
- Exterior Lighting - Designed so as to illuminate structures and exterior areas only at levels necessary to ensure safety and security of persons and property; so that the light source (lamp) is not directly visible from public roads, adjacent residences, or distant vantage points; and so that the source light does not project above the lamp. All lighting fixtures serving parking areas shall be cut-off fixtures (shielded, with down light only).
- Parking - To be located in the side and rear yards when possible. Front yard parking shall be single-row only. Shared access drives and parking areas are encouraged. Side and rear setbacks may be waived for shared access and parking.
- Site Design - PUDs with buildings grouped together in a village design with shared parking, open space, and integrated street, tree, and landscape design are encouraged. See Section 500.

Section 307 - Agricultural / Forest Production (AGR/F)

District Description and Purpose: The Agricultural/Forest Production District is defined as those areas where resources such as valuable agricultural and forestry soils and the crops or forests grown upon them are present in character and quantities suitable for significant productive use or extraction, but must be protected from incompatible development to preserve the resources for future use. The assets to be protected include, but are not limited to: soils for agricultural and forestry uses, minerals for extraction, stands of timber, a sugar bush, etc.

Development in these areas shall be planned to ensure continued ability to utilize resources and shall be at low density, and not infringe upon Acceptable Agricultural Practices and forestry Acceptable Management Practices.

Permitted Uses (Only if located within 500 feet of a State Highway or Class 2, or 3 town road):

1. Accessory Dwelling Unit.
See Definition (Dwelling Unit, Accessory) for requirement for Conditional Use Permit.
2. Accessory Uses and Buildings to Permitted Use
3. Agriculture and Forestry*
4. Primitive Camp*
5. Family Child Care Home serving no more than six children
6. Home Enterprise (See Sec. 450)

- 7. Photovoltaic System - Individual, on existing or new structure
 - 8. Single or Two-Family Dwelling
- * Also a permitted use beyond 500 feet of a State Highway or Class 2, or 3 town road.

Conditional Uses (Only if located within 500 feet of a State Highway or Class 2, or 3 town road):

- 1. Accessory Dwelling Unit
A Conditional Use Permit shall be required if one or more of the following is involved in the creation of an accessory dwelling unit:
 - a. A new accessory structure,
 - b. An increase in the height or floor area of the existing dwelling, or
 - c. An increase in the dimensions of the parking areas.
- 2. Accessory Uses and Buildings to Conditional Use
- 3. Bed & Breakfast - Allowed only if change of use in an existing structure.
- 4. Cemetery
- 5. Extraction of Soil, Sand, or Gravel - See Section 405
- 6. Family Child Care Home serving no more than six full-time children and four part-time children. Shall require Site Plan approval based on these Zoning Regulations
- 7. Home Enterprise (See Sec. 450)
- 8. Kennel
- 9. Micro Hydro-electric Systems
- 10. Professional Residence-Office
- 11. Photovoltaic System - Small, on existing structure
- 12. Photovoltaic System - Small, on new structure
- 13. Residential Care Home or Group Home - See Definition (Residential Care Home or Group Home) for detailed explanation of applicability.
- 14. Wind Energy System - Individual.
- 15. Wind Energy System - Small.

Conditional Uses (The following Conditional Uses, if located more than 500 feet from any State Highway or Class 2, or 3 town road, shall be Conditional Uses subject to the Wildlife Habitat Overlay District requirements, see Section 350.):

- 1. Accessory Dwelling Unit.
- 2. Accessory Uses and Buildings to Permitted Use
- 3. Single or Two-Family Dwelling
- 4. Bed and Breakfast (Only if change of use in an existing structure, with no expansion of existing structure.)
- 5. Home Enterprise (Only if change of use in an existing structure, with no expansion of existing structure.)
- 6. Extraction of Earth Resources/Quarrying - See also Section 405
- 7. Photovoltaic System - Individual, on existing or new structure.
- 8. Wind Energy System - Individual.

Area, Dimensional, and Coverage Requirements:

| | |
|--------------------------------------|---|
| Lot Area Minimum: | 10 acres |
| Lot Frontage Minimum: | 200 feet |
| Front Yard Minimum Setback: | 30 feet |
| Side and Rear Yard Minimum Setbacks: | 50 feet each |
| Structure Height Maximum: | Three stories or 35 feet, whichever is less. No height limit for agricultural uses. 150 feet Total Tower Height, Wind Energy System |
| Accessory Use Height Maximum | 25 feet. No height limit for agricultural uses. |
| Building Floor Area Maximum | 10,000 square feet |
| Building Footprint Maximum | 10,000 square feet |
| Building Coverage Maximum: | 3 percent |

Section 308 - Conservation Priority (CONS)

District Description and Purpose: The Conservation Priority District is defined as those large and/or contiguous blocks of essentially undeveloped land areas that are the most important portions of town to protect for perpetuation and enhancement of water resources, wildlife habitat, scenic viewsheds, and other resources, such as open space and trails for recreation. These resources are to be preserved for their inherent values. Such resources include, but are not limited to:

1. Headwaters, wetlands, streams, riparian corridors, and ponds, etc.
2. Wildlife habitat and connecting corridors, especially riparian corridors.
3. Significant natural communities.
4. Outstanding Resources Water, water supply Source Protection Areas (SPAs).

These lands shall be used principally for agriculture, forestry, and low-intensity recreational and open space uses. Residential development in this district shall be sited to protect the resource values of the land. Any use of the land shall follow Acceptable Agricultural Practices and Acceptable Management Practices (AMP's) For Maintaining Water Quality on Logging Jobs in Vermont.

Within these areas development is discouraged, and any development that does occur shall be sited to protect the resource values of the land. These are areas that may be suitable for no active land management. If there is to be new development, it shall be at low impact and densities. Recreational opportunities/potential should be valued and protected. Development in this district shall be subject to a heightened level of review.

Permitted Uses (Only if located within 500 feet of a State Highway or Class 2, or 3 town road):

- | | |
|--|---|
| 1. Accessory Uses and Buildings to Permitted Use | 4. Photovoltaic System - Individual, on existing or new structure |
| 2. Agriculture and Forestry* | * Also a permitted use beyond 500 feet of a State Highway or Class 2, or 3 town road. |
| 3. Home Enterprise (See Sec. 450) | |

Conditional Uses (Only if located within 500 feet of a State Highway or Class 2, or 3 town road):

- | | |
|---|---|
| 1. Accessory Dwelling Unit | 9. Micro Hydro-electric Systems |
| 2. Accessory Uses and Buildings to Conditional Use | 10. Professional Residence-Office |
| 3. Bed & Breakfast - Allowed only if change of use in an existing structure | 11. Photovoltaic System - Small, on existing structure |
| 4. Primitive Camp | 12. Photovoltaic System - Small, on new structure |
| 5. Cemetery | 13. Residential Care Home or Group Home - See Definition (Residential Care Home or Group Home) for detailed explanation of applicability. |
| 6. Family Child Care Home serving no more than six children | 14. Single or Two-Family Dwelling |
| 7. Family Child Care Home serving no more than six full-time children and four part-time children. Shall require Site Plan approval based on these Zoning Regulations | 15. Wind Energy System - Individual. |
| 8. Home Enterprise (See Sec. 450) | 16. Wind Energy System - Small. |

Conditional Uses (The following Conditional Uses, if located more than 500 feet from any State Highway or Class 2, or 3 town road, shall be Conditional Uses subject to the Wildlife Habitat Overlay District requirements, see Section 350.):

- | | |
|---|--|
| 1. Accessory Uses and Buildings to Permitted Use | 3. Photovoltaic System - Individual, on existing or new structure. |
| 2. Home Enterprise (Only if change of use in an existing structure, with no expansion of existing structure.) | 4. Wind Energy System - Individual. |

Area, Dimensional, and Coverage Requirements:

| | |
|--------------------------------------|--|
| Lot Area Minimum: | 27 acres |
| Lot Frontage Minimum: | 200 feet |
| Front Yard Minimum Setback: | 30 feet |
| Side and Rear Yard Minimum Setbacks: | 50 feet each |
| Structure Height Maximum: | Three stories or 35 feet, whichever is less. No height limit for agricultural uses. 150 feet Total Tower Height, Wind Energy System |
| Accessory Use Height Maximum | 25 feet. No height limit for agricultural uses. |
| Building Floor Area Maximum | 3,500 sf |
| Building Footprint Maximum | 3,500 sf |
| Building Coverage Maximum: | 1 percent |

Section 309 - Commercial (COM-W and COM-E)

District Description and Purpose: The Commercial District includes certain lands with access to Route 9 which appear to be generally suitable for new and expanded commercial and related uses. The purpose of this District is to provide for recreation, commercial, and other compatible uses which will have suitable access to the state highway and minimum impact on surrounding rural residential areas, to avoid sprawl, and to minimize impacts on natural and cultural resources.

This District is divided into West and East portions:

1. The Commercial West District (COM-W) includes lands on both sides of Rt. 9 in the western portion of the Town, particularly enterprises ancillary to the old Hogback ski facility and similar recreation- and tourist-oriented businesses. Development in the Commercial West District shall be sensitive to and compatible with the scenic, natural, and recreational character of the area in which it is located - the Hogback Mountain Conservation Area.
2. The Commercial East District (COM-E) includes land from the edge of the highway right-of-way extending back a distance of 500 feet on both sides of Route 9 in the east-central portion of the Town, between the Village District on the west and North Pond Road on the east. The Commercial East District is intended to accommodate most future commercial growth within an area having the best relationship to the existing State highway corridor to minimize the impacts of such growth on Marlboro's rural character.

Commercial West District (COM-W)

Permitted Uses (Only if located within 500 feet of a State Highway or Class 2, or 3 town road):

- | | |
|---|---|
| 1. Accessory Dwelling Unit. (PC 4/22/14) See Definition (Dwelling Unit, Accessory) for requirement for Conditional Use Permit. | 6. Home Enterprise (See Sec. 450) |
| 2. Accessory Uses and Buildings to Permitted Use | 7. Museum/Gallery |
| 3. Agriculture and Forestry* | 8. Professional Residence - Office |
| 4. Community Building | 9. Photovoltaic System - Individual, on existing or new structure |
| 5. Family Child Care Home serving no more than six children | 10. Single or Two-Family Dwelling |
- * Also a permitted use beyond 500 feet of a State Highway or Class 2, or 3 town road.

Conditional Uses (Only if located within 500 feet of a State Highway or Class 2, or 3 town road):

- | | |
|---|--|
| 1. Accessory Dwelling Unit A Conditional Use Permit shall be required if one or more of the following is involved in the creation of an accessory dwelling unit: a. A new accessory structure, b. An increase in the height or floor area of the existing dwelling, or | c. An increase in the dimensions of the parking areas. |
| | 2. Accessory Uses and Buildings to Conditional Use |
| | 3. Bed & Breakfast |
| | 4. Campground |
| | 5. Educational Facility (See Sec. 403) |

- | | |
|--|--|
| <ul style="list-style-type: none"> 6. Home Enterprise (See Sec. 450) 7. Micro Hydro-electric Systems 8. Professional Residence-Office 9. Recreation - Active 10. Photovoltaic System - Small, on existing structure 11. Photovoltaic System - Small, on new structure 12. Residential Care Home or Group Home - See Definition (Residential Care Home or Group Home) for detailed explanation of applicability. | <ul style="list-style-type: none"> 13. Restaurant and/or Bar 14. Retail Store - Less than 1,600 sf retail area 15. Retail Store - More than 1,600 sf retail area 16. State Facility (See Sec. 403) 17. Telecommunications Facility - See Article VI - Telecommunications Facilities. 18. Wind Energy System - Individual. 19. Wind Energy System - Small. |
|--|--|

Conditional Uses (The following Conditional Uses, if located more than 500 feet from any State Highway or Class 2, or 3 town road, shall be Conditional Uses subject to the Wildlife Habitat Overlay District requirements, see Section 350.):

- | | |
|---|---|
| <ul style="list-style-type: none"> 1. Accessory Dwelling Unit. 2. Accessory Uses and Buildings to Permitted Use 3. Home Enterprise (Only if change of use in an existing structure, with no expansion of existing structure.) 4. Museum/Gallery 5. Professional Residence-Office (Only if change | <ul style="list-style-type: none"> of use in an existing structure, with no expansion of existing structure.) 6. Photovoltaic System - Individual, on existing or new structure. 7. Single or Two-Family Dwelling 8. Telecommunications Facility - See Article VI - Telecommunications Facilities. 9. Wind Energy System - Individual. |
|---|---|

Area, Dimensional, and Coverage Requirements:

| | |
|--------------------------------------|---|
| Lot Area Minimum: | 2 acres |
| Lot Frontage Minimum: | 100 feet |
| Front Yard Minimum Setback: | 30 feet |
| Side and Rear Yard Minimum Setbacks: | 30 feet each (50 feet each where abutting a residential use.) |
| Structure Height Maximum: | Three stories or 35 feet, whichever is less. No height limit for agricultural uses. 150 feet Total Tower Height, Wind Energy System |
| Accessory Use Height Maximum | 25 feet. No height limit for agricultural uses. |
| Building Floor Area Maximum | 6,000 sf |
| Building Footprint Maximum | 4,000 sf |
| Building Coverage Maximum: | 20 percent |

Additional Standards:

- Building Design - Commercial Building design to be compatible with the architecture of the neighborhood.
- Building Materials - Siding to be wood, brick, stone, or aluminum or vinyl clapboard- style siding.
- Exterior Lighting - Designed so as to illuminate structures and exterior areas only at levels necessary to ensure safety and security of persons and property; so that the light source (lamp) is not directly visible from public roads, adjacent residences, or distant vantage points; and so that the source light does not project above the lamp. All lighting fixtures serving parking areas shall be cut-off fixtures (shielded, with downlight only).
- Parking - To be located in the side and rear yards when possible. Front yard parking shall be single-row only. Shared access drives and parking areas are encouraged. Side and rear setbacks may be waived for shared access and parking.

Commercial East District (COM-E)

Permitted Uses (Since the Commercial East district extends back only a distance of 500 feet from the edge of each side of the highway right-of-way, the Wildlife Habitat Overlay District does not apply):

1. Accessory Dwelling Unit.
See Definition (Dwelling Unit, Accessory) for requirement for Conditional Use Permit.
2. Accessory Uses and Buildings to Permitted Use
3. Agriculture and Forestry
4. Assisted Living Facility
5. Bed and breakfast
6. Business Office
7. Community Building
8. Family Child Care Home serving no more than six children
9. Child Care Facility serving more than six full-time and four part-time children, which shall be subject to all applicable municipal bylaws
10. Health Care Facility (See Sec. 403)
11. Home Enterprise (See Sec. 450)
12. Museum/Gallery
13. Professional Residence-Office
14. Photovoltaic System - Individual, on existing or new structure
15. Single or Two-Family Dwelling
16. Veterinary Clinic

Conditional Uses (Since the Commercial East district extends back only a distance of 500 feet from the edge of each side of the highway right-of-way, the Wildlife Habitat Overlay District does not apply):

1. Accessory Dwelling Unit
A Conditional Use Permit shall be required if one or more of the following is involved in the creation of an accessory dwelling unit:
 - a. A new accessory structure,
 - b. An increase in the height or floor area of the existing dwelling, or
 - c. An increase in the dimensions of the parking areas.
2. Accessory Uses and Buildings to Conditional Use
3. Campground
4. Cemetery
5. Conference Center/Retreat Facility
6. Dormitory/Hostel
7. Educational Facility (See Sec. 403)
8. Family Child Care Home serving no more than six full-time children and four part-time children. Shall require Site Plan approval based on these Zoning Regulations
9. Gasoline or Motor Vehicle Service Station (See Sec. 430)
10. Home Enterprise (See Sec. 450)
11. Hotel/Motel
12. Kennel
13. Micro Hydro-electric Systems
14. Multi-unit Dwelling
15. Municipal or Fire Co. Facility
16. Planned Unit Development
17. Recreation - Active
18. Religious Institution (See Sec. 403)
19. Photovoltaic System - Small, on existing structure
20. Photovoltaic System - Small, on new structure
21. Photovoltaic System - Large, on existing structure
22. Photovoltaic System - Large, on new structure
23. Residential Care Home or Group Home - See Definition (Residential Care Home or Group Home) for detailed explanation of applicability.
24. Light Industry
25. Restaurant and/or Bar
26. Retail Store - Less than 1,600 sf retail area
27. Retail Store - More than 1,600 sf retail area
28. State Facility (See Sec. 403)
29. Telecommunications Facility - See Article VI - Telecommunications Facilities.
30. Vehicle Services (See Sec. 430)
31. Waste Management Facility (See Sec. 403)
32. Hazardous Waste Facility (See Sec. 403)
33. Wind Energy System - Individual.
34. Wind Energy System - Small.
35. Wind Energy System - Large.

Area, Dimensional, and Coverage Requirements:

- | | |
|-----------------------|----------|
| Lot Area Minimum: | 2 acres |
| Lot Frontage Minimum: | 100 feet |

| | |
|--------------------------------------|---|
| Front Yard Minimum Setback: | 30 feet |
| Side and Rear Yard Minimum Setbacks: | 30 feet each (50 feet each where abutting a residential use.) |
| Structure Height Maximum: | Three stories or 35 feet, whichever is less. No height limit for agricultural uses. 150 feet Total Tower Height, Wind Energy System |
| Accessory Use Height Maximum | 25 feet. No height limit for agricultural uses. |
| Building Floor Area Maximum | 8,000 sf |
| Building Footprint Maximum | 8,000 sf |
| Building Coverage Maximum: | 20 percent |

Additional Standards:

Building Design - Commercial Building design to be compatible with the architecture of the neighborhood.

Building Materials - Siding to be wood, brick, stone, or aluminum or vinyl clapboard- style siding.

Exterior Lighting - Designed so as to illuminate structures and exterior areas only at levels necessary to ensure safety and security of persons and property; so that the light source (lamp) is not directly visible from public roads, adjacent residences, or distant vantage points; and so that the source light does not project above the lamp. All lighting fixtures serving parking areas shall be cut-off fixtures (shielded, with down light only).

Parking - To be located in the side and rear yards when possible. Front yard parking shall be single-row only. Shared access drives and parking areas are encouraged. Side and rear setbacks may be waived for shared access and parking.

Site Design - PUDs with buildings grouped together in a village design with shared parking, open space, and integrated street, tree, and landscape design are encouraged. See Section 500.

Section 310 - Educational (EDU)

District Description and Purpose: The Educational District includes the contiguous Marlboro College Campus. Its purpose is to provide adequate lands for the reasonable location and expansion of institutional facilities in relation to the present campus. Site Plan review and approval by the Development Review Board is required for zoning permit applications within the Educational District, and a Conditional Use Permit is required for all facilities which deviate from the Area, Dimensional, and Coverage Requirements for Permitted Uses.

Only land which is in fact owned by Marlboro College shall be included within the Educational District, but not all such land will be necessarily so zoned. Should land in the Educational District be subsequently transferred to non-institutional ownership or management, said land shall thereafter be considered to be in the Rural Residential District.

Permitted Uses (Only if located within 500 feet of a State Highway or Class 2, or 3 town road):

1. Agricultural and Forestry* or new structure
2. Assisted Living Facility * Also a permitted use beyond 500 feet of a State
3. Educational Facilities (see also Section 403) Highway or Class 2, or 3 town road.
4. Photovoltaic System - Individual, on existing

Conditional Uses (Only if located within 500 feet of a State Highway or Class 2, or 3 town road):

1. Community Building on new structure
2. Conference Center/Retreat Facility
3. Micro Hydro-electric Systems
4. Photovoltaic System - Small, on existing structure
5. Photovoltaic System - Small,
6. Wind Energy System - Individual.
7. Wind Energy System - Small.
8. Education Facilities which deviate from the Area, Dimensional, and Coverage Requirements.

Conditional Uses (The following Conditional Uses, if located more than 500 feet from any State Highway or Class 2, or 3 town road, shall be Conditional Uses subject to the Wildlife Habitat Overlay District requirements, see Section 350.):

1. Educational Facilities (see also Section 403)
2. Photovoltaic System - Individual, on existing or new structure
3. Wind Energy System - Individual.

Area, Dimensional, and Coverage Requirements:

Structure Height Maximum: 35 feet
 No height limit for agricultural uses.
 150 feet Total Tower Height, Wind Energy System

Building Coverage Maximum: 10 percent

Building Setbacks: Not less than 50 feet from property lines or 10 feet from public rights-of-way.

Yard & Courts: Not less than 50 feet between structures. For this purpose, buildings connected by an enclosed passageway shall be considered separate buildings, and the distance shall be measured from the main structure in each case.

Section 311 - Use Table

"Permitted Uses," "Conditional Uses," and "Area, Dimensional, and Coverage Requirements" for all Zoning Districts are illustrated in the following Use Table. If there is any conflict between the Use Table and the information contained in the previous Sections 305 through 310, or in any other Sections of these Regulations, the information in Sections 305 through 310 or in other Sections of these Regulations shall govern.

| USE TABLE Section 311 | | | | | | | |
|--|---------------------------------|-----------------------|--|--------------------------------------|---------------------------------|---------------------------------|---------------------------|
| KEY: P = Permitted Use C = Conditional Use (blank) = Use is not allowed N/A = Not Applicable | | | | | | | |
| USES | ZONING DISTRICTS | | | | | | |
| | RUR Rural Residential | VIL Village | AGR/F Agricultural/ Forest Production | CONS Conservation Priority | COM-W Commercial West | COM-E Commercial East | EDU Educational |
| Accessory Dwelling Unit | P,C ¹ | P,C ¹ | P,C ¹ | C ¹ | P,C ¹ | P,C ¹ | |
| Accessory Uses and Buildings to Permitted Use | P | P | P | P | P | P | |
| Accessory Uses and Buildings to Conditional Use | C | C | C | C | C | C | |
| Agriculture and Forestry | P | P | P | P | P | P | P |
| Assisted Living Facility | | P | | | | P | P |
| Bed & Breakfast | C ² | P | C ² | C ² | C | P | |
| Business Office | | P | | | | P | |
| Primitive Camp | P | | P | C | | | |
| Campground | | | | | C | C | |
| Cemetery | C | C | C | C | | C | |
| Community Building | C | P | | | P | P | C |
| Conference Center/Retreat Facility | | C | | | | C | C |
| Dormitory/Hostel | C | C | | | | C | |
| Educational Facility ³ | C | C | | | C | C | P,C |

ARTICLE III - ESTABLISHMENT OF ZONING DISTRICTS AND ZONING MAP

Draft 10/26/17

| | RUR Rural Residential | VIL Village | AGR/F Agricultural/ Forest Production | CONS Conservation Priority | COM-W Commercial West | COM-E Commercial East | EDU Educational |
|--|---------------------------------|-----------------------|--|--------------------------------------|---------------------------------|---------------------------------|---------------------------|
| Extraction of Soil, Sand, or Gravel (See Section 405) | | | C | | | | |
| Family Child Care Home serving no more than six children | P | P | P | C | P | P | |
| Family Child Care Home serving no more than six full-time children and four part-time children. Shall require Site Plan approval based on these Zoning Regulations | C | C | C | C | | C | |
| Child Care Facility serving more than six full-time and four part-time children, which shall be subject to all applicable municipal bylaws | | C | | | | P | |
| Gasoline or Motor Vehicle Service Station (See Sec. 430) | | | | | | C | |
| Health Care Facility ³ | | C | | | | P | |
| Home Enterprise (See Sec. 450) | P,C ⁴ | P,C ⁴ | P,C ⁴ | P,C ⁴ | P,C ⁴ | P,C ⁴ | |
| Hotel/Motel | C ² | | | | | C | |
| Kennel | | | C | | | C | |
| Light Industry | | | | | | C | |
| Multi-unit Dwelling | | C | | | | C | |
| Municipal or Fire Co. Facility | | C | | | | C | |
| Museum/Gallery | | P | | | P | P | |
| Planned Unit Development | C | C | | | | C | |
| Professional Residence-Office | C | P | C | C | P | P | |
| Recreation - Active | C | | | | C | C | |
| Religious Institution ³ | | C | | | | C | |
| Vehicle Services | | | | | | C | |
| Wind Energy System - Individual | C | C | C | C | C | C | C |
| Wind Energy System - Small | C | C | C | C | C | C | C |
| Wind Energy System - Large | | | | | | C | |
| Photovoltaic System - Individual, on existing structure | P | P | P | P | P | P | P |
| Photovoltaic System - Individual, on new structure | P | P | P | P | P | P | P |
| Photovoltaic System - Small, on existing structure | C | C | C | C | C | C | C |
| Photovoltaic System - Small, on new structure | C | C | C | C | C | C | C |
| Photovoltaic System - Large, on existing structure | | | | | | C | |
| Photovoltaic System - Large, on new structure | | | | | | C | |
| Photovoltaic System - Producer, on existing structure | | | | | | | |

| | RUR Rural Residential | VIL Village | AGR/F Agricultural/ Forest Production | CONS Conservation Priority | COM-W Commercial West | COM-E Commercial East | EDU Educational |
|--|------------------------------------|-----------------------|---|---|------------------------------------|------------------------------------|---------------------------|
| Photovoltaic System - Producer, on new structure | | | | | | | |
| Micro Hydro-electric System | C | C | C | C | C | C | C |
| Residential Care Home or Group Home ⁵ | C | C | C | C | C | C | |
| Restaurant and/or Bar | | C | | | C | C | |
| Retail Store - Less than 1,600 sf retail area ⁶ | | C | | | C | C | |
| Retail Store - More than 1,600 sf retail area ⁶ | | | | | C | C | |
| Single or Two-Family Dwelling | P | P | P | C | P | P | |
| State Facility ³ | | C | | | C | C | |
| Telecommunications Facility ⁷ | C | C ⁷ | | | C | C | |
| Veterinary Clinic | | | | | | P | |
| Waste Management Facility ³ | | | | | | C | |
| Hazardous Waste Facility ³ | | | | | | C | |
| DIMENSIONAL STANDARDS | RUR Rural Residential | VIL Village | AGR/F Agricultural/ Forest Production | CONS Conservation Priority | COM-W Commercial West | COM-E Commercial East | EDU Educational |
| Lot Area Minimum | 2 acres | ¼ acre | 10 acres | 27 acres | 2 acres | 2 acres | N/A |
| Lot Frontage Minimum | 200 ft. | 50 ft. | 200 ft. | 200 ft. | 100 ft. | 100 ft. | N/A |
| Front Yard minimum | 30 ft. | 10 ft. | 30 ft. | 30 ft. | 30 ft. | 30 ft. | N/A |
| Side and Rear Yards Minimum | 50 ft. | 10 ft. | 50 ft. | 50 ft. | 30 ft.(50 ft. abut RUR) | 30 ft.(50 ft. abut RUR) | 50/10 ft. |
| Structure Height Max.(None for Ag) | 35 ft./3 st. | 35 ft./3 st. | 35 ft./3 st. | 35 ft./3 st. | 35 ft./3 st. | 35 ft./3 st. | 35 ft. |
| Accessory Use Height Maximum | 25 ft. | 25 ft. | 25 ft. | 25 ft. | 25 ft. | 25 ft. | N/A |
| Building Floor Area Maximum | None | None | 10,000 sf | 3,500 sf | 6,000 sf | 8,000 | 6,000 |
| Building Footprint Maximum | None | None | 10,000 sf | 3,500 sf | 4,000 sf | 8,000 | 6,000 |
| Building Coverage Maximum | 10% | 25% | 3% | 1% | 20% | 20% | 10% |

¹ See Definition (Dwelling Unit, Accessory) for requirement for Conditional Use Permit.

² Allowed only if change of use in an existing structure.

³ See Section 403.

⁴ See Section 450 (Home Enterprises) for requirement for Conditional Use Permit.

⁵ See Definition (Residential Care Home or Group Home) for detailed explanation of applicability.

⁶ Retail Area is defined as the gross floor area of all spaces associated with and required for the retail use, including but not limited to selling areas, service areas, storage areas, support and employee areas, and rest rooms, all measured to the outside face of the exterior walls.

⁷ See Article VI - Telecommunications Facilities. In the Village District, a Telecommunication Facility is only allowed if it is concealed within an existing building.

Section 320 - Official Zoning Map

The location and boundaries of Zoning Districts are established as shown on the attached Official Zoning Map. The Official Zoning Map consists of four maps: Map 1 of 4, Zoning Districts; Map 2 of 4; Wildlife Habitat Overlay; Map 3 of 4; Flood and Fluvial Erosion Hazard Area Overlays; Map 4 of 4: Shoreland and Surface Water Buffer Overlays. The Official Zoning Map is hereby made a part of these Regulations together with all future amendments.

No amendment to these Regulations which involves matter portrayed on the Official Zoning Map shall become effective until after such change and entry has been made on said map, signed by the legislative body, and attested to by the **Town Clerk**. Regardless of the existence of copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map which shall be located in the office of the **Town Clerk** shall be the final authority as to the current zoning status of land and water areas.

Section 330 - Interpretation of District Boundaries

The locations of zoning district boundaries are established as shown on the official Zoning Map. Where due to scale, lack of detail or illegibility by the zoning map there is any uncertainty, contradiction, or conflict as to the intended location of any zoning district boundary shown thereon, the Development Review Board shall make an interpretation, upon request, by any aggrieved party. Any additional expense such as surveying shall be borne by the applicant.

Section 331 - Overlay Districts

General Description: Overlay districts are superimposed over the existing zoning map. Without altering the underlying zoning, a superimposed, additional district or zone is created. Special zoning regulations apply within the area covered by the overlay district. The regulations of the overlay district are in addition to the regulations of the underlying zoning scheme. The overlay district may completely cover certain existing zones, while partially intruding or avoiding other zones. It may overlap with the majority of the land within the municipality's borders; or cover only a very small portion.

Section 340 - Unused

Section 350 - Wildlife Habitat Overlay District (WH)

District Description, Authority, and Purpose: Pursuant to Section 4414(2) of the Act, there is hereby established a Wildlife Habitat Overlay District for the Town of Marlboro. The purpose of establishing a Wildlife Habitat Overlay District is to encourage landowners to locate structures and development near roads rather than extending development into core forest blocks, to guide development in a manner that preserves large tracts of undeveloped interior land across property lines, and to thus accommodate the life requirements and movement of wildlife across a broad landscape. The ecological value of maintaining large areas of connected habitat is to reduce the harmful effects of habitat fragmentation and population isolation and to reduce the risk of local population extinctions by enabling migration, reproduction, and exchange of genes for many plant and animal species. The prevention of forest fragmentation is particularly important for wide-ranging animals, such as bobcats, moose, and black bears, or for animals that require a great deal of space to meet their daily life needs, including food and mating needs.

Section 351 - Establishment of District Boundaries

The Wildlife Habitat Overlay District includes all areas more than 500 feet from a State Highway or Class 2, or 3 town road. Areas within the Wildlife Habitat Overlay District are shown as Wildlife Habitat Overlay on the Zoning Map - 2 of 4, Wildlife Habitat Overlay. It is not the Town's intention to prevent development in these areas but rather to require that any such development will avoid or minimize impacts on sensitive wildlife resources and habitat.

Where the boundary of the Wildlife Habitat Overlay District divides a lot of record such that part of the lot falls within the Wildlife Habitat Overlay District and part of the lot falls outside of it, the provisions of this Article shall apply to only that portion of the lot that falls within the Wildlife Habitat Overlay District. This supersedes Section 411 of these Regulations.

According to the Vermont Fish and Wildlife Department, land included in Marlboro's proposed Wildlife Habitat Overlay District falls within an eco-regional significant habitat connectivity area connecting the Southern Green

Mountains and the Hudson Highlands of Massachusetts. This area has been prioritized as an eco-regionally significant feature at the landscape scale that allows for wildlife movement and gene flow between core forests and habitats in Vermont and Massachusetts by the Staying Connected Initiative, a public/private collaboration of State Agencies, and conservation non-governmental organizations in northeast US and southern Canada. The Vermont Agency of Natural Resources BioFinder (<http://biofinder.vermont.gov/>) further identifies this area as highest priority and priority connectivity blocks and interior forest blocks and thus a significant feature in Vermont Conservation Design. At this broad landscape scale, it is absolutely clear that forests in Marlboro serve as vital connecting habitat for the region.

Section 352 - Use Regulations and Development Subject to Review

The following uses and development activities are subject to review under the Wildlife Habitat Overlay District:

1. The Wildlife Habitat Overlay District Standards (Section 354) shall apply to all development activities and construction listed under subparagraph 2, following, in this district with the exception of those listed under "Exemptions" (Section 353). These standards shall be applied concurrently with the standards in the underlying district. In all cases, the more restrictive requirement(s) shall apply.
2. Within the Wildlife Habitat Overlay District, the following development activities shall require a Conditional Use Permit, including Environmental Consultant review (Section 355): the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure; any mining, excavation, or land fill; and any change in the use of any building or other structure, with the exception of those listed under "Exemptions" (Section 353).

Section 353 - Exemptions

The following development activities are exempted from review under the Wildlife Habitat Overlay District:

1. Repairs or alterations to a structure existing prior to the effective date of these Regulations or to a structure installed in conformance with a Wildlife Habitat Overlay Conditional Use Permit that do not expand the total building footprint of the structure by greater than 50% of the building footprint. Note: Expansion of a structure existing prior to the effective date of these Regulations or to a structure installed in conformance with a Wildlife Habitat Overlay Conditional Use Permit by greater than 50% of the building footprint (whether at one time or over a series of expansions) will require a new Wildlife Habitat Overlay Conditional Use Permit.
2. Repairs or minor alterations to non-structural items (including but not limited to the following examples: septic systems, wells, driveways, patios, utility lines, fences, gardens, yard areas, ponds, etc.) existing prior to the effective date of these Regulations or installed in conformance with a Wildlife Habitat Overlay Conditional Use Permit.
3. A project required to comply with existing state or local health, sanitary, or safety code specifications that are solely necessary to assure safe living conditions.
4. New small accessory structures (see Section 202.4.a), the closest point of which is not more than 25 feet from a principal structure.
5. Farming, silviculture, or forestry operations. See Definitions (Article VII) for all three categories.
6. Primitive camps.
7. Sugar houses.

Section 354 - Standards and Special Requirements for Development Activities in the Wildlife Habitat Overlay District

All development within the Wildlife Habitat Overlay District not exempted under Section 353 shall meet the following standards. In granting approval of a Conditional Use Permit, the Development Review Board may consider and impose appropriate conditions to ensure that the development complies with these standards. Conditions may be imposed with regard to development siting (road location, building coverage and envelopes), density, setbacks, land uses and the intensity and operation of the use.

1. Development should be located as close as possible to the State Highway or Class 2, or 3 town road unless a

- less disruptive option is available, such as locating development in close proximity to existing development in the Wildlife Habitat Overlay District. Development should be located to leave the greatest contiguous land area within the District as undisturbed forest to provide wildlife habitat.
2. Development shall be designed to minimize forest fragmentation and disruption. To this end, development shall:
 - a. Be designed to minimize forest fragmentation and minimize penetration into large forest blocks through careful placement of individual structures and clustering of multiple structures as close to other development sites and disturbed areas as is practical given the development suitability of the site.
 - b. Be located within defined development envelope(s) as shown on the Site Plan to ensure that clearing, accessory structures, and other site development is limited to a defined area;
 - c. Be designed so that the extension of roads, driveways, utility corridors, and infrastructure is minimized and, where practical, shared by multiple uses. Where sites include linear features such as existing roads, tree lines, stone walls, and/or fence lines, consider following these features to minimize the fragmentation of forestland parcels.
 - d. Avoid bright exterior lighting or noise-creating equipment. Any necessary exterior lighting shall be as dim as possible and directed downward, especially avoiding illumination that shines horizontally, and, if adjacent to a wildlife corridor, shall be directed away from the wildlife corridor.
 - e. If immediately adjacent to a wildlife corridor, be designed, sited, and undertaken in a manner compatible with the continued viability of the adjacent wildlife corridor.
 - f. Be configured, if forestland is being subdivided, to allow for ongoing forest management of the resultant parcels after subdivision, to the extent feasible. Lot boundaries and development envelopes shall be laid out to avoid the unnecessary fragmentation of productive timber stands. Provision for forest management access (e.g., existing or potential timber landing areas and logging roads) shall be a consideration of the final plan if active management is taking place.
 - g. Avoid disruptions of connectivity between wildlife road crossings.
 3. A naturally vegetated buffer that is adequate to protect the following habitats from the impacts of development and associated activities may be required as a condition of approval. Buffer standards shall be as follows:
 - a. From rivers, streams, lakes, ponds, and wetlands: 300 feet
 - b. From deer wintering areas: 300 feet and a state biologist review
 - c. From mast stands: 1,300 feet and a state biologist review
 - d. From vernal pools: 600 feet
- If the strict application of adequate buffer standard for a particular type of habitat would deny a landowner a reasonable use of their property, the Development Review Board may allow the minimum encroachment into the buffer area needed to allow for the reasonable use of the parcel. In allowing such an encroachment, the Development Review Board may place conditions on the use or management of the area of the parcel within the buffer to maintain ecological values.

Section 355 - Consultation with an Environmental Consultant

Before issuing a Conditional Use Permit in the Wildlife Habitat Overlay District, the Development Review Board shall consult with the Environmental Consultant selected by the applicant and receive input and a written Report on the proposed project's adherence to the district standards, as listed in the following items 1-2 of this Section. It is strongly recommended that anyone contemplating work within a Wildlife Habitat Overlay District contact an Environmental Consultant at the earliest possible time to informally review the proposed work. It is not necessary to have filed any applications with the town in order to request Environmental Consultant input. Also, anyone contemplating work within a Wildlife Habitat Overlay District is encouraged to use online mapping resources such as BioFinder (<http://biofinder.vermont.gov/>) to learn about what might be on their site as early as possible in the planning process.

The Environmental Consultant shall be selected from the following list by the applicant contemplating work within a Wildlife Habitat Overlay District. The Environmental Consultant may be: The Marlboro Conservation

Commission; or the Vermont Fish & Wildlife Department; or a Consultant, qualified and experienced in performing similar environmental reviews and acceptable to the Development Review Board).

1. Prior to the Environmental Consultant beginning their review of the proposed work, the applicant shall have the major components of the work staked out on the ground.
2. The Environmental Consultant shall review the application to determine whether it is in accord with the standards in Section 354. To accomplish this, the Environmental Consultant shall:
 - a. Determine what natural resources are present on the project site (for example, rare, threatened or endangered species, significant wildlife habitat, wildlife corridors, streams, wetlands, vernal pools, etc.).
 - b. Evaluate whether the proposed development is in accord with all standards set forth in Section 354. This may include a site visit (with the applicant when possible), meetings and/or discussions with the applicant, map/document review, and consultation with the Vermont Fish & Wildlife Department or other qualified professionals. If the Environmental Consultant selected by the applicant is the Marlboro Conservation Commission or a Consultant, the Marlboro Conservation Commission, the Consultant, and the applicant shall have the option of consultation with the Vermont Fish & Wildlife Department to determine what natural resources and wildlife features are present on the site at any stage during this process.
 - c. Meet with the applicant at his or her option to review the comments and recommendations, preferably before the hearing.
 - d. Present a written Report to the Development Review Board stating clearly how the proposed development meets or fails to meet the standards set forth in Section 354. The Report shall include all comments and recommendations relative to achieving compliance with the relevant standards. The Report shall be submitted to the Development Review Board and the applicant a minimum of five (5) days before the hearing on the project. Until the Environmental Consultant's Report is received by the Development Review Board, the Conditional Use Permit application shall be considered incomplete, the Development Review Board shall not proceed with processing the application, and required processing deadlines shall be suspended, until the Report is received.

Section 356 - Review and Decision by the Development Review Board

1. As part of the public hearing under Section 203.3.a. Conditional Use Permit-Application, the Development Review Board shall review and consider the Environmental Consultant's Report, including recommendations, along with other application materials as required by Section 202 - Zoning Permits and/or Section 204 - Site Plan Review as applicable, and testimony of the applicant and other interested persons.
2. The applicant shall have the primary responsibility of presenting the application to the Development Review Board and shall have the burden of proof to establish that the proposed development complies with all applicable standards.
3. Giving due weight to the Report, including recommendations, of the Environmental Consultant, the Development Review Board shall determine whether the proposed development is in compliance with all standards set forth in Section 203 and Section 354 and issue a written decision granting or denying the application. The decision may be issued with or without conditions, pursuant to Section 203. The Development Review Board shall render its decision within 45 days from the adjournment of the final public hearing, per Section 203.
4. In the event that seasonal site conditions (e.g., heavy snow cover) prevent the Development Review Board and/or the Environmental Consultant from completing their review and determining what natural resources are present on the project site, the Development Review Board shall recess the hearing until such time as the site analysis may be completed.
5. If the Environmental Consultant selected by the applicant is the Marlboro Conservation Commission or a Consultant, the Development Review Board, the Consultant, and the applicant shall have the option of consultation with the Vermont Fish & Wildlife Department to determine what natural resources and wildlife features are present on the site at any stage during this process.

Section 360 - Shoreland Overlay District (SL)

District Description, Authority and Purpose: As provided for in the Act and to effect the purpose of Chapter 49 of Title 10 and to promote the public health, safety and general welfare in accord with criteria set forth in Sections 1423 and 1425 thereof, there are hereby established Shoreland zoning regulations for the Town of Marlboro.

Any lake over 10 acres is subject to the Vermont Shoreland Protection Act (Chapter 49A of Title 10, §1441 et seq).

Section 361 - Classification of Shorelands: General Description

Marlboro's Shorelands include lands around all bodies of water over 10 acres, which include but are not limited to Sunset Lake (North Pond), North Pond Road Wetlands (referred to by DEC as Halladay), South Pond, Hidden Lake, Marlboro Millpond (referred to by DEC as Marlboro – 431), and an unnamed body of water on the north side of Shearer Hill Road referred to by DEC as Gates - NE. The purpose of Shoreland control is to preserve and enhance high quality waters, and, therefore, to require adequate development standards to achieve the purpose.

Section 362 - Shoreland Regulations

For the purpose of these Regulations, Shoreland areas shall be defined as those lands lying between the normal mean high water mark of the water bodies identified under Section 361, and a line 250 feet (measured on a horizontal plane) from such normal mean high water mark, and as covered under the Vermont Shoreland Protection Act. All development in this district is likely to require a Shoreland Permit from the Vermont Agency of Natural Resources.

Use, Area, Setbacks and Vegetation Buffer Requirements:

Use and Lot Size: As specified in underlying zoning district.

Setback from Normal Mean High Water Mark:

On-site Sewage: 100 feet

Principal Structures*: 100 feet

Vegetative Buffer: Shall extend from normal mean high water mark a distance of 100 feet.

* Docks and landings shall be exempt from the setback requirement for structures.

* Accessory uses shall be set back at least 50 feet.

Prohibited Uses:

Within Shoreland districts, garbage and solid waste disposal, including expansion of existing garbage and solid waste facilities is prohibited.

Vegetation Buffer:

Within the required Vegetative Buffer area a buffer of healthy trees, shrubs, and ground cover shall be preserved, maintained, and enhanced by appropriate methods. The extent of any planting and/or seeding shall be sufficient to minimize soil erosion and to screen selectively the land use from the shoreline.

Further guidance may be provided by the Vermont Shoreland Protection Act: A Handbook for Shoreland Development.

Section 370 - Surface Water Buffer Overlay District

Purpose: It is the purpose of this Section to provide standards for the protection and improvement of the surface waters and streams within the town of Marlboro and the watersheds contained wholly or partially within the town. These Regulations and standards are established to protect natural areas along the town's surface waters for protection of water quality and to maintain open-space areas and wildlife habitat in riparian corridors. These Regulations apply to new land uses and to expansions of pre-existing uses commenced after the effective date of these Regulations. Pre-existing uses are not affected.

Section 371 - Surface Water Buffer Overlay District Description

1. Applicability: The Surface Water Buffer Overlay District includes the following areas:

- a. All land within the Wildlife Habitat Overlay District (see Section 351) that is within three hundred feet (300') of a stream or river identified as such on the Zoning Map - 4 of 4, Shoreland and Surface Water Buffer Overlays, and/or associated water body.
- b. All land outside of the Wildlife Habitat Overlay District that is within fifty feet (50') of a stream or river identified as such on the Zoning Map - 4 of 4, Shoreland and Surface Water Buffer Overlays, and/or associated water body.
- c. All land within one hundred feet (100') of water bodies of ten (10) acres or more, including, but not limited to Sunset Lake (North Pond), North Pond Road Wetlands (referred to by DEC as Halladay), South Pond, Hidden Lake, Marlboro Millpond, (referred to by DEC as Marlboro – 431), and an unnamed body of water on the north side of Shearer Hill Road referred to by DEC as Gates - NE.
- d. If uncertainty exists with respect to the existence or location of a stream or river identified as such on the Zoning Map - 4 of 4, Shoreland and Surface Water Buffer Overlays, the existence or location of the stream or river shall be determined by the Zoning Administrator. If the applicant disagrees with the determination, he/she may appeal to the Development Review Board.

The Surface Water Buffer Overlay District shall be measured from the top of bank of rivers and streams and from the normal mean high watermark of water bodies. The top of bank is the point along a stream or river bank where an abrupt change in slope is evident, and where the stream or river is generally able to overflow the banks and enter the adjacent floodplain during flows at or exceeding the average annual high-water stage. In areas where there are ponds contiguous to a stream or river the Surface Water Buffer Overlay District shall be measured from the top of bank of the pond.

2. Exemptions. These Regulations shall not apply to:
 - a. Required agricultural or accepted farming practices, as defined by the Commissioner of Agriculture, Food, and Markets, following Required Agricultural Practices or to accepted silvicultural practices, as defined by the Commissioner of Forests, Parks, and Recreation, following Acceptable Management Practices.
 - b. Maintaining existing buildings, driveways, gardens, and lawns, without enlarging them.
 - c. Reconstruction of existing impervious areas without increasing or changing the current footprint, such as rebuilding a house, deck, or driveway in the exact same footprint.
 - d. Removal of invasive species, nuisance plants, and noxious weeds.
 - e. Creation of a path no more than six feet wide.
 - f. Replacement, maintenance, repair or installation of septic systems and potable water systems.

Section 372 - Surface Water Buffer Overlay Standards:

1. General standards. It is the objective of these standards to promote the maintenance of areas of native vegetation and trees to reduce the impact of stormwater runoff, reduce sedimentation, and increase infiltration and base flows in the town's streams and ponds. Therefore, except as specifically permitted by the Development Review Board pursuant to the standards in Section 203 (Conditional Use Permit), all lands within the Surface Water Buffer Overlay District shall be left in an undisturbed, naturally vegetated condition. Supplemental planting and landscaping with appropriate native species of vegetation to achieve these objectives shall be permitted. The specific standards for the vegetation and maintenance of Surface Water Buffers are as follows:
 - a. A buffer of healthy trees, shrubs, and ground cover shall be preserved, maintained, and enhanced by appropriate methods. The extent of any planting and/or seeding shall be sufficient to minimize soil erosion and to screen selectively the land use from the shoreline.
 - b. Any areas within the Surface Water Buffer Overlay District that are not vegetated or that are disturbed during construction shall be seeded with a naturalized mix of grasses rather than standard lawn grass, and shall not be mowed more than one (1) time per calendar year after establishment.
 - c. The creation of new lawn areas within the Surface Water Buffer Overlay District is not permitted after the effective date of these Regulations.
 - d. Snow storage areas designated pursuant to Site Plan or Planned Unit Development (PUD) review shall not be located within the Surface Water Buffer Overlay District unless the applicant can demonstrate

- that:
- (i) There is no reasonable alternative location for snow storage on the same property.
 - (ii) Measures such as infiltration areas have been incorporated into the Site Plan and/or stormwater treatment system to reduce the potential for erosion and contaminated runoff entering the associated stream as a result of snow melt.
2. Expansion of pre-existing structures within the Surface Water Buffer Overlay District. The expansion of pre-existing structures within the Surface Water Buffer Overlay District, except as provided for on named water bodies in Section 373, below, shall be permitted only in accordance with the standards for nonconforming structures and nonconforming uses in Article IV, Section 413, of these Regulations.
3. New uses and encroachments within the Surface Water Buffer Overlay District. The encroachment of new land development activities into the town's Surface Water Buffer Overlay District is discouraged. The Development Review Board may grant approvals pursuant to this section as part of PUD review without a separate Conditional Use review. The Development Review Board may authorize the following as conditional uses within the Surface Water Buffer Overlay District, subject to the standards and conditions enumerated below, for each use.
- a. Clearing of vegetation and filling or excavating of earth materials, only to the extent directly necessitated for the construction or safe operation of a permitted or conditional use on the same property and where the Development Review Board finds that:
 - (i) There is no practicable alternative to the clearing, filling, or excavating within the Surface Water Buffer Overlay District; and
 - (ii) The purposes of this Section will be protected through erosion controls, plantings, protection of existing vegetation, and/or other measures.
 - b. Encroachments necessary to rectify a natural catastrophe for the protection of the public health, safety, and welfare.
 - c. Encroachments necessary for providing for or improving public facilities.
 - d. Unpaved public recreation paths, located at least ten (10) feet from the top of bank of the surface water.
 - e. Stormwater treatment facilities meeting the Vermont Agency of Natural Resources (VANR) stormwater treatment standards, and routine maintenance thereof, including necessary clearing of vegetation and dredging. Evidence of a complete application to the VANR for coverage under the applicable permitting requirements shall be required to meet this criterion for encroachment into the Surface Water Buffer Overlay District.
 - f. Roadways or access drives for purposes of crossing a Surface Water Buffer area to gain access to land on the opposite side of the buffer, or for purposes of providing safe access to an approved use, in cases where there is no feasible alternative for providing safe access and the roadway or access drive is located at least ten (10) feet from the normal high water mark of the surface water.
 - g. Roadways or access drives for purposes of crossing a stream to gain access to land on the opposite side of the stream, or for purposes of providing safe access to an approved use, in cases where there is no feasible alternative to the crossing for providing safe access.
 - h. Utility lines, including power, telephone, cable, sewer, and water, to the extent necessary to cross the stream or encroach into the Surface Water Buffer Overlay District where there is no feasible alternative for providing or extending utility services.
 - i. Outdoor recreation, provided any building or structure (including parking and driveways) related to such use is located outside the Surface Water Buffer Overlay District.
 - j. Research and educational activities, provided any building or structure (including parking and driveways) related to such use is located outside the Surface Water Buffer Overlay District.
 - k. Hydro-electric power generation
 - l. Water dependent uses, such as boat launching facilities and docks.
4. Review and Comment by the Marlboro Conservation Commission.
- a. The Marlboro Conservation Commission shall in a timely manner review applications made pursuant to sections (372) and (373) above and provide specific comments to the Development Review Board, as appropriate, as to the proposed project's compliance with the general purposes and standards enumerated

in sections (370 and 372) above.

Section 373 - Pre-Existing Structures Along Named Water Bodies

1. Applicability. The provisions of this section shall apply to pre-existing structures within the areas defined as follows:
 - a. All lands within one hundred (100) feet horizontal distance of the top of bank of South Pond, Hidden Lake, Sunset Lake, and Marlboro Millpond.
 - b. Where the provisions of this Section and the Shoreland Overlay District are both involved, the more stringent (protective) shall apply.
2. Expansion and reconstruction of pre-existing structures. Within the areas defined in Section 373.1 (Applicability) immediately above, the expansion and reconstruction of pre-existing structures may be approved by the Development Review Board as a conditional use provided the requirements of the underlying zoning district and the following standards are met:
 - a. The structure to be expanded or reconstructed was originally constructed on or before March 1, 2005. For purposes of these Regulations, expansion may include the construction of detached accessory structures including garages and utility sheds.
 - b. The expanded or reconstructed structure does not extend any closer, measured in terms of horizontal distance, to the applicable high water elevation than the closest point of the existing structure.
 - c. The total building footprint area of the expanded or reconstructed structure shall not be more than twenty percent (20%) larger than the footprint of the structure lawfully existing on March 1, 2005. For purposes of these Regulations, reconstruction may include razing the existing structure and/or foundation and constructing a new structure in accordance with the provisions of the underlying zoning district regulations and this Section.
 - d. An erosion control plan for construction is submitted by a licensed engineer detailing controls that will be put in place during construction or expansion to protect the associated surface water.
 - e. A landscaping plan showing plans to preserve, maintain, and supplement existing trees and ground cover vegetation is submitted and the Development Review Board finds that the overall plan will provide a visual and vegetative buffer for the lake and/or stream.

Section 380 - Flood and Fluvial Erosion Hazard Regulations & Flood and Fluvial Erosion Hazard Area Overlay District

Statutory Authorization and Effect: In accordance with 10 V.S.A. Chapter 32, and 24 V.S.A. Chapter 117 §4424, §4411 §4414, and 24 VSA Chapter 59, there are hereby established these Flood and Fluvial Erosion Hazard Regulations for areas at risk of flood and fluvial erosion damage in the Town of Marlboro, Vermont. Except as additionally described below, all administrative procedures follow municipal procedures under 24 VSA Chapter 117.

Section 381 - Statement of Purpose

It is the purpose of these Flood and Fluvial Erosion Hazard Regulations to:

1. Implement the goals, policies, and recommendations in the current municipal plan;
2. 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 erosion;
3. Ensure that the selection, design, creation, and use of development in hazard areas is reasonably safe and accomplished in a manner that is consistent with public wellbeing, does not impair stream equilibrium, flood plain services, or the stream corridor;
4. 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 Marlboro, its citizens, and businesses eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds as may be available.
5. Other Provisions

- a. Precedence of these Flood and Fluvial Erosion Hazard Regulations:
The provisions of these Flood and Fluvial Erosion Hazard Regulations shall not in any way impair or remove the necessity of compliance with any other local, state, or federal laws or regulations. Where this Article imposes a greater restriction, the provisions of this Section shall take precedence.
- b. Validity and Severability:
If any portion of these regulations is held unconstitutional or invalid by a competent court, the remainder of these regulations shall not be affected.
- c. Warning of Disclaimer of Liability:
These regulations do not imply that land outside of the Flood and Fluvial Erosion Hazard Area Overlay District will be free from flood or erosion damages. These Flood and Fluvial Erosion Hazard Regulations shall not create liability on the part of the Town of Marlboro, or any municipal official or employee thereof, for any flood or erosion damages that result from reliance on these Flood and Fluvial Erosion Hazard Regulations, or any administrative decision lawfully made hereunder.

Section 382 - Applicability

The Flood and Fluvial Erosion Hazard Area (FFEHA) Overlay District shall be superimposed over any other zoning districts. All lands to which the FFEHA Overlay District applies shall meet the requirements of the underlying zoning district(s) and the FFEHA Overlay District. Where there is a conflict between the underlying zoning or other overlay districts and the FFEHA Overlay District, compliance with the most restrictive guidelines shall be required for land development under these Regulations.

Section 383 - Flood and Fluvial Erosion Hazard Area Overlay District

District Description and Authority: Pursuant to Section 4414(2) of the Act, there is hereby established a Flood and Fluvial Erosion Hazard Area Overlay District for the Town of Marlboro.

1. The Flood and Fluvial Erosion Hazard Area (FFEHA) Overlay District.
The FFEHA Overlay District shall consist of the River Corridors, Special Flood Hazard Areas, and Town-Identified Fluvial Erosion Areas in the Town of Marlboro, Vermont as described below. The FFEHA Overlay District includes:
 - a. River Corridors, shown on the Zoning Map - 3 of 4, Flood and Fluvial Erosion Hazard Overlays, and/or shown on maps published by the Vermont Agency of Natural Resources, specifically the Statewide River Corridor (SRC) map layer on the Vermont Natural Resource Atlas (<http://anrmaps.vermont.gov/websites/anra5/>), and refinements to that data based on field-based assessments, which are hereby adopted by reference and declared to be part of these Regulations. Where River Corridors are not mapped by ANR, the River Corridor shall be defined as the area measured as seventy-five (75) feet from the top of each stream bank or slope, and the Development Standards in 385.c shall apply. See Sections 370-373 for additional requirements along River Corridors.
 - b. Special Flood Hazard Areas (SFHA) shown on the Zoning Map - 3 of 4, Flood and Fluvial Erosion Hazard Overlays, and/or shown in and on the most current Flood Insurance Rate Maps dated September 28, 2007 (FIRMs) and Flood Insurance Studies (FIS) and maps published by the Department of Homeland Security, Federal Emergency Management Agency (FEMA), National Flood Insurance Program, as provided by the Secretary of the Vermont 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. Digital Flood Insurance Rate Maps may be found at the Vermont Agency of Natural Resources website: <http://anrmaps.vermont.gov/websites/anra5/>.
 - c. Town-Identified Fluvial Erosion Areas shown on the Zoning Map - 3 of 4, Flood and Fluvial Erosion Hazard Overlays, are hereby adopted and declared to be a part of the FFEHA Overlay District. These Town-Identified Fluvial Erosion Areas were designated using the best available topographic data and locally derived information such as fluvial flooding on record, and historic high water marks.
 - d. The Zoning Map - 3 of 4, Flood and Fluvial Erosion Hazard Overlays, is based on a combination of the current above map references and on-ground experience by town officials after flooding events. These

- regulations shall apply to the FFEHA in Marlboro, and are the minimum standards that must be met before meeting the additional standards applicable in the underlying district.
2. Base Flood Elevations in Special Flood Hazard Areas.
 - a. Where available, Base Flood Elevations 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 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.
 - b. The Floodway Area shall be those areas identified in the FIS and the FIRM as floodway (AE with Floodway) and which represent the channel of a watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without increasing the water surface elevation by more than one (1) foot at any point. This term shall also include floodway areas which have been identified in other available studies or sources of information for those Special Flood Hazard Areas where no floodway has been identified in the FIS and FIRM.
 - c. Within any floodway area, no encroachments, including fill, new construction, substantial improvements, or other development shall be permitted unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.
 3. Interpretation.

The information presented on any maps, or contained in any studies, adopted by reference, is presumed accurate.

 - a. If uncertainty exists with respect to the boundaries of the Special Flood Hazard Area, the location of the boundary shall be determined by the Zoning Administrator. If the applicant disagrees with the determination made by the Zoning Administrator, an appeal may be made to the Development Review Board. A Letter of Map Amendment from FEMA shall constitute final determination.
 - b. If uncertainty exists with respect to the boundaries of the River Corridor, the location of the boundary shall be determined by the Zoning Administrator. If the applicant disagrees with the determination made by the Zoning Administrator, he/she may appeal to the Development Review Board. A letter of determination from the Vermont Agency of Natural Resources shall constitute final determination.
 - c. If uncertainty exists with respect to the boundaries of the Town-identified Fluvial Erosion Area, the location of the boundary shall be determined by the Zoning Administrator. If the applicant disagrees with the determination, he/she may appeal to the Development Review Board. The burden of proof shall be on the appellant. A letter of determination from a third party licensed surveyor or engineer shall constitute proof.

Section 384 - Development Review in the Flood and Fluvial Erosion Hazard Area Overlay District

Permitted uses in the FFEHA Overlay District are allowed with the approval of the Zoning Administrator provided that any repair, relocation, or enlargement is required for the continued economically feasible operation of a nonresidential enterprise and will not increase flood levels, risk of other hazards in the area, or threaten health, safety and welfare of the public or other property owners. The areas within the FFEHA Overlay District are not appropriate sites for new structures nor for development that increases the elevation of the base flood or obstructs the ability of streams to establish and maintain geomorphic equilibrium.

Summary Table begins on next page

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| Summary Table: Development in the Flood and Fluvial Erosion Hazard Area Overlay District | | | | |
|---|--|---------------------------|--------------------------------------|----------------|
| # | Development P Permitted C Conditional Use Permit X Prohibited E Exempted | Hazard Area | | |
| | | Special Flood Hazard Area | Town-identified Fluvial Erosion Area | River Corridor |
| 1 | New structures | X | X | X |
| 2 | Storage | X | X | X |
| 3 | Improvements to existing structures | C | C | C |
| 4 | Accessory Structures | C | C | C |
| 5 | At grade parking | P | P | C |
| 6 | Replacement water supply or septic systems | C | C | C |
| 8 | Fill as needed to elevate existing structures | C | C | C |
| 9 | Fill | X | X | X |
| 12 | Grading | C | C | C |
| 13 | Road maintenance | E | E | E |
| 14 | Road improvements | C | C | C |
| 15 | Bridges and culverts | C | C | C |
| 16 | Channel management | C | C | C |
| 17 | Parking or storage of recreational vehicles (180 days) | P | P | P |
| 18 | Open space, recreation | E | E | E |
| 19 | Forestry | E | E | E |
| 20 | Agriculture | E | E | E |
| 21 | Removal of a structure | E | E | E |
| 22 | Replacement of residential homes | C | C | C |

Development in the Flood and Fluvial Erosion Hazard Area Overlay District

1. Permit

A permit approval is required from the Zoning Administrator for all development in the FFEHA Overlay District. These Regulations shall be administered and enforced according to the provisions of Article II, in addition to the requirements of this Article. Development that requires a Conditional Use Permit, nonconforming use approval, or a Variance from the Development Review Board under these Regulations, must have such approvals prior to the issuance of a Zoning Permit by the Zoning Administrator. Any development subject to municipal jurisdiction in the FFEHA Overlay District shall meet the criteria in Sections 384 and 385. 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 Agency, whichever is sooner. The Development Review Board should consider comments from the NFIP Coordinator at ANR. For development within the SFHA, no permit shall be issued until all other necessary government permits required by state and federal laws have been obtained.

2. Review subdivision proposals and other development, including manufactured home parks or subdivisions, to determine whether such proposals will be reasonably safe from flooding. If a subdivision or other development proposal is in a flood prone area, assure that:
 - a. Such proposals minimize flood damage.
 - b. Public utilities and facilities are constructed so as to minimize flood damage.
 - c. Adequate drainage is provided.

3. Development

The following development activities in the FFEHA Overlay District, if located in a Special Flood Hazard

Area where outside of the Town-identified Fluvial Erosion Area and outside of the River Corridors, and meeting the Development Standards in Section 385, require a Zoning Permit from the Zoning Administrator if required elsewhere in these Regulations:

- a. Non-substantial improvements, provided the improvements do not decrease the pre-existing distance between the unaltered structure and the top of the bank;
 - b. Accessory structures;
 - c. Development related to on-site septic or water supply systems;
 - d. Building utilities;
 - e. At-grade parking for existing buildings; and,
 - f. Parking or storage of recreational vehicles (see definition).
4. Prohibited Development in the Regulated Flood Hazard Areas
- a. New residential or non-residential structures (including the placement of manufactured homes);
 - b. Storage or junk yards;
 - c. New fill, except as necessary to elevate structures above the Base Flood Elevation;
 - d. Critical facilities; and,
 - e. All development not exempted, permitted, or conditionally permitted.
5. Conditional Use Permit
- A Conditional Use Permit issued by the Development Review Board is required prior to the issuance of a Zoning Permit by the Zoning Administrator for the following proposed development:
- a. Replacement of residential homes that do not result in a decrease of the former setback from any stream.
 - b. 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.
 - c. Substantial improvement, elevation, relocation, or flood proofing of existing structures;
 - d. New or replacement storage tanks for existing structures;
 - e. Improvements to existing structures in the Floodway;
 - f. Grading, excavation, or the creation of a pond;
 - g. Improvements to existing roads;
 - h. Bridges, culverts, channel management activities, or public projects which are functionally dependent on stream access or stream crossing;
 - i. Public utilities;
 - j. Improvements to existing primary structures in the River Corridors that do not expand the footprint of the existing structure more than 500 square feet;
 - k. Accessory structures in the River Corridors, of 200 square feet or less in area and 16 feet or less in height.
 - l. Building utilities in the River Corridors; and,
 - m. At-grade parking for existing buildings in the River Corridors.
 - n. Manufactured homes, which shall be elevated and anchored to resist flotation, collapse, or lateral movement.
6. Exempted Activities
- The following are exempt from regulation under these Flood and Fluvial Erosion Hazard Regulations:
- 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 Zoning Administrator in writing of the proposed activity. The notice must contain a sketch of the proposed structure including setbacks.
7. Variances

If compliance with any of the requirements of this regulation would result in an exceptional hardship to a prospective builder, developer or landowner, the town of Marlboro may, upon request, grant relief from the strict application of the requirements. Variances may be granted in writing by the Development Review Board only in accordance with all the criteria in 24 V.S.A. § 4469, § 4424, and 44 CFR Section 60.6, and after public notice and hearing. If granted, a variance shall involve only the least modification necessary to provide relief. In granting any variance, the Town of Marlboro shall attach whatever reasonable conditions and safeguards it considers necessary in order to protect the public health, safety, and welfare, and to achieve the objectives of this regulation.

- a. A Variance for development within the River Corridors may be allowed if, based on a review by the Vermont Agency of Natural Resources, it is determined that the proposed development will not obstruct the establishment and maintenance of fluvial geomorphic equilibrium for the watercourse.
 - b. 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.
 - c. A complete record of all variance requests and related actions shall be maintained by the Town of Marlboro.
8. Nonconforming Structures and Uses
- The Development Review Board may, after public notice and hearing, approve the repair, relocation, replacement, or enlargement of a nonconforming structure or use within a Special Flood Hazard Area provided that:
- a. The proposed development is in compliance with all the Development Standards in Section 385 of this Regulation.
 - 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.
 - c. In the FFEHA Overlay District only, nonconforming structures or uses shall be considered abandoned where such structures or uses are discontinued for more than 12 months. Outside the FFEHA Overlay District, Section 413 - Nonconformities, shall apply.
 - d. An individual manufactured home lot in an existing manufactured home park that is vacated shall not be considered a discontinuance or abandonment of nonconformity. Replacement manufactured homes must be placed so as to meet the Development Standards in the FFEHA Overlay District.

Section 385 - Development Standards

The criteria below are the minimum standards for development in the FFEHA Overlay District. Where more than one zone or area is involved, the most restrictive standard shall take precedence.

1. Special Flood Hazard Area
 - a. *All development* shall be:
 - (1) Reasonably safe from flooding;
 - (2) Designed, operated, maintained, modified, located, and adequately anchored to prevent flotation, collapse, release, or lateral movement of the structure;
 - (3) Constructed with materials and utility equipment resistant to flood damage;
 - (4) Constructed by methods and practices that minimize flood damage;
 - (5) 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;
 - (6) Adequately drained to reduce exposure to flood hazards;
 - (7) Located so as to minimize conflict with changes in channel location over time and the need to

- intervene with such changes; and,
- (8) Required to locate any fuel storage tanks (as needed to serve an existing building in the Special Flood Hazard Area) 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 engineer.
- b. *In Zones 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 licensed professional engineer.
- c. New structures and structures to be 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 non-residential structures and *non-residential structures to be substantially improved* shall:
- (1) Meet the above Standard 385.1.c; or,
 - (2) 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 licensed 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.
- e. Manufactured homes placed or substantially improved within A1-30, AH, and AE Zones, which meet one of the following location criteria, shall be elevated such that the lowest floor is to or above the Base Flood Elevation and shall be securely anchored.
- (1) outside a manufactured home park or subdivision;
 - (2) in a new manufactured home park or subdivision;
 - (3) in an expansion to an existing manufactured home park or subdivision;
 - (4) on a site in an existing park which a manufactured home has incurred substantial damage as a result of a flood.
- f. In A1-30, AH, and AE Zones, manufactured homes to be placed or substantially improved in an existing manufactured home park shall be elevated so that:
- (1) the lowest floor is at or above the Base Flood Elevation; OR
 - (2) the chassis is supported by reinforced piers no less than 36 inches in height above grade and securely anchored.
- g. *Fully enclosed areas below grade* on all sides (including below grade crawlspaces and basements) are prohibited.
- h. *Fully enclosed areas that are above grade*, below the lowest floor, below Base Flood Elevation and subject to flooding, shall:
- (1) Be solely used for parking of vehicles, storage, or building access, and such a condition shall clearly be stated on any permits; and,
 - (2) 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 licensed 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.
- i. *Recreational vehicles* must be fully licensed and ready for highway use;

- j. A *small accessory* structure of 200 square feet or less that represents a minimal investment need not be elevated to the Base Flood Elevation in this area, provided the structure is placed on the building site so as to offer the minimum resistance to the flow of floodwaters and shall meet the criteria in Section 385.1.f (above). Otherwise, all accessory structures will have to be elevated or floodproofed.
 - k. *Water supply systems* shall be designed to minimize or eliminate infiltration of flood waters into the systems.
 - l. *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.
 - m. *On-site waste disposal systems* shall be located to avoid impairment to them or contamination from them during flooding.
 - n. *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;
 - o. *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 where applicable.
 - p. *Subdivisions and Planned Unit Developments must be accessible by dry land* access outside the Special Flood Hazard Area.
 - q. *Existing buildings, including manufactured homes, to be substantially improved in Zone AO* shall have the lowest floor, including basement, elevated above the highest adjacent grade, at least as high as the depth number specified on the community's Flood Insurance Rate Map, or at least two feet if no depth number is specified.
2. Town-Identified Fluvial Erosion 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 licensed professional engineer, certifying that the proposed development will:
 - (1) Not result in any increase in flood levels (0.00 feet) during the occurrence of the base flood;
 - (2) 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 licensed professional engineer certifies that there will be no change in grade and the utilities will be adequately protected from scour.
3. River Corridors
- a. Improvements to existing structures, and any associated fill as needed to comply with elevation requirements in the Special Flood Hazard Area shall not decrease the distance between the existing primary building and the top of bank;
 - b. Accessory structures may be located within 50 feet of the existing primary building provided that the location does not decrease the distance between the existing primary structure and the top of bank.
 - c. Development shall not increase the susceptibility of that or other properties to fluvial erosion damage;
 - d. Development shall not increase the potential of materials being swept onto other lands or into the stream and causing damage to other properties from fluvial erosion;
 - e. Development shall not cause an undue burden on public services and facilities including roads, bridges, culverts, and emergency service providers during and after fluvial erosion events.
 - f. Bridge and culvert projects must have a Stream Alteration Permit; and
 - g. Channel management activities must be authorized by the Agency of Natural Resources.
4. Alteration or Relocation of Watercourse
- a. No encroachment, alteration, or improvement of any kind shall be made to any watercourse until all adjacent towns which may be affected by such action have been notified by the town, and until all required permits or approvals have first been obtained from the Vermont ANR.
 - b. No encroachment, alteration, or improvement of any kind shall be made to any watercourse unless it can be shown that the activity will not decrease stream stability, or reduce or impede the flood carrying and sediment transport capacity of the watercourse in any way.
 - c. In addition, FEMA shall be notified prior to any alteration or relocation of any watercourse.

Section 386 - Application Submission Requirements

Applications for development in the Flood and Fluvial Erosion Hazard Area Overlay District shall include:

1. Two (2) copies of a Site Plan drawn to scale that depict the nature, location, dimensions and elevations of the lot, including the extent of the FFEHA Overlay District, Special Flood Hazard Areas, Town-Identified Fluvial Erosion Areas, River Corridors, the Base Flood Elevation, and the nearest public road, the proposed development, all water bodies, 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. Section 204, Site Plan Review, also applies to applications for development in the FFEHA Overlay District.
2. Existing and proposed structures including the elevation of the lowest habitable floor including basement and confirmation as to whether such structures contain a basement.
3. Proposed fill and/or storage of materials
4. Proposed flood proofing measures and the level to which any structure will be flood proofed.
5. The relationship of the proposal to the location of the stream or channel through identification to the shortest horizontal distance from the proposed development to the center line (or top of the nearest bank if not possible to measure to the center line).
6. For all subdivision and development which requires a permit under Section 384 of these Regulations and which involves more than 50 lots or 5 acres, the Base Flood Elevation for that portion that lies within Zone A.
7. A statement of purpose and need of the proposed development and description of alternatives considered to proposed development, including alternative locations on site, especially outside the FFEHA Overlay District.
8. 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 Zoning Administrator and attached to the permit before work can begin;
9. Such other information deemed necessary by the Development Review Board for determining the suitability of the site for the proposed development.

Section 387 - Procedures

1. Upon receipt of a complete application for a Zoning Permit for substantial improvement or new construction or development in the FFEHA Overlay District, the Zoning Administrator shall submit a copy of the application and supporting information to the State National Flood Insurance Program Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section, 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.
2. If the above application, or any application, is seeking a permit for the alteration or relocation of a watercourse, copies of the application shall 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 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. Where a Conditional Use Permit is required for development in the FFEHA Overlay District, within ten days after a complete application is submitted to the Zoning Administrator, a copy of the application shall be submitted by the Zoning Administrator to the Development Review Board for review and comment. Within 45 days after a complete application is submitted to the Development Review Board, the Development Review Board shall, in a written decision, approve, approve with conditions, or deny the application based

on compliance with this Article. The Development Review Board shall consider all comments received from the Vermont Agency of Natural Resources, which comments shall be made part of the record of the hearing.

4. Proposed development shall be reviewed by the Zoning Administrator or the Development Review Board, as appropriate, to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal, State, or Municipal law.

5. Decisions:

The Development Review Board and the Zoning Administrator shall consider comments from the State National Flood Insurance Program Coordinator at the Vermont Agency of Natural Resources. The Development Review Board may recess the proceedings on any application pending submission of additional information.

6. Records:

The Zoning Administrator shall properly file and maintain a record of:

- a. All permits issued in the FFEHA Overlay District;
- 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 these Regulations; and,
- d. All decisions of the Development Review Board (including Variances and violations) and all supporting findings of fact, conclusions, and conditions.

Section 388 - Administration

1. The Zoning Administrator shall maintain a record of:
 - a. Permits issued for development in the FFEHA Overlay District.
 - b. The elevation, consistent with the datum of the elevation on the NFIP maps for the community, to which buildings have been flood-proofed, or of the lowest floor, including basement, of all new or substantially improved buildings.
 - d. All flood proofing certifications required under these Regulations.
 - e. All Variance actions, including justification for their issuance.
2. It shall be the duty of the Zoning Administrator to enforce the provisions of these Regulations. Whenever any development occurs contrary to these Regulations, the Zoning Administrator, in his/her discretion, shall institute appropriate action in accordance with Article II.
3. If the structure or development is still noncompliant after the opportunity to cure has passed, in addition to the penalties provided for in Article II, the Zoning Administrator shall submit a declaration to the Administrator of the National Flood Insurance Program requesting a denial of flood insurance. Section 1316 of the National Flood Insurance Act of 1968, as amended, authorizes FEMA to deny flood insurance to a property declared by a community to be in violation of their flood hazard area regulations. The declaration shall consist of:
 - a. The name of the property owner and address or legal description of the property sufficient to confirm its identity or location,
 - b. A clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance,
 - c. A clear statement that the public body making the declaration has authority to do so and a citation to that authority,
 - d. Evidence that the property owner has been provided notice of the violation and the prospective denial of insurance, and
 - e. A clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

Section 389 - Enforcement and Penalties

1. This Regulation shall be enforced under the municipal zoning bylaw in accordance with 24 VSA Chapter 117 § 4451, § 4452, and 24 VSA Chapter 59 §1974a. A copy of the notice of violation will be mailed to the State National Flood Insurance Program Coordinator.
2. If any appeals have been resolved, but the violation remains, the Zoning Administrator shall submit a declaration to the Administrator of the National Flood Insurance Program requesting a denial of flood insurance to the property pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.
3. Violations of the Accepted Agricultural Practices shall be enforced under these FFEHA Regulations as violations of these Regulations. Such violations shall also be immediately reported to the Secretary of Agriculture for enforcement under 6 V.S.A. Section 4812.
4. In addition to the above, these FFEHA Regulations shall be enforced according to the provisions of Article II.

Section 390 - Definitions

Accessory Structure: A structure which is: 1) detached from and clearly incidental and subordinate to the principal use of or structure on a lot; and 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.

ANR: The Vermont Agency of Natural Resources.

Area of Special Flood and Fluvial Hazard: Synonymous in meaning with the phrase "Special Flood and Fluvial Hazard Area" for the purposes of these Regulations. See "Special Flood Hazard Area."

Base Flood: The flood having a one percent chance of being equaled or exceeded in any given year (also referred to as the "100-year flood" or one-percent (1%) annual chance flood).

Base flood discharge: The volume of water resulting from a Base Flood as it passes a given location within a given time, usually expressed in cubic feet per second (cfs).

Base Flood Elevation (BFE): The elevation shown on the Flood Insurance Rate Map (FIRM) for Zones AE, AH, A1-30 that indicates the water surface elevation resulting from a flood that has a 1-percent or greater chance of being equaled or exceeded in any given year.

Basement: Any area of the building having its floor sub grade (below ground level) on all sides.

Buffer: An undisturbed area consisting of trees, shrubs, ground cover plants, duff layer, and generally uneven ground surface that extends a specified distance horizontally across the surface of the land from the mean water level of an adjacent lake or from the top of the bank of an adjacent river or stream.

Channel: An area that contains continuously or periodically flowing water that is confined by banks and a streambed.

Channel width (or bankfull width): 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, once every 1 to 2 years.

Common plan of development: 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

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

Development: See definition in Article VII - Definitions.

Digital Flood Insurance Rate Map (DFIRM): The official Flood Insurance Rate Map (FIRM) of a community, in digital Geographic Information System (GIS) format. This map is available at the Vermont Agency of Natural Resources website: <http://anrmaps.vermont.gov/websites/anra5/>. See also Flood Insurance Rate Map (FIRM).

Existing manufactured home park or subdivision: 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 floodplain management regulations adopted by a community.

Expansion to an existing manufactured home park or subdivision: 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: 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: (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) The official map of a community, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study (FIS): 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: Any land area which is susceptible to being inundated by water from any source (see definition of "flood").

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

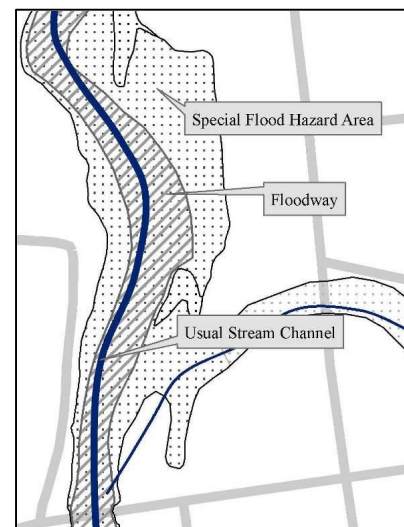
Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point.

Fluvial Erosion: Erosion caused by high flow conditions. Fluvial erosion can be catastrophic when a flood event causes a rapid adjustment of the stream channel size and/or location.

Functionally dependent use: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water.

Highest Adjacent Grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

Historic structure: 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.

Identified Fluvial and Floodplain Area: An umbrella term that includes all of the areas within which the municipality has selected to enforce floodplain regulations. It will always include the area identified as the Special Flood Hazard Area on the Flood Insurance Rate Maps and Flood Insurance Study, but may include additional areas identified by the municipality. See Section 382 of these Regulations for what areas the community has included in the identified Fluvial and Floodplain Area.

Letter of Map Amendment (LOMA): A letter issued by FEMA officially removing a structure or lot from the flood hazard zone, amending an effective National Flood Insurance Program map. A LOMA establishes a property's location in relation to the Special Flood Hazard Area. LOMAs are usually issued because a property has been inadvertently mapped as being in the floodplain, but a licensed engineer or surveyor is able to show that the property or structure is actually above the base flood elevation.

Lowest floor: The lowest floor of the lowest enclosed area, including basement. An unfinished or flood resistant partially enclosed area, used solely for parking of vehicles, building access or incidental storage in an area other than a basement area is not considered a building's lowest floor provided that such enclosure is not designed and 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): 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: A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Minor repair is the replacement of existing work with equivalent materials for the purpose of its routine maintenance and upkeep, but not including the cutting away of any wall, partition or portion thereof, the removal or cutting of any structural beam or bearing support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the exitway requirements; nor shall minor repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, oil, waste, vent, or similar piping, electric wiring, mechanical or other work affecting public health or general safety.

New construction: For regulation under these regulations, structures for which the start of construction commenced on or after the effective date that these regulations were adopted by the community and includes any subsequent improvements to such structures.

New manufactured home park or subdivision: 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: A structure or part of a structure that does not conform to these Flood and Fluvial Erosion Hazard Regulations but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present Regulations, including a structure improperly authorized as a result of error by the Zoning Administrator. Structures that were in violation of the Flood and Fluvial Erosion Hazard Regulations at the time of their creation, and remain so, remain violations and are not nonconforming structures.

Nonconforming use: Use of land that does not conform to the present Regulations but did conform to all applicable laws, ordinances, and regulations prior to the enactment of the present Regulations, including a use improperly authorized as a result of error by the Zoning Administrator. Uses that were in violation of the flood and fluvial hazard regulations at the time of their creation, and remain so, remain violations and are not nonconforming uses.

Nonconformity: A nonconforming use, structure, lot, or parcel.

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.

Non-substantial improvement: Any reconstruction, rehabilitation, addition, or other improvement of a structure after the date of adoption of this regulation, the cost of which, over three years, or over the period of a common

plan of development, cumulatively is less than 50 percent of the market value of the structure before the “start of construction” of the improvement.

Post-FIRM Structure is a structure for which construction or substantial improvement occurred after December 31, 1974 or on or after the community’s initial Flood Insurance Rate Map (FIRM) whichever is later, and, as such, would be required to be compliant with the regulations of the National Flood Insurance Program.

Pre-FIRM Structure is a structure for which construction or substantial improvement occurred on or before December 31, 1974 or before the community’s initial Flood Insurance Rate Map (FIRM), whichever is later, and, as such, would not be required to be compliant with the regulations of the National Flood Insurance Program.

Recreational vehicle: 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.

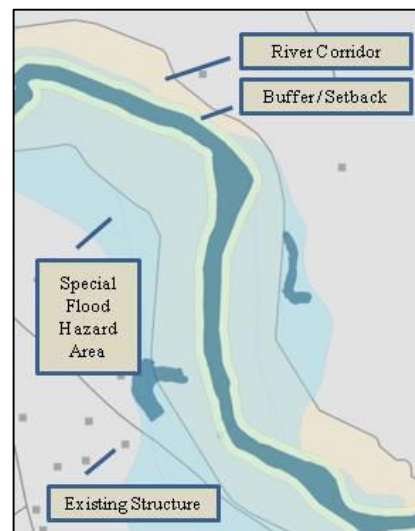
Repetitive loss: Flood related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on average, equals or exceeds 25 percent of the market value of the structure before the damages occurred.

Regulated Flood Hazard Areas: A term that refers to all areas defined in Section 383 of these regulations and regulated by this regulation, and as is the total land to which these regulations apply. These hazard areas overlay any other existing zoning districts and the regulations herein are the minimum standards that must be met before meeting the additional standards applicable in the underlying district.

River Corridor: The land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel and that is necessary for the natural maintenance or natural restoration of a dynamic equilibrium condition, as that term is defined in 10 V.S.A. §1422, and for minimization of fluvial erosion hazards, as delineated by the Vermont Agency of Natural Resources ANR) on the online Natural Resources Atlas. (Note: "Planform" is defined as the channel pattern, or the appearance of a stream from above. The most common categories are straight, meandering, and braided (i.e. the path the channel creates through its valley).)

Special Flood Hazard Area (SFHA): 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 shown on the FIRM as Zone A, AO, A1-A30, AE, A99, or, AH. 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 maps.

Start of construction: For purposes of floodplain management, start of construction determines the effective map or regulation that regulates 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 and shall be completed within twelve (12) months after the date of issuance of the permit unless a time extension is granted, in writing, by the Zoning Administrator. 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: For regulatory purposes under this Section only, structure is defined as a walled and roofed building, as well as a manufactured home, and any related built systems, including gas or liquid storage tanks.

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

Substantial improvement: Any reconstruction, rehabilitation, addition, or other improvement of a structure after the date of adoption of these Regulations, 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: 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: The failure of a structure or other development to be fully compliant with these Regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

✧ ✧ ✧ **END OF ARTICLE III** ✧ ✧ ✧

ARTICLE IV - GENERAL REGULATIONS

Section 400 - Requirements of the Act

In accordance with the Act, the following requirements shall apply.

Section 401 - Existing Small Lots

Any lot in individual and separate and nonaffiliated ownership from surrounding properties in existence on 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 one-eighth acre in area with a minimum width or depth dimension of forty feet.

Section 402 - Required Frontage On, or Access To, Public Roads or Waters

No land development shall be permitted on lots that do not either have frontage on a public road or, with Site Plan Review approval of the Development Review Board, access to such a road by a permanent easement or right-of-way at least fifty feet in width.

Section 403 - Special Public Use Exceptions

The Act lists certain public and private use exceptions to the general rules of zoning, including special rules for schools, hospitals, churches, regional solid waste facilities, state facilities, day care centers, and other uses. The following uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use:

1. State-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. § 6606a.
7. For day care centers, refer to the definitions (Article VII) for Family Child Care Home or Child Care Facility.

Section 404 - Equal Treatment of Housing

1. Equal treatment of housing and required provisions for affordable housing.
 - a. No bylaw shall have the effect of excluding housing that meets the needs of the population as determined in the housing element of its municipal plan as required under subdivision 4382(a)(10) of the Act.
 - b. Except as provided in subdivisions 4414(1)(E) and (F) of the Act, no bylaw shall have the effect of excluding mobile homes, modular housing, or prefabricated housing from the municipality, except upon the same terms and conditions as conventional housing is excluded. A municipality may establish specific site standards in the bylaws to regulate individual sites within preexisting mobile home parks with regard to distances between structures and other standards as necessary to ensure public health, safety, and welfare, provided the standards do not have the effect of prohibiting the replacement of mobile homes on existing lots.
 - c. No bylaw shall have the effect of excluding mobile home parks, as defined in 10 V.S.A. Chapter 153, from the municipality.
 - d. Bylaws shall designate appropriate districts and reasonable regulations for multiunit or multifamily

- dwellings. No bylaw shall have the effect of excluding these multiunit or multifamily dwellings from the municipality.
- e. No bylaw shall have the effect of excluding as a permitted use one accessory dwelling unit that is located within or appurtenant to an owner-occupied single-family dwelling. An accessory dwelling unit means an efficiency or one-bedroom apartment that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:
- (i) The property has sufficient wastewater capacity.
 - (ii) The unit does not exceed 30 percent of the total habitable floor area of the single-family dwelling.
 - (iii) Applicable setback, coverage, and parking requirements specified in the bylaws are met.

Section 405 - Extraction of Soil, Sand, or Gravel

The removal of soil, sand, or gravel for commercial purposes shall be allowed (in the zoning districts stipulated in Article III) **only after the issuance of a Conditional Use Permit by the Development Review Board upon the Board's finding** that the proposed activity meets the Standards below. A Site Plan in accordance with Section 203 shall accompany the Conditional Use Permit application.

In addition, a plan for the rehabilitation of the site is required that will demonstrate that the site will be left safe, attractive, and in useful condition. This plan shall provide for the restoration of the area excavated, including but not limited to necessary grading, drainage, replacement of loam, or other suitable soil cover to support permanent vegetation and prevent soil erosion.

The **Development Review Board** may attach additional conditions that it deems necessary in accordance with the Act (including but not limited to guarantees of financial capability for the site rehabilitation; hours of operation; setbacks from **town** roads, property lines, or residences; or other factors) to protect the safety and general welfare of the public.

Standards: The extraction of soil, sand, and gravel may occur if:

1. The operation will not result in an embankment with a slope steeper than one (1) foot vertical to two (2) feet horizontal upon completion of an area of work.
2. No part of the operation shall be undertaken within 100 feet of a property line.
3. The operation does not cause undue noise, dust, or fumes. This can be accomplished through adequate vegetative buffers or screening to be maintained at all times between the operation (including excavation, blasting, crushing, and traffic access and circulation) and all roads and neighboring properties.
4. The operation does not cause unreasonable highway congestion, unsafe conditions, or excessive use with respect to gravel trucks on highways and bridges existing or proposed in the area.
5. The operation does not cause an unreasonable burden on the existing water supply if one is to be used, nor have an adverse impact on the quality or quantity of neighboring water supplies.
6. The operation does not interfere or threaten deeryards or other critical wildlife habitat, wetlands, streams, ponds, or lakes.
7. The operation does not have an undue adverse effect on the scenic or natural beauty of the area including such community resources as landmarks, historic sites, cemeteries, or scenic areas.
8. The operation will not cause unreasonable soil erosion nor result in a reduction in the capacity of the land to hold water during and after the operation which could create a dangerous or unhealthy situation for adjoining property owners or downstream areas due to stream bank erosion, surface water runoff, or flooding.

Section 410 - Calculation of Required Lot Area and Setbacks

The area taken up by existing or planned private road rights-of-way shall be included in calculating the required Lot Area Minimum. Lot depth or setbacks for front yards and side yards shall be calculated from the edges of existing or planned private road rights-of-way. (See definitions of setbacks in Article VII.)

Section 411 - Lots in Two Zoning Districts

When a district boundary line divides a lot of record at the time such line is adopted, the regulations for the less restricted part of such lot shall extend not more than thirty feet into the more restricted part. This Section shall not apply to Overlay Districts.

Section 412 - Buildings on Lots

1. There shall be only one principal residential building on a lot.
2. Any building standing on more than the minimum lot area required for the district within which it is located must retain the minimum required lot area and minimum required setbacks if such building is sold.

Section 413 - Nonconformities

Nonconforming Uses: The following provisions shall apply to all uses existing on the effective date of these Regulations which do not conform to the use requirements of these Regulations:

1. Any lawful use of a building or premises or part thereof existing at the time these Regulations are adopted may be continued, although such building or use does not conform to the provisions of the district in which it is located, and any such building or use may be altered or enlarged after approval by the Development Review Board, upon a finding that such alteration or enlargement is not detrimental to the district in which it is located.
2. The Development Review Board may, on application, permit the change from a nonconforming use to another nonconforming use not substantially different in its purpose or manner of application, and not harmful or objectionable to the neighborhood.
3. Buildings, the use of which is nonconforming, which are destroyed by fire or other disaster, may be reconstructed for such use provided such construction begins within a period of three (3) years from the date of destruction.
4. Once a nonconforming use is changed to a use permitted in the district where it is located, then it shall not be changed back to a nonconforming use.
5. A nonconforming use or structure which has been abandoned, or not used for a period of three years, shall lose its protected status and shall be subject to all of the provisions of these Regulations.

Nonconforming Structures: Nothing in this section shall prevent normal maintenance and repair of a non-complying building provided that such action does not increase the degree of noncompliance.

Nonconforming Lots: As a condition for approval of a Division of Land whereby a nonconforming lot is created for the sole purpose of conveyance to an adjoining landowner, the Grantee shall be required to merge and incorporate the nonconforming lot with an existing adjacent lot by recorded conveyance. The remaining lands of Grantor must conform to all requirements of the Zoning Regulations after the conveyance.

Section 414 - Front Yard Setback on Highways with less than 50-Foot Rights-of-Way

Notwithstanding provisions for front yards elsewhere in these Regulations, on highways with less than 50-foot rights-of-way, the building setback shall be established on the assumption of a 50-foot right-of-way.

Section 415 - Location of Driveways

All driveways are to be located at least one hundred feet from a street or highway line intersection for all uses.

Section 420 - Erosion and Sediment Control

The smallest possible area of land should be cleared of vegetation at any one time during development. Lands shall not be left cleared of vegetation during the winter months. Where necessary, temporary vegetation and/or mulching and structural measures may be required to protect areas exposed during the development. Sediment basins shall be installed and maintained during development to remove sediment from run-off water and from land undergoing development, where appropriate and feasible.

Development shall be accomplished so as to minimize adverse effects upon the natural or existing topography and soil conditions and to minimize the potential for erosion. Grading and storm drainage plans shall maximize the amount of natural drainage that can be percolated into the soil and minimize direct runoff into adjoining streets, properties, and watercourses or water bodies. Areas of grading, cut or fill and ditches shall be designed, constructed, and kept in good repair to minimize erosion and sedimentation.

Section 425 - Landscaping Requirements

Landscaping, where required under these Regulations, shall be installed and maintained in front, side, and rear yards and shall take the form of shade trees, deciduous trees, shrubs, evergreens, well-kept grassed areas or ground cover, the species of which shall be approved by the Development Review Board.

Following are the minimum landscaping requirements:

1. Where any nonresidential land use abuts a residential land use, a strip of land, at least twenty-five feet in width shall be maintained as a landscape and utility area in the front yard, side yards, and rear yard, unless waived by the Development Review Board.
2. Commercial and industrial uses shall provide for a strip of land at least twenty feet in width that shall be maintained as a landscaped area in the front, side, and rear yards, unless waived by the Development Review Board.
3. In any Planned Unit Development, minimum landscaping requirements shall be as required by the Development Review Board.

Section 430 - Gasoline or Motor Vehicle Service Stations and Vehicle Services

In all districts where permitted, gasoline or motor vehicle service stations shall comply with the following:

1. A gasoline station lot shall not be located within three hundred feet of any lot occupied by a school, hospital, library, or religious institution or dwelling.
2. Lot size shall be at least two acres.
3. Lot frontage shall be at least 200 feet.
4. Lot depth shall be at least 200 feet.
5. Pumps, lubricating and other service devices shall be located at least fifty feet from the front lot line and side and rear lot lines.
6. All fuel and oil shall be stored at least thirty-five feet from any property line.
7. All automobile parts and dismantled vehicles are to be stored within a building, and no major repair work is to be performed customarily outside a building.
8. No signs shall extend beyond the pumps, nor exceed twenty feet in height.
9. There shall be no more than two access driveways from the street. The maximum width of each access driveway shall be forty feet.
10. A suitably curbed landscaped area shall be maintained at least five feet in depth along all street frontage not used as driveway.

Section 435 - Off-street Parking and Loading Space Requirements

Off-street parking spaces shall be provided at least as set forth below. A required driveway shall be at least twenty feet clear in width, except for one- and two-family dwelling uses. A parking space shall be at least nine feet by twenty-two feet.

1. Residential:
 - a. One-family and two-family dwelling units: at least one parking space for every unit.
 - b. Multiple-family dwelling units: at least four parking spaces for every three units.
 - c. Professional residence-office: one parking space, plus one additional parking space for every three hundred square feet of office space.
2. Hotel, Motel, Tourist Home, Boarding House: one space for every guest room.
3. Dormitory, Fraternity, Nurses' Home, Hospital: one space for every two beds.
4. Places of Public Assembly: one parking space for every five seats; where there are no seats, one parking

- space shall be provided for every two hundred square feet of floor area.
5. Business, Professional, and Medical Offices: one space for every two hundred square feet of office space.
 6. Commercial, Business, and Unspecified Uses: one parking space for every motor vehicle used in the business, plus one parking space for every two hundred square feet of floor area.
 7. Restaurant, Eating and Drinking Establishments: one parking space for every seventy-five square feet of floor space.
 8. Other Uses: as required by the Development Review Board.

The Development Review Board may require additional off-street parking and loading spaces for any use if it finds that minimum spaces are not sufficient.

Section 440 - Primitive Camps

A Primitive Camp shall not be used as a permanent dwelling. See the definition for Primitive Camps in Article VII - Definitions, under Camp, Primitive. Persons may occupy Primitive Camps only in accordance with the following regulations:

1. Primitive Camps are allowed as long as they conform to all applicable Regulations for structures within the district in which they are located.
2. The owner of a trailer or motor home may park it on his/her own property for the purpose of storage in the rear or side yards and no closer than twenty-five feet to any lot line, provided that property has a permanent dwelling constructed on it and provided that dwelling is connected to water and septic systems in accordance with the town's Zoning Regulations and sewage ordinance.
3. The owner of a tent may erect it on his/her property provided that it is further than six (6) feet from any lot line and is not hooked up to any utilities.
4. A Primitive Camp may be used as living quarters upon specific approval of the landowner or in an approved campground for less than or equal to sixty (60) days per year, and no more than three consecutive weeks.
5. Primitive Camps are subject to all applicable set back requirements for structures in the district in which they are located, including a 75-foot setback from the mean high water mark of any stream or body of water.
6. In order to convert a Primitive Camp to any use that no longer meets the definition for a Primitive Camp, the structure and use must conform to the requirements of use and occupancy of the district in which it is located.
7. All Primitive Camps are subject to interior and exterior inspection by the Zoning Administrator on an annual basis.

Section 441 - Campgrounds

A person or persons shall construct or operate a campground only after obtaining a Conditional Use Permit (Section 204 (3)) from the Development Review Board.

Campgrounds must meet requirements and standards contained in the State Department of Health Trailer Camp and Tent Site Regulations, and the following specific standards must be satisfied.

1. An individual access driveway and parking area, suitably surfaced and graded, shall be provided for each site. If the driveway opens onto a state or town highway, the requirements of 19 V.S.A. § 1111 must also be met.
2. Each site shall be at least 2,500 square feet in area. Each camping trailer site shall have a compacted gravel surface at least twenty (20) feet in width.
3. There shall be an undeveloped area of not less than one hundred (100) feet in depth between all camping trailer and tent sites and the travel portion of any adjacent highway and other boundaries of the campground. These areas shall be landscaped with existing or planted trees or other plant materials.
4. Each site shall be located in a dry and well-drained area.
5. All roads within the campground shall be of sufficient grade and alignment so as to permit safe traffic flow at all times. The design of roads shall be adequate to provide for the utilization of police, fire, ambulance, and other emergency vehicles. Proper traffic control signs shall be established.

Section 450 - Home Enterprises

Home Enterprises in a rural residential zone may be allowed if such use complies with the requirements of this subsection:

1. In accordance with the Act, the use of a minor portion of an owner-occupied dwelling by the owner of the dwelling for an enterprise that is customarily conducted in residential areas and does not have an undue adverse effect upon the character thereof is a Permitted Use and shall not require a permit. See Home Enterprise definition.
2. A Conditional Use Permit shall be required for:
 - a. Use requiring two or more full-time employees or the equivalent who are not members of the family living on the premises.
 - b. Activity that generates traffic and parking in consistently larger amounts than would normally be expected in a residential neighborhood.
 - c. An enterprise that uses a substantial portion of the residence or accessory building(s).
3. Prohibited use:
 - a. Large commercial or industrial operations.
 - b. Operations which violate Section 460 as to noise, traffic, dust, odors, etc.

Home Enterprises in a commercial zone may be allowed so long as they do not violate Section 460.

Section 452 - Signs

Definitions:

1. SIGN: A "Sign" is any display, device, or representation that is designed or used to advertise or call attention to any thing, person, business, activity, or place, and is visible from any highway or other public right-of-way. Whenever dimensions of a sign are specified they shall include panels and frames excluding the building to which a sign may be attached. When a sign has more than a single face two sides of a sign are used, whether in sandwich board or not, the areas of all faces both shall be summed and included in the total allowed for the lot. Signs are allowed with regulations, restrictions, and prohibitions as detailed in these Regulations.
2. OFF-PREMISES SIGN: "Off-premises Sign" means a sign that directs attention to a business, profession, commodity, service, or entertainment carried on, sold, or offered that is not located on the same premises as the business, profession, commodity, service, or entertainment carried on, sold, or offered that is displayed on the sign. All Off-premises signs shall be set back from the edge of the traveled portion of the road or highway a minimum of eight (8) feet.
3. ON-PREMISES SIGN: "On-premises sign" means a sign that directs attention to a business, profession, commodity, service, or entertainment carried on, sold, or offered on the same premises. A sign, display, or device will be considered to be an on-premises sign if it meets the following requirements:
 - a. The sign must be located on the same premises as the activity or property advertised.
 - b. The sign must have as its purpose:
 - (1) The identification of the activity or its products or services, or
 - (2) The sale or lease of the property on which the sign is located.
 - (3) It shall not have the purpose of general advertising.
 - c. When a sign has more than a single face two sides of a sign are used, whether in sandwich board or not, the areas of all faces both shall be summed and included in the total allowed for the lot.
4. PREMISES: The premises shall be that part of the owner's or occupant's real property to which the public is invited and on which the business, profession, commodity, service, or entertainment (to which an on-premises sign directs attention) is carried on, sold, or offered.

Section 453 - Allowed Off-Premises Signs

1. Official Business Directional Signs - Signs erected and maintained by the State to indicate to the traveling public the route and the distance to public accommodations, commercial services for the traveling public, and points of scenic, historic, cultural, educational, and religious interest. (See 10 V.S.A., Chapter 21.)
2. An off-premises sign giving directions to a home industry or other rural-residential use that is permitted in

the Marlboro Zoning Regulations, Rural Residential District, Permitted Uses. Three (3) such single-sided signs are allowed, with the area of each sign not to exceed four square feet (2' x2 '), for a total area of twelve (12) square feet for three single-sided signs, in total area for one side of a single-sided sign.

3. No person may erect or maintain an off-premises sign, except as provided in 10 V.S.A., Chapter 21, or as described in Section 456, Sign Exceptions.

Section 454 - Allowed On-Premises Signs

1. On-Premises signs are allowed, provided the purpose is to advertise products sold in the Town of Marlboro or to advertise a service or commercial establishment within the Town. Certain exceptions are given in Section 456.
2. Pursuant to 10 V.S.A., Chapter 21, an on-premises sign shall be located not more than fifteen hundred feet from a main entrance from that highway to the activity or premises advertised. The fifteen hundred foot distance shall be measured along the center line of the highway between the sign and a main entrance. A main entrance shall be a principal, private roadway or driveway that leads from a public highway to the activity or premises advertised.
3. Zoning Permit Not Required:
 - a. In all districts, the following On-Premises signs are allowed without a zoning permit:
 - (1) One (1) professional or home enterprise sign, not exceeding sixteen (16) square feet in total area for one side of a single-sided sign (no edge shall exceed four feet in length), or sixteen (16) square feet in total area for both sides of a two-sided sign (no edge shall exceed three feet in length).
 - (2) One (1) temporary real estate sign offering sale or rental of the premises, entire or in part, and not exceeding twelve (12) square feet in total area for one side of a single-sided sign, or twelve (12) square feet in total area for both sides of a two-sided sign.
 - b. In commercial districts, interior window signs are allowed without a zoning permit, but with the following provisions:
 - (1) Such sign shall present a face that can be contained in a rectangular area no greater than four (4) square feet, whether or not the elements of the sign completely fill such a rectangle.
 - (2) Signs employing gas-discharge tube ("neon") displays are allowed, provided that they conform to the size limits given above, and that no more than six (6) such signs are displayed by any establishment.
4. Zoning Permit Required:
 - a. In residential districts, the following On-Premises signs require a zoning permit:
 - (1) Signs identifying any allowed non-residential Conditional Use, not exceeding twenty (20) square feet in total area for one side of a single-sided sign, or twenty (20) square feet in total area for both sides of a two-sided sign.
 - b. In commercial districts: the following On-Premises signs require a zoning permit and site plan review and approval from the Development Review Board:
 - (1) No more than three (3) single-sided business signs, not larger than thirty-two (32) square feet each (total of 96 sq. feet). No more than two (2) of these signs (which can be combined to form one double-sided sign) are to be located within twenty-five (25) feet of the edge of the traveled portion of the road or highway.
 - (2) Signs may be externally illuminated, provided that the source of illumination is carefully shielded to prevent traffic hazards.

Section 455 - Prohibited Signs

The following signs shall not be allowed in any district:

1. A commercial advertising sign that interferes with, imitates, or resembles any official traffic control sign, signal, or device, or attempts or appears to attempt to direct the movement of the traffic.
2. A sign that prevents the driver of a motor vehicle from having a clear and unobstructed view of official traffic control signs and approaching or merging traffic.
3. A sign that contains, includes, or is illuminated by any flashing, intermittent, or moving lights, or moves, or has any animated images or moving parts, except that this restriction shall not apply to a traffic control sign.

4. A sign that is argon or neon in any exterior application, or similar types of lighting.
5. A sign that is located upon a tree, or painted or drawn upon a rock or other natural feature.
6. A sign that is reflective.
7. A sign that is attached to buildings when such signs are more than twenty-five (25) feet in height from the top of the sign, are extended more than twenty-five feet above ground level or attached to the roof of a building, or extend above the eaves of that part and side of the building to which the sign is attached.
8. A sign that is freestanding in excess of twenty (20) feet in height.
9. A sign that is located within twenty-five (25) feet of the center line on the road or within one hundred fifty (150) feet of any intersection of streets unless part of the main structure of a building.
10. A sign that is Portable, except as allowed in Section 456.5.
11. A sign that is not in good repair.
12. A sign that remains after the business or activity has closed. If the business or activity changes, the proprietor or owner of the property will have 60 days to alter the sign in order to reflect the new business or activity. If, after 60 days, no such alteration occurs or the premises are vacant of a business or activity for a 60-day period, the sign becomes a violation.
13. Internally illuminated signs.
14. An exterior sign containing the registered trademark of a specific commodity or product that occupies more than twenty percent (20%) of the area of the sign, except that if the sale of the commodity or product is the major business conducted on the premises, there shall be no such restriction.

Section 456 - Sign Exceptions

The following On- and Off-Premise signs are allowed without a zoning permit:

1. Official Business Directional Signs - Signs erected, maintained, or administered by the municipality or by the State of Vermont under Title 10, Chapter 21. Reflective signs are allowed within this category.
2. Signs without advertising displayed for the direction, instruction, or convenience of the public, including signs that identify rest rooms, freight entrances, posted areas, or the like, not exceeding four (4) square feet in total area.
3. Signs announcing events such as fairs or expositions, auctions, campaign drives, or events sponsored by a civic, political, religious, or philanthropic service organization. Such signs may not exceed sixteen (16) square feet in total area for one side of a single-sided sign, or sixteen (16) square feet in total area for both sides of a two-sided sign, and must be removed by the owners, sponsors, or proprietors promptly after the announced event. Tradesmen's signs while work is performed on the premises shall fall under this category.
4. Signs in or on the rolling stock of a common carrier while in use as such, and signs painted on or attached to registered and inspected vehicles so as not to change the exterior dimensions of such vehicle, provided that any such vehicle is in use as a vehicle. This exemption does not extend to rolling stock or vehicles when one of the principal uses has become that of advertising by its having advertising matter painted or posted thereon. No rolling stock or vehicle with advertising matter painted or posted thereon shall remain parked and visible from a public way for longer than 24 hours.
5. One double-sided portable sign of no more than sixteen (16) square feet (each side) that is placed and removed daily. No edge shall exceed four feet in length.
6. Signs identifying the 911 address of the premises.

Section 458 - Visibility At Intersections

In order to provide unobstructed visibility at intersections, no sign, fence, wall, or other structure, or hedge or planting of more than three (3) feet above the established road grade shall be erected, placed or maintained within the triangular area formed by the intersection's road edge lines and a straight line joining said road edge lines at points which are twenty-five (25) feet distant from the point of intersection, measured along said road edge lines. A road edge line is the edge of the graded or paved portion of the road, not the edge of the road right-of-way.

Section 459 - Fences

Fences shall be a maximum of six feet in height above the finished grade. Garden and orchard fences shall be exempt from this six foot height restriction. The height of fences and/or retaining walls shall be measured on the inside face of the structure on the owner's side. Fences and/or retaining walls may be built abutting the property line.

Section 460 - General Performance Standards

In accordance with the Act, the following Performance Standards together with all applicable State standards shall be met by all uses in all districts on a continuing basis. The Zoning Administrator shall decide whether a proposed or existing use meets the standards. A use that exceeds these standards may be permitted upon receipt of a Conditional Use Permit to do so.

1. Agricultural operations shall at minimum observe Accepted Agricultural Practices (AAPs) as defined and administered by the Vermont Department of Agriculture.
2. Forestry operations shall at minimum observe Acceptable Management Practices (AMPs) as defined and administered by the Vermont Department of Forests, Parks, and Recreation.
3. The following standards apply to all uses, with the exception of AAPs and AMPs. No existing or proposed use, under normal conditions, shall cause, create, or result in:
 - a. Persistent, repetitive, or recurring noise that represents a significant increase in noise levels in the vicinity of the use so as to be incompatible with the reasonable use of the surrounding lots;
 - b. Noticeable, clearly apparent vibration beyond the property on which the use is located during normal operations of a use so as to be incompatible with the reasonable use of the surrounding area.
 - c. Persistent smoke, dust, odors, noxious gases, or other forms of air pollution that constitute a nuisance or recognized health hazard beyond the property on which the use is located so as to be incompatible with the reasonable use of the surrounding area.
 - d. Releases of heat, cold, moisture, mist, fog, precipitation, or condensation likely to be detrimental to public safety, health, or welfare beyond the property on which the use is located so as to be incompatible with the reasonable use of the surrounding area.
 - e. Electronic emissions or signals which will repeatedly and substantially interfere with the reception of radio, television, or other electronic signals beyond the lines of the property on which the use is located.
 - f. Glare, lights, or reflections that are a nuisance to traffic or neighboring properties or that are detrimental to the public safety, health, or welfare.
 - g. Liquid or solid wastes or refuse that cannot be disposed of by available or existing methods, or that place an unreasonable burden on municipal facilities, or that if buried or allowed to seep into the ground will in any way endanger the health, comfort, safety, or welfare of any person, or that have a tendency to cause injury or damage to property, plants, or animals.
 - h. Undue fire, safety, explosive, or other hazards that significantly endanger any property, including the applicant's or lot owner's, or that result in a significantly increased burden on municipal facilities, such as the Fire Department.
 - i. Soil erosion and/or the discharge of sediment into a brook, stream, river, culvert, or catch basin. The smallest practical area of land should be exposed at any one time during development. Lands shall not be left exposed during the winter months. Where necessary, temporarily vegetation and/or mulching and structural measures may be required to protect areas exposed during development. Sediment basins shall be installed and maintained during development to remove sediment from run-off water and from land undergoing development, where appropriate and feasible. Development shall be accomplished so as to minimize adverse effects upon the natural or existing topography and soil conditions and to minimize the potential for erosion. Grading and storm drainage plans shall maximize the amount of natural drainage that can infiltrate into the soil and minimize direct run-off onto adjoining streets, properties, and watercourses or water bodies. Areas of grading, cut or fill and ditches shall be designed, constructed, and kept in good repair to minimize erosion and sedimentation. All changes in grade shall be controlled so as not to cause a nuisance or damage to other properties or erosion of soil.
 - j. A significant increase in any storm water flow levels beyond the property on which the development is

located. Where possible, existing natural runoff control features, such as berms, swales, terraces, and wooded areas shall be retained in order to reduce runoff and encourage infiltration of storm waters. The exception of this rule is discharge into an approved storm drainage system. The Development Review Board may require that the drainage system be designed and installed under the direction of a certified engineer. Any changes in grading shall be made so that runoff is directed to established drainage courses and will not cause ponding or flooding of other properties, or exceed the capacity of downstream drainage facilities.

Section 470 - Renewable Energy Systems

1. *Purpose:* It is the purpose of this Regulation to promote the safe, effective, and efficient use of renewable energy systems such as small wind energy systems, photovoltaic systems, and micro hydro projects. Portions of this Section may also be regulated by Vermont State Statute, in which case the State Statute would govern.
2. *Findings:* The Town of Marlboro finds that wind, photovoltaic, and hydro energy is an abundant, renewable, and nonpolluting energy resource and that its conversion to electricity will reduce our dependence on nonrenewable energy resources and decrease the air and water pollution that results from the use of conventional energy sources. Distributed small wind, photovoltaic, and hydro energy systems will also enhance the reliability and power quality of the power grid, reduce peak power demands, and help diversify the State's energy supply portfolio. Small wind, photovoltaic and micro hydro energy systems also make the electricity supply market more competitive by promoting customer choice.

The State of Vermont has enacted programs to encourage the use of small-scale renewable energy systems, including net metering. Existing zoning ordinances, however, may contain restrictions, which, while not intended to discourage the installation of small wind turbines, photovoltaic, and hydro projects, can substantially increase the time and costs required to obtain necessary permits. Therefore, we find that it is necessary to standardize and streamline the proper issuance of Zoning Permits for small wind, photovoltaic, and micro hydro energy systems so that these clean, renewable energy resources can be utilized in a cost-effective and timely manner. To accomplish this, small wind, photovoltaic, and micro hydro energy systems, as defined herein, shall be allowed where listed as a Permitted Use or Conditional Use in Section III.

3. Renewable Energy Systems Definitions:
 - a. Classifications of Renewable Energy Systems
 - 1) Off-grid: A system not connected to a power utility and that produces power solely for on-site use. An Off-Grid System may be connected to any Permitted or Conditional Use as listed in Section III. Off-grid systems shall be exempt from the requirements of this Section, but shall be subject to all other Sections of these Regulations. Anyone applying to the Vermont Public Service Board or any other entity to install a renewable energy system shall concurrently send a copy of such application to the Zoning Administrator.
 - 2) Individual: A system with a total rated capacity of not more than 15 kW and that is intended primarily to reduce the on-site cost of utility power. An Individual System is permitted in connection with (and shall be on the same site as) any Permitted or Conditional Use listed in Section III. Note: Individual Photovoltaic Systems shall be further classified as systems installed on an existing structure, or systems not installed on an existing structure.
 - 3) Small: A system with a total rated capacity of more than 15 kW but less than 150 kW.
 - 4) Large: A system with a total rated capacity of more than 150 kW but less than 500 kW.
 - 5) Producer: A system with a total rated capacity of 500 kW or more.
4. Standards for Aesthetic Evaluation of Renewable Energy Systems. All Renewable Energy Systems under consideration for a Conditional Use Permit or connection to a Conditional Use, shall, in addition to the requirements of Section 203.3, be subject to the following Standards for Aesthetic Evaluation of Renewable Energy Systems. The Development Review Board shall not approve a Conditional Use Permit or connection to a Conditional Use if it determines there is an undue adverse effect on aesthetics and scenic or natural beauty.
 - a. These Standards are based on the Vermont Environmental Board's Quechee analysis for guidance in

assessing the aesthetic impacts of Renewable Energy Systems. In determining whether a project raises a significant issue with respect to aesthetic concerns, the Development Review Board shall be guided by the two-part test outlined below:

- 1) First a determination must be made as to whether a project will have an adverse impact on aesthetics and the scenic and natural beauty of the Town. In order to find that it will have an adverse impact, a project must be out of character with its surroundings. Specific factors used in making this evaluation include the nature of the project's surroundings, the compatibility of the project's design with those surroundings, the suitability of the project's colors and materials with the immediate environment, the visibility of the project, and the impact of the project on open space.
 - 2) The next step in the two-part test, once a conclusion as to the adverse effect of the project has been reached, is to determine whether the adverse effect of the project is "undue." The adverse effect is considered undue when a positive finding is reached regarding any one of the following factors:
 - a) Does the project violate a clear, written community standard intended to preserve the aesthetics, character, or scenic beauty of the area or Town?
 - b) Have the applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings?
 - c) Does the project offend the sensibilities of the average person? Is it offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area or Town?
 - 3) Analysis of whether a particular project will have an "undue" adverse effect on aesthetics and scenic or natural beauty is also significantly informed by the overall societal benefits of the project.
5. Removal of Renewable Energy Systems: Abandoned, unused, or noncompliant renewable energy systems governed under these regulations shall be removed as follows:
- a. The owner of a renewable energy system with a capacity greater than 15 kW shall annually, on January 15, file a declaration with the Town of Marlboro's Zoning Administrator certifying the continuing safe operation of said renewable energy system installed subject to these Regulations. Failure to file a declaration shall mean that the system is no longer in use and considered abandoned.
 - b. Abandoned or unused renewable energy systems with a capacity greater than 15 kW shall be removed within 180 days of cessation of operations at the site unless a time extension is approved by the Development Review Board. In the event the system is not removed within 180 days of the cessation of operations at a site, the town shall notify the owner and may remove the system. Costs of removal shall be assessed against the property or system owner.
 - c. Renewable energy systems which are constructed in violation of permit conditions or application representations shall be removed within 180 days of notification of violation. In the event the system is not removed within 180 days of notification of such a violation, the town may remove the system. Costs of removal shall be assessed against the property or system owner.
 - d. An owner of a renewable energy system with a capacity greater than 15 kW who has failed to file an annual declaration with the Zoning Administrator by January 15 may, by February 15, file a declaration of use or intended use and may request the ability to continue use of the renewable energy system.
 - e. The Applicant of a renewable energy system with a capacity greater than 15 kW shall, as a condition of the Conditional Use Permit, provide a financial surety bond payable to the Town of Marlboro and acceptable to the Development Review Board to cover the cost of removal of the renewable energy system and remediation of the landscape, should the above clauses be invoked.
 - f. Unused portions of a renewable energy system with a capacity of greater than 15 kW shall be removed within 180 days of the time that such portion is no longer used. Replacement of portions of a system previously removed shall require a new permit.
 - g. Costs incurred by the Town regarding any enforcement action, including but not limited to attorney fees, court costs, expert and consultant fees, and costs of removal of all or part of a renewable energy system and site remediation shall be assessed against the property owner, and/or system owner at the election of the Town.
6. Wind Energy Systems
- a. Classifications of Wind Energy Systems, in addition to 470.3.a (Classifications of Renewable Energy

Systems) above:

- 1) Individual Wind Energy System: A wind energy conversion system consisting of one wind turbine, tower, and associated control or conversion electronics, that has a total rated capacity of not more than 15 kW. An Individual Wind Energy System is allowed where listed as a Conditional Use in Section III.
- 2) Small Wind Energy System: A wind energy conversion system consisting of not more than three wind turbines, towers, and associated controls or conversion electronics that has a total rated capacity of more than 15 kW but not more than 150 kW. A Small Wind Energy System is allowed where listed as a Conditional Use in Section III.
- 3) Large Wind Energy System: A wind energy conversion system consisting of one or more wind turbines, towers, and associated controls or conversion electronics that has a total rated capacity of more than 150 kW but less than 500 kW. A Large Wind Energy System is allowed where listed as a Conditional Use in Section III.
- 4) Producer Wind Energy System: A wind energy conversion system consisting of one or more wind turbines, towers, and associated controls or conversion electronics that has a total rated capacity of 500 kW or more. A Producer Wind Energy System is not allowed in the Town of Marlboro.

b. Definitions:

- 1) Tower Height: The height above grade of the fixed portion of the tower, excluding the wind turbine.
- 2) Total Tower Height: The total height of the tower plus the rotor radius (blade length).

c. All Wind Energy Systems shall be subject to the following Standards:

- 1) Total Tower Height: There is a maximum limit of one hundred fifty (150) feet on total tower height.
- 2) Setback: The minimum setback for the tower shall be the total tower height plus ten (10) feet. No part of the wind system structure, including guy wire anchors, shall extend closer than ten (10) feet to the property boundaries.
- 3) Noise: Wind energy systems shall not exceed 45 dBA, as measured at the property line, except during short-term events such as utility outages and severe windstorms.
- 4) Lighting: No lighting of wind turbine towers or generators is permitted.
- 5) Signage: Signage shall be limited to that required by federal or state regulations. No commercial signage or lettering shall be placed on a tower or generator, excluding manufacturer's logo on the turbine.
- 6) Approved Wind Turbines: Wind energy system turbines must have been approved by the wind certification program recognized by NREL (National Renewable Energy Lab).
- 7) Compliance with FAA Regulations: Wind energy systems must comply with applicable FAA regulations.
- 8) Utility Notification: No wind energy system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned generator. Off-grid systems shall be exempt from this requirement.

7. Photovoltaic Systems

a. Definitions:

- 1) Photovoltaic (PV) is a method of generating electrical power by converting solar radiation into direct current electricity using semiconductors that exhibit the photovoltaic effect. Photovoltaic power generation employs solar panels composed of a number of solar cells containing a photovoltaic material. With current technology, photovoltaics recoup the energy needed to manufacture them in 1 to 4 years.
- 2) Photovoltaic systems (PV system) use solar panels to convert sunlight into electricity. A system is made up of one or more photovoltaic (PV) panels, a DC/AC power converter (also known as an inverter), a racking system that holds the solar panels, electrical interconnections, and mounting for other components. Optionally it may include a maximum power point tracker (MPPT), battery system and charger, solar tracker, energy management software, solar concentrators or other equipment. A small PV system may provide energy to a single consumer, or energy needed by many local customers. The electricity generated can be stored, used directly (island/standalone plant), or fed into a large electricity grid powered by central generation plants (grid-connected/grid-

- ... tied plant), or combined with one or many domestic electricity generators to feed into a small grid (hybrid plant). Systems are generally designed in order to ensure the highest energy yield.
- b. Classifications of Photovoltaic Systems. All photovoltaic systems shall be further classified as systems installed on an existing structure or systems installed on a new structure.
- 1) Individual Photovoltaic System: A photovoltaic system that has a total rated capacity of not more than 15 kW. An Individual Photovoltaic System may be connected to any Permitted or Conditional Use as listed in Section III.
 - 2) Small Photovoltaic System: A photovoltaic system that has a total rated capacity of more than 15 kW but not more than 150 kW. A Small Photovoltaic System is allowed where listed as a Permitted Use or Conditional Use in Section III.
 - 3) Large Photovoltaic System: A photovoltaic system that has a total rated capacity of more than 150 kW but less than 500 kW. A Large Photovoltaic System is allowed where listed as a Permitted Use or Conditional Use in Section III.
 - 4) Producer Photovoltaic System: A photovoltaic system that has a total rated capacity of 500 kW or more. Producer Photovoltaic Systems is allowed where listed as a Permitted Use or Conditional Use in Section III.
- c. All Photovoltaic System, whether a Permitted or Conditional Use or connected to any Permitted or Conditional Use, shall be subject to the following Standards:
- 1) Setbacks. The minimum setbacks shall be as follows:
 - a) From a State or town highway or road, measured from the edge of the traveled way: (i) 100 feet for a facility with a plant capacity exceeding 150 kW; and (ii) 40 feet for a facility with a plant capacity less than or equal to 150 kW but greater than 15 kW.
 - b) From each property boundary that is not a State or town highway or road: (i) 50 feet for a facility with a plant capacity exceeding 150 kW; and (ii) 25 feet for a facility with a plant capacity less than or equal to 150 kW but greater than 15 kW.
 - c) No setbacks are required for a facility with a plant capacity equal to or less than 15 kW.
 - d) On review of an application, the Vermont Public Service Board may (1) require a larger setback than this subsection requires; or (2) approve an agreement to a smaller setback among the applicant, the municipal legislative body, and each owner of property adjoining the smaller setback.
 - e) "Setback" means the shortest distance between the nearest portion of a solar panel or support structure for a solar panel, at its point of attachment to the ground, and a property boundary or the edge of a highway's traveled way.
 - f) No solar project greater than 150 kW shall be located with 1,000 feet of any other solar project greater than 150 kW.
 - 2) Noise: Systems shall not generate noise.
 - 3) Lighting: No lighting is permitted.
 - 4) Signage: Signage shall be limited to that required by federal or state regulations. No commercial signage or lettering is allowed.
 - 5) Utility Notification: No photovoltaic system shall be installed until evidence has been given that the utility company has been informed of the customer's intent to install an interconnected customer-owned photovoltaic system.
 - 6) Screening. The following screening requirements apply to systems over 15 kW and are not intended to prohibit or have the effect of prohibiting the installation of photovoltaic systems and are not intended to have the effect of interfering with a photovoltaic system's intended functional use.
 - a) "Screening" means reasonable aesthetic mitigation measures to harmonize a project with its surroundings and includes landscaping, vegetation, fencing, and topographic features, which must be maintained for the life of the Project.
 - b) Each project, any part of which is proposed to be constructed within the Town, must be designed and constructed of materials, colors, and textures that blend into the surrounding natural or built environment to the maximum extent feasible.
 - c) Each project shall incorporate screening that (i) breaks up the visible area of the project so as to

- prevent unobstructed views; (ii) mitigates adverse aesthetic impacts on views from residences and public highways; and (iii) harmonizes the project with the character of the surrounding landscape and neighborhood.
- d) A project shall be sited within a parcel in such a manner as to make maximum use of preexisting vegetation, hedgerows, hills, ridges, buildings, and other topographical features and structures that naturally screen the project, thereby minimizing the need for the installation of new screening materials.
- e) Where new screening materials must be installed or planted to ensure compliance with this Section, natural, living, native screening materials such as native trees and shrubs shall be used in lieu of artificial screening materials such as walls, fences, and other structures; provided, however, that limited use of artificial screening materials is permissible to the extent that (i) the use of living screening in that area is not feasible, and (ii) the artificial screening is of size, scale and materials that are consistent with the character of the surrounding neighborhood and landscape.
- 7) Glare: No photovoltaic system shall, at any time, produce any glare or reflection of sunlight onto a public road or onto an occupied structure.
8. Micro Hydro-electric System
- a. Definition:
- 1) Micro Hydro-electric System: A type of hydroelectric power that typically produce up to 100 kW of electricity using the natural flow of water. These installations can provide power to an isolated home or small community, or are sometimes connected to electric power networks. Micro hydro systems complement photovoltaic solar energy systems because in many areas, water flow, and thus available hydro power, is highest in the winter when solar energy is at a minimum. The installation is often just a small dammed pool, at the top of a waterfall, with several hundred feet of pipe leading to a small generator housing. Very small installations, a few kilowatts or smaller, may generate direct current and charge batteries for peak use times.
- b. Permitted Uses and Requirements - Micro Hydro-electric systems shall be allowed where listed as a Conditional Use in Section III, subject to certain requirements as set forth below:
- 1) Construction details of a Micro Hydro-electric system plant are site-specific. Sometimes an existing mill-pond or other artificial reservoir is available and can be adapted for power production. In general, micro hydro systems are made up of a number of components. The most important include the intake where water is diverted from the natural stream, river, or perhaps a waterfall. An intake structure such as a catch box is required to screen out floating debris and fish, using a screen or array of bars to keep out large objects. In temperate climates this structure must resist ice as well. The intake may have a gate to allow the system to be dewatered for inspection and maintenance.
- 2) Permits for Micro Hydro-electric systems are currently regulated by the State.

Section 475 - Steep Slopes Standards

1. *Purpose:* The purpose of this Regulation is to limit the intensity of use in areas of steeply sloping terrain in order to limit soil loss, erosion, sedimentation, excessive stormwater runoff, and the degradation of surface water as well as to maintain the natural topography and drainage patterns of land.
2. *Applicability:* This Regulation shall be applicable to any Subdivision, Planned Unit Development, Site Plan Review, Conditional Use, or other land disturbance application located in the town as defined in these Regulations. Land disturbance for the purpose of this ordinance shall mean any activity involving the clearing, cutting, excavation, grading, filling, storing, transporting of land or any other activity that causes land to be exposed to the danger of erosion and sedimentation.
3. *Requirements:*
 - a. On slopes of greater than 25% (twenty five percent), no development, re-grading or stripping of vegetation shall be permitted. Any disturbance for roadways or utility construction in areas of slopes greater than 25% shall require a Variance and the applicant must affirmatively demonstrate that the roadway or utility improvements are necessary in the sloped area. The sloped area to be developed, re-graded, or stripped of vegetation shall be clearly indicated on the development plans for each individual

- lot.
- b. Site design and grading on slopes 15% (fifteen percent) or greater shall provide the minimum disruption of view corridors and scenic vistas and shall preserve significant natural topographic features to the greatest extent possible.
- c. An erosion control plan shall be submitted with each application involving land disturbance, regardless of the affected area, when the ground slope equals or exceeds 15%. The plan shall address site stability in the area of the land disturbance before, during, and after construction. The plan shall include specifications for construction, surface water diversions if needed, and re-vegetation to prevent soil erosion.
- 4. *Site Plan Requirements:* For all land disturbances on slopes of 15% or greater, the Applicant shall submit a Site Plan prepared by a Professional Engineer. The Site Plan submitted shall be reviewed by the Zoning Administrator. The Zoning Administrator shall determine if the Site Plan as submitted is complete and in conformance with the ordinance requirements. The Zoning Administrator shall recommend acceptance or rejection of the plan or may require that specific conditions be complied with in order for the plan to merit acceptance. No zoning permit shall be issued and no grading or site clearing shall occur until a Site Plan including all of the following items has been reviewed and approved by the Development Review Board. The Applicant’s Site Plan as prepared by a Professional Engineer will include at a minimum the following:
 - a. Location of all surface waters, including but not limited to streams, lakes, and wetlands.
 - b. Existing natural and topographic features including existing vegetation by category (i.e. meadow, hardwood forest, softwood forest, etc.)
 - c. Location of all proposed and existing buildings and streets.
 - d. Location of those areas of vegetation to be removed as well as vegetation to be preserved.
 - e. A planting plan including herbaceous and woody plants and seed mixes to be used.
 - f. Specific methods that will be utilized to control soil erosion, sedimentation, soil loss, and excessive stormwater runoff both during and after construction.
 - g. A statement and description of the stability of the soils on site and the appropriateness of the construction method proposed.
 - h. Calculations of the area of proposed disturbance of each slope class (0-14%, 15-25%, and greater than 25%) on each proposed lot as well as within any proposed road right-of-way.
 - i. Grading plan and Erosion Prevention and Sediment Control Plan for the construction site and all access routes.
- 5. *Steep Slope Conservation Measures:*
 - a. Lands to be preserved as 100% open space due to the presence of steep slopes may be offered for dedication to the municipality, a private land trust, or a non-profit agency in order to preserve and maintain the area in its natural state.
 - b. The use of conservation easements on steep slopes shall be encouraged to preserve the area in perpetuity.
- 6. *Exemptions:* Land development plans that were approved prior to the adoption date of this ordinance shall be exempt from these requirements.
- 7. *Compatibility With Other Permit And Ordinance Requirements:* Development approvals issued pursuant to this Regulation are to be considered an integral part of development approvals under the subdivision, conditional use, and Site Plan review processes and do not relieve the Applicant of the responsibility to secure required permits or approvals for activities regulated by other applicable codes, rules, acts, or ordinances. In their interpretation and application, the provisions of this Regulation shall be held to be the minimum requirements for the promotion of the public health, safety, general welfare, and the protection of water quality.

◆ ◆ ◆ END OF ARTICLE IV ◆ ◆ ◆

ARTICLE V – PLANNED UNIT DEVELOPMENT

Section 500 - Planned Unit Development (PUD)

In accordance with the Act, and where permitted by the zoning district, the modification of Zoning District Regulations by the Development Review Board is permitted simultaneously with Subdivision Regulation plat approval, or, in the absence of the application of Subdivision Regulations, Site Plan Review under the following procedures.

Section 501 - Purpose

The purpose of the Planned Unit Development provision is to encourage flexibility of design and development of land in such a manner as to promote the most appropriate use of land, to encourage planned communities or community centers for residential, commercial or industrial uses or any combination thereof; to encourage innovation in design and layout and more efficient use of land; to facilitate the adequate and economic provision of streets and utilities; to preserve the natural and scenic qualities of open land; to provide for a mixture of compatible uses at different intensities to facilitate affordable housing through providing for increases of density or intensity; and to provide for the development of lands which because of physical, topographical or geological conditions could not otherwise be developed.

Section 502 - Definition

A PUD means an area of land, controlled by a landowner, to be developed as a single entity for a number of dwelling units, and commercial and industrial uses, if any; the plan for which does not correspond in lot size, bulk or type of dwelling, density, lot coverage and required open space to the Regulations of the district within which it is located.

Section 504 - Permitted Uses

Uses shall be limited to those permitted and conditional uses within the district in which the PUD is proposed.

Section 505 - Application and Review Procedures

1. A Site Plan shall be submitted to the Development Review Board showing the location, height, and spacing of buildings, open spaces and landscaping, common land, streets, driveways and off-street parking spaces, water and sewage facilities, proposed grading and drainage, fire protection, unique natural or manmade features, physical conditions of the site, and other information that may be required under Section 204 and under the Town's Subdivision Regulations. The application shall be accompanied by a statement setting forth the nature of all proposed deviations from the Zoning Regulations.
2. Prior to official submission to the Development Review Board, any application for PUD, involving uses that are Conditional for the district within which the project is located, shall be submitted to the Development Review Board. The Development Review Board shall consider the uses which are Conditional Uses subject to the procedures and standards contained in Sections 203 and 203 of these Regulations. Any Conditional Use Permit shall be conditioned upon Development Review Board PUD review and approval.

Section 506 - General and Specific Standards

The following general and specific standards shall be met in order for the Development Review Board to approve the application.

1. The PUD shall be consistent with the Town Plan.
2. Mixed uses shall be arranged so as to be compatible and assure visual and aural privacy for residents of the project.
3. The development plan is proposed over a satisfactory period of time in order that adequate municipal facilities and services may be assured in a timely manner.

4. The overall density of the project shall not exceed the number of dwelling units and commercial and industrial uses which could be constructed, in the Development Review Board's judgment, if the land were reasonably and logically subdivided into buildable lots in accordance with district lot area requirements, these Regulations, and Subdivision Regulations, accepted site engineering practices, and all applicable regulations including but not limited to wetland and stream regulations, septic system regulations, etc., except when eligible for Density Bonus for Affordable Housing, see Section 507. A site plan shall be prepared by a Registered Engineer and provided to the Development Review Board by the applicant substantiating the above.
5. The PUD is an effective and unified treatment of the development possibilities on the project site, and the development plan makes appropriate provision for preservation of streams and stream banks, steep slopes, wet areas, soils unsuitable for development, forested areas, and unique natural and manmade features.
6. All other zoning requirements of the district, except for those that specifically may be waived or varied under the provisions of this Article shall be met. Said requirements shall include the General and Specific Standards for Conditional Uses contained in Section 203 of these Regulations.
7. Conditional uses allowed within the district for which the PUD is planned shall complement the permitted uses in numbers of principal buildings or in total land area required.

Area, Dimensional, & Coverage Requirements

Density: See Section 506.4 above and Section 510 below.

Lot Area Minimum (for each lot within the PUD)

One-family dwelling: 10,000 square feet/unit when land is not commonly owned.

Two-family dwelling: 15,000 square feet.

Multiple-family dwelling: average at least 6,000 square feet per dwelling unit.

Yards Required: Front yards, rear yards, and side yards shall be designed so that no residential building is closer than 50 feet to any other residential building, and no building is closer than 50 feet to any boundary line of the district or any street.

Coverage Maximum: 20% of the lot.

Section 507 - Density Bonus for Affordable Housing

General Standards

1. Housing proposed under this Section shall meet the definitions of "Affordable Housing" and "Affordable Housing Development" in Article VII - Definitions.
2. Affordable housing units shall be maintained as affordable housing units in perpetuity (see Affordable Housing Development definition in Article VII) through deed restrictions, covenants, or other accepted legal mechanisms.

Specific Standards

1. Notwithstanding the provisions of Section 506, paragraph 4, a density bonus of 25% of the permitted overall underlying density may be permitted in instances in which not less than 20% of the total number of dwelling units created are affordable housing units, as defined in Article VII;
2. Notwithstanding the provisions of Section 506, paragraph 4, a density bonus of up to 50% of the permitted overall underlying density may be permitted in instances in which not less than 50% of the total number of dwelling units created are affordable housing, as defined in Article VII, AND the PUD is located in a Rural Residential, Village, or Commercial East District.

Section 508 - District Regulations' Waivers

Upon the approval of a Subdivision Plan or Site Plan, as the case may be, the lot area, dimensional and coverage requirements in the Zoning Regulations may be waived or varied.

Any such waiver or variation shall be specifically set forth in terms of conditions. Such conditions may include but are not limited to the design, location, and spacing of buildings, the size of lots and open spaces. Any conditions shall be noted or appended to the plat.

Section 509 - Open Space

If the PUD results in lands available for parks, recreation, open space or other municipal-type facilities, the Development Review Board, as a condition of its approval, shall establish such conditions on the ownership, use, and maintenance of such land as it deems necessary to assure the preservation of such lands for their intended purposes.

Section 510 - Density Requirements for Planned Unit Development

The permitted number of Dwelling Units within any Planned Unit Development (PUD) shall not exceed that which is permitted according to the following schedule, except as provided for in Section 507 - Density Bonus for Affordable Housing. The total acreage to be used in determining the permitted Number of Units shall be the net acreage if the land were reasonably and logically subdivided into buildable lots in accordance with district lot area requirements, these Regulations, and Subdivision Regulations, accepted site engineering practices, and all applicable regulations including but not limited to wetland and stream regulations, septic system regulations, etc. A site plan shall be prepared by a Registered Engineer and provided to the Development Review Board by the applicant substantiating the above.

| <u>Number of Units</u> | <u>Required Average Acreage per Unit</u> | <u>Required Acres</u> |
|------------------------|--|-----------------------|
| Maximum 2 | 2 acres/Unit | 4 acres |
| Maximum 5 | 3 acres/Unit | 15 acres |
| Maximum 10 | 4 acres/Unit | 40 acres |
| Maximum 15 | 5 acres/Unit | 75 acres |
| Maximum 20 | 6 acres/Unit | 120 acres |
| Maximum 25 | 7 acres/Unit | 175 acres |
| Maximum 30 | 8 acres/Unit | 240 acres |
| 31 or more | 9 acres/Unit | 279 acres (minimum) |

General Regulations

1. The above schedule shall not apply to the sale of one (1) lot of (2) or more acres every (3) or more years
2. If a person submits site plans or subdivision plats for two or more planned unit developments involving land within a radius of one mile of any point of any involved land, the Development Review Board shall consider the two or more plans or plats as combined into one plan or plat for the purpose of determining the permitted number of dwelling units under the schedule in Section (510) above.
3. If 2 or more persons submit site plans or subdivision plats for planned unit developments, involving land within a radius of one mile of any point on adjacent parcels of land and if there is evidence of affiliation among adjacent landowners the Development Review Board shall consider the plans or plats combined into one plan or plat for the purpose of determining the permitted number of dwelling units under the schedule in Section (510) above.

For the purpose of determining whether such affiliation among adjacent landowners exists, the Development Review Board may direct its Attorney to examine the relationship of the parties and any knowledge or information about any contracts or agreements between the parties, and any facts revealed by the plans themselves that tend to show an interdependence of physical characteristics or design of the separate plans.

4. For the purpose of this Section, the word "person" shall mean an individual, partnership, corporation, association, unincorporated organization, trust, or any other legal or commercial entity, including a joint venture of affiliated ownership.

✧ ✧ ✧ **END OF ARTICLE V** ✧ ✧ ✧

ARTICLE VI – TELECOMMUNICATIONS FACILITIES

Section 600 - Title

This bylaw shall be known as the Wireless Telecommunications Facilities Bylaw of the Town of Marlboro. Wireless telecommunication facilities shall include all wireless telecommunication providers, licensed and/or regulated by the Federal Communications Commission, and associated equipment and buildings.

Section 605 - Statement of Purpose

The purpose of this bylaw is to protect the public health, safety, and general welfare of the Town of Marlboro while accommodating the communication needs of residents and businesses. This bylaw shall:

1. Preserve the character and appearance of the Town of Marlboro while allowing adequate wireless telecommunications services to be developed.
2. Protect the scenic, historic, environmental, and natural resources of the Town of Marlboro.
3. Provide standards and requirements for the operation, siting, design, appearance, construction, monitoring, modification, and removal of wireless telecommunications facilities and towers.
4. Minimize tower and antenna proliferation by requiring the sharing of existing communications facilities, towers, and sites where possible and appropriate.
5. Facilitate the provision of telecommunications services to the residences and businesses of the Town of Marlboro.
6. Minimize the adverse visual effects of towers and other facilities through careful design and siting standards.
7. Encourage, through performance standards and incentives, the location of towers and antennas in non-residential areas and away from other sensitive areas such as schools, hospitals, and childcare facilities.

Section 610 - Authority

Pursuant to 24 V.S.A. § 4414(12), the Development Review Board shall have the authority to regulate construction, alteration, and development, decommissioning and dismantling of Wireless Telecommunication Facilities in the Town of Marlboro in a manner consistent with State or federal law. Pursuant to the Act, the Development Review Board is authorized to hire qualified persons to conduct an independent technical review of applications and to require the applicant to pay for all reasonable costs thereof.

As of the date of the adoption of these Regulations, under 30 V.S.A § 248a(h), a party wishing to construct a cell tower can choose between applying for a local permit or applying to the Vermont Public Service Board for a certificate of public good. If the party submits an application to the Public Service Board, then the applicant is not required to obtain a local permit. If 30 V.S.A § 248a(h) is revised in the future to allow localities to require a local permit for a cell tower, this Article shall apply. See also Section 620.

Section 611 - Consistency with Federal Law

In addition to other findings required by this bylaw, the Development Review Board shall find that its decision regarding an application is intended to be consistent with the Telecommunications Act of 1996 and Title 24, Chapter 117 of Vermont Statutes. The bylaw does not:

1. Prohibit or have the effect of prohibiting the provision of personal wireless services;
2. Unreasonably discriminate among providers of functionally equivalent services; or
3. Regulate personal wireless services on the basis of the environmental effects of radio frequency emissions to the extent that the regulated services and facilities comply with the Federal Communications Commission (FCC) regulations concerning such emissions.

Section 615 - Telecommunications Facilities Definitions

See glossary at the end of this Article.

Section 616 - Administration, Enforcement and Appeals

This bylaw shall be administered by the Zoning Administrator pursuant to the terms of the Act.

The Zoning Administrator shall provide appropriate forms for, and general assistance in completing, applications required for permits under this bylaw. The Zoning Administrator shall act to approve or deny a complete application submitted for a Small Scale Facility as set out in Section 625 of this bylaw, and shall forward all complete applications for Large Scale Facilities to the Marlboro Development Review Board for its consideration as a Conditional Use as provided in this bylaw.

The Zoning Administrator shall act on a complete application within thirty days or a permit shall be deemed approved on the 31st day.

The Development Review Board shall, pursuant to the Act hold a duly warned hearing on the application before it and, within sixty days of the date of the final hearing, issue its decision. Failure to so act within such period shall be deemed approval.

The Zoning Administrator shall be the enforcement officer for this bylaw, and shall act with respect to violations of this under this bylaw in accordance with the terms of the Act. Any violation of this bylaw shall be subject to a fine of not more than \$100.00 for each offense. Each day that a violation is continued shall constitute a separate offense.

Costs incurred by the Town regarding any such enforcement action, including but not limited to attorney fees, court costs, expert and consultant fees, and costs of removal of all or part of a Facility and site remediation shall be assessed against the property owner, and/or Facility owner at the election of the Town.

Appeal of an act or decision of the Zoning Administrator shall be taken to the Marlboro Development Review Board as provided in the Act.

Appeals of a decision of the Marlboro Development Review Board shall be taken to the Vermont Environmental Court as provided in the Act.

Section 620 - Permitted and Prohibited Locations

Wireless telecommunications towers or facilities may be permitted as Conditional Uses upon compliance with the provisions of these Regulations in the following zoning districts:

1. Rural Residential (RUR)
2. Commercial (COM)
3. Village District (VIL)

No installation or construction of, or significant addition or modification to, any Wireless Telecommunication Facility shall commence until a Conditional Use Permit has been issued by the Development Review Board. However, in accordance with 24 V.S.A. § 4412(9), a Conditional Use Permit shall be issued for a Wireless Telecommunication Facility that, in the determination of the Development Review Board will impose no impact or merely a de minimis impact upon any criteria established in Section 650 below. The Development Review Board's determination regarding no impact or de minimis impact shall be in writing and shall be subject to appeal under 24 V.S.A. § 4471.

No permit shall be required for a Wireless Telecommunication Facility that is used exclusively for municipal radio dispatch service or emergency radio dispatch service and which does not exceed 50 feet in elevation.

This bylaw shall not apply to amateur radio, citizens band radio, AM or FM radio, or broadcast television service.

No Conditional Use permit shall be required for a Wireless Telecommunication Facility that has received a certificate of public good pursuant to 30 V.S.A. § 248a.

This ordinance shall not prohibit a property owner's ability to place or allow placement of antennae used to transmit, receive, or transmit and receive communications signals on the property owner's premises if the aggregate area of the largest face of the antennae is not more than eight square feet, and if the antennae and the mast to which they are attached do not extend more than 12 feet above the roof of that portion of the building to which they are attached.

Additionally, freestanding telecommunications towers or antennas over 20 feet in elevation shall not be located in any of the following locations without a plan to prevent impingement on the potentially affected area:

1. Within 300 ft. horizontally of a State or Federally designated wetland.
2. Within 300 ft. horizontally or twice the tower elevation, whichever is greater, of the boundary of the habitat of any State listed Rare or Endangered Species.
3. Closer than 300 ft. horizontally or twice the tower elevation, whichever is greater, to the boundary of the property on which the tower is located.
4. Closer than 500 ft. horizontally or twice the tower elevation, whichever is greater, to any structure existing at the time of the application which is used as either a primary or secondary residence, to the property of any school, or to any other building.
5. Within 300 ft. horizontally or twice the tower elevation, whichever is greater, of any river or perennial stream.
6. Within 300 ft. horizontally or twice the tower elevation, whichever is greater, of any known archeological site.

Section 625 - Small Scale Facilities

The placement of wireless telecommunications antennas, repeaters or microcells on existing buildings, structures, roofs, or walls, and not extending more than 10 feet from the same, or the installation of ground facilities less than 20 feet in height, may be allowed with the issuance of a Conditional Use Permit by the Development Review Board, provided the antennas, repeaters, or microcells meet the applicable requirements of these Regulations, upon submission of:

1. A final Site Plan and building plan.
2. A report prepared by a qualified engineer (A mechanical or structural engineer will be qualified by virtue of licensing in the State of Vermont; RF engineers, however, are not licensed by most states, including Vermont.) indicating the structure's suitability for the telecommunications facility, and that the proposed method of affixing the antenna or other device to the structure complies with standard engineering practices. Complete details of all fixtures and couplings and the exact point(s) of attachment shall be indicated.
3. For a facility to be installed on an existing structure, a copy of the applicant's executed contract with the owner of the existing structure.

However no such device shall be located closer than 50' to an existing residence.

Section 630 - Application Requirements for Wireless Telecommunications Facilities not Covered Under Section 625

An applicant for a permit must be a personal wireless service provider or FCC licensee, or must provide a copy of its executed contract to provide land or facilities to such an entity, to the Zoning Administrator at the time that an application is submitted. A permit shall not be granted for a tower or facility to be built on speculation.

No construction, alteration, modification (including the installation of antennas for new uses) or installation of any wireless telecommunications tower or facility shall commence without a Conditional Use Permit first being obtained from the Development Review Board.

In addition to information otherwise required in the Town of Marlboro's Zoning Regulations/Subdivision Regulations, applicants for wireless telecommunications towers or facilities shall include the following supplemental information:

1. The name and address of the applicant, the record landowners, and any agents of the landowners or applicants as well as an applicant's registered agent and registered office. If the applicant is not a natural person, the name and address of the business and the state in which it is incorporated and has its principal office shall be provided.
2. The name, address, and telephone number of the person to be contacted and who is authorized to act in the event of an emergency regarding the structure or safety of the facility.
3. The names and addresses of the record owners of all abutting property. Adjoining property owners shall be determined without regard to any public right-of-way.

4. A report from qualified engineers that:
 - a. Describes the facility height, design, and elevation. (Licensed Structural Engineer)
 - b. Documents the height above grade for all proposed mounting positions for antennas to be collocated on a telecommunications tower or facility and the minimum separation distances between antennas. (Radio Frequency Engineer)
 - c. Describes the tower’s proposed capacity, including the number, height, and type(s) of antennas that the applicant expects the tower to accommodate. (Licensed Structural Engineer)
 - d. In the case of new facilities proposals, demonstrates that existing telecommunications sites and other existing structures, or other structures proposed by the applicant within 5 miles of the proposed site cannot reasonably provide adequate coverage and adequate capacity to the Town of Marlboro. The documentation shall include, for each facility site or proposed site within such radius, the exact location, ground elevation, height of tower or structure, and sufficient additional data to allow the independent reviewer to verify that other locations will not be suitable.
 - e. Demonstrates that the applicant has analyzed the feasibility of using “repeaters” or micro-cells in conjunction with all facility sites listed in compliance with Section 630.4.d (above) to provide coverage to the intended service area.
 - f. Describes potential changes to those existing facilities or sites in their current state that would enable them to provide adequate coverage.
 - g. Describes the output frequency, number of channels, sector orientation, and power output per channel, as appropriate for each proposed antenna.
 - h. Includes a written explanation for use of the proposed facility, including reasons for seeking capacity in excess of immediate needs if applicable, as well as plans for additional development and coverage within the Town.
 - i. Demonstrates the tower’s compliance with the municipality’s structural standards and setbacks for towers and support structures.
 - j. Provides assurance that at the proposed site the applicant will establish and maintain compliance with all FCC rules and regulations, particularly with respect to radio-frequency exposure. The Development Review Board may hire independent engineers to perform evaluations of compliance with the FCC regulations, standards, and requirements on an annual basis at unannounced times.
 - k. Includes other information required by the Development Review Board that is necessary to evaluate the request.
 - l. Includes an engineer’s stamp and registration number, where appropriate.
 - m. A letter of intent committing the facility owner and his or her successors to permit shared use of the facility if the additional user agrees to meet reasonable terms and conditions for shared use, including compliance with all applicable FCC regulations, standards and requirements and the provisions of these Regulations and all other applicable laws.
5. For a facility to be installed on an existing structure, a copy of the applicant’s executed contract with the owner of the existing structure (to be provided to the Zoning Administrator at the time an application is submitted).
6. To the extent required by the National Environmental Policy Act (NEPA) as administered by the FCC, a complete Environmental Assessment (EA) draft or final report describing the probable impacts of the proposed facility.
7. A copy of the application or draft application for an Act 250 permit, if applicable.

The permit application shall be signed under the pains and penalties of perjury.

Section 635 - Site Plan Requirements for Wireless Telecommunications Facilities not Covered Under Section 625

In addition to Site Plan requirements found elsewhere in the Town of Marlboro’s Zoning Regulations/Subdivision Regulations, Site Plans for wireless telecommunications facilities shall include the following supplemental information:

1. The location of the Facility on a USGS Topographic Map or a GIS-generated map compatible with Vermont

Center for Geographic Information (VCGI) standards and encompassing the area within at least a two-mile radius of the proposed tower site.

2. Vicinity Map showing the entire vicinity within a 2500-foot radius of the facility site, including the facility or tower, topography, public and private roads and driveways, buildings and structures, water bodies, wetlands, landscape features, historic sites and habitats for endangered species. It shall indicate the property lines of the proposed facility site parcel and all easements or rights of way needed for access from a public way to the facility.
3. Proposed site plans of the entire development indicating all improvements including landscaping, utility lines, guy wires, screening and roads.
4. Elevations showing all facades and indicating all exterior materials and color of towers, buildings, and associated facilities.
5. Computer generated photo simulations of the proposed facility showing the facility from all public rights-of-way and any adjacent property from which it may be visible. Each photo must be labeled with the line of sight, elevation and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.
6. In the case of a proposed site that is forested, the approximate average height of the existing vegetation within 200 feet of the tower base.
7. Construction sequence and time schedule for completion of each phase of the entire project.

Plans shall be drawn at a minimum at the scale of one (1) inch equals fifty (50) feet.

Section 637 - Independent Consultants

Upon submission of an application for a Wireless Telecommunication Facility permit, the Development Review Board may retain independent consultants whose services shall be paid for by the applicant. These consultants shall be qualified professionals in telecommunications engineering, structural engineering, monitoring of electromagnetic fields, and such other fields as determined by the Development Review Board. The consultant(s) shall work at the Development Review Board's direction and shall provide the Development Review Board such reports and assistance, as the Development Review Board deems necessary to review an application.

Section 640 - Collocation Requirements

An application for a new wireless telecommunications facility shall not be approved unless the applicant demonstrates to the Development Review Board that the facilities planned for the proposed structure cannot be accommodated on an existing or approved tower or structure due to one of the following reasons:

1. The proposed antennas and equipment would exceed the structural or spatial capacity of the existing or approved tower or facility, as documented by a qualified engineer licensed to practice in the State of Vermont. Additionally, the existing or approved tower cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment, at a reasonable cost, to provide coverage and capacity comparable to that of the proposed facility.
2. The proposed antennas and equipment would cause interference materially impacting the usefulness of other existing or permitted equipment at the existing or approved tower or facility as documented by a qualified engineer and such interference cannot be mitigated at a reasonable cost.
3. The proposed antennas and equipment; either alone or together with existing facilities, equipment or antennas, would create radio frequency interference and/or radio frequency radiation in violation of federal standards.
4. Existing or approved towers and structures cannot accommodate the planned equipment at a height necessary to function reasonably or are too far from the area of needed coverage to function reasonably as documented by a qualified engineer.
5. Aesthetic reasons make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.
6. There is no existing or approved tower in the area in which coverage is sought.
7. Other unforeseen specific reasons make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.

The Facility shall provide reasonable opportunity for collocation of other equipment at varying heights when overall permitted height allows. Towers shall be designed structurally and in all other respects to accommodate both the applicant's equipment and additional equipment when overall permitted height allows.

Section 645 - Access Roads and Above Ground Facilities

Where the construction of new wireless telecommunications towers and facilities requires construction of or improvement to access roads, to the extent practicable, roads shall follow the contour of the land, and be constructed or improved within forest or forest fringe areas, and not in open fields. Utility or service lines shall be designed and located so as to minimize or prevent disruption to the scenic character or beauty of the area. The Town may require closure of access roads to vehicles following facility construction where it is determined that site conditions warrant the same and where maintenance personnel can reasonably access the facility site on foot.

Section 650 - Tower and Antenna Design Requirements

Proposed facilities shall not unreasonably interfere with the view from any public park, natural scenic vista, historic building or district, or major view corridor. Height and mass of facilities shall not exceed that which is essential for the intended use and public safety.

1. Towers, antennas and any necessary support structures shall be designed to blend into the surrounding environment through the use of color camouflaging and architectural treatment, except in cases in which the Federal Aviation Authority (FAA), state or federal authorities have dictated color. Use of stealth design, including those, which imitate natural features, may be required in visually sensitive locations.
2. In order to protect public safety and to preserve the scenic character and appearance of the area, the height limit for towers, antennas, and tower-related fixtures shall be not more than 20 feet above the average height of the tree line measured within 50 feet of the highest vertical element of the telecommunications facility. Notwithstanding the above, additional height may be approved upon a finding by the Development Review Board that the additional height is necessary in order to provide adequate coverage in the Town of Marlboro or to accomplish collocation of facilities and that the additional height will not cause an undue visual impact on the scenic character or appearance of the area.
3. Towers, antennas and any necessary support structures shall be designed to avoid having an undue adverse impact aesthetic impact on prominent ridgelines and hilltops. In determining whether a tower's aesthetic impact would be undue and adverse, the Development Review Board will consider:
 - a. the period of time during which the proposed tower would be viewed by the traveling public on a public highway;
 - b. the frequency of the view experienced by the traveling public;
 - c. the degree to which the tower would be screened by existing vegetation, the topography of the land, and existing structures;
 - d. background features in the line of sight to the proposed tower that obscure the facility or make it more conspicuous;
 - e. the distance of the proposed tower from the view point and the proportion of the facility that is visible above the skyline;
 - f. the sensitivity or unique value of a particular view affected by the proposed tower;
 - g. significant disruption of a viewshed that provides context to a historic or scenic resource.
 - h. the results of the balloon test, if conducted.

The Development Review Board shall have the authority to impose conditions consistent with the purpose of this section in approving a proposed facility. Furthermore, the Development Review Board may designate an alternative location for the tower to be evaluated by the applicant if it is determined that the proposed location would result in undue adverse aesthetic impacts. In consideration of this, the applicant shall revise its application to include such a site, assuming it is available to the applicant and reasonably technically feasible to meet the applicant's communication objectives.

4. All buildings and structures accessory to a tower (except for electric power poles where specifically exempted by the Development Review Board) shall meet the minimum setback requirements of the underlying zoning district and be no closer than 500 ft. horizontally to any structure existing at the time of

the application which is used as either a primary or secondary residence, to the property of any school, or to any other building not related to the facility. If the minimum setbacks of the underlying zoning district are less than the height of the tower, including antennas or other vertical appurtenances, the minimum distance from the tower to any property line shall be no less than the height of the tower, including antennas and other vertical appurtenances.

5. Ground mounted equipment or antennas as well as buildings and structures accessory to a tower shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better complements the architectural character of the surrounding neighborhood. A planted or vegetative screen shall be a minimum of ten feet in depth with a minimum height of six feet and shall have the potential to grow to a height of at least 15 feet at maturity. Existing on-site vegetation outside the immediate site for the wireless facility shall be preserved or improved. Disturbance to existing topography shall be minimized unless the disturbance is demonstrated to result in less visual impact on the facility from surrounding properties and other vantage points.
6. The Facility will not destroy or significantly imperil necessary wildlife habitat.

Section 652 - Balloon Test

The Development Review Board may require the applicant to fly a four-foot diameter brightly colored balloon at the location and maximum elevation of any proposed tower. If a balloon test is required, the applicant shall advertise the date, time, and location of this balloon test at least 7 days in advance of the test in a newspaper with a general circulation in the Town. The applicant shall also inform the Development Review Board, in writing, of the date, time, and location of the test, at least 15 days in advance of the test.

The balloon shall be flown for at least eight consecutive daylight hours on two days. If visibility and weather conditions are inadequate for observers to be able to clearly see the balloon test, further tests may be required by the Development Review Board.

Section 655 - Amendments to Existing Wireless Telecommunications Facility Permit

An alteration or addition to a previously approved wireless telecommunications facility shall require a permit amendment when any of the following are proposed:

1. Change in the number and/or size of buildings or facilities permitted on the site;
2. Addition or change of any equipment resulting in greater visibility or structural wind loading, or additional height of the tower, including profile of additional antennas, not specified in the original application.
3. Any addition or change that would cause interference materially impacting the usefulness of other existing or permitted equipment at the existing or approved tower or facility.

Section 660 - Tower Lighting and Signage; Noise Generated by Facility

Unless required by the Federal Aviation Administration ("FAA"), no lighting of towers is permitted. In any case where a tower is determined to need obstruction marking or lighting, the applicant must demonstrate that it has or will request the least visually obtrusive marking and/or lighting scheme in FAA applications. Copies of required FAA applications shall be submitted by the applicant. Heights may be reduced to eliminate the need for lighting or another location selected.

No commercial signs or lettering shall be placed on a tower or facility. Signage shall be limited to that required by federal or state regulation.

The Development Review Board may impose conditions to minimize the effect of noise from the operation of machinery or equipment upon adjacent properties.

Section 665 - Temporary Wireless Communications Facilities

Any wireless telecommunications facility designed for temporary use is subject to the following:

1. Use of a temporary facility is permitted only if the owner has received a temporary use permit from the Town of Marlboro.

2. Temporary facilities are permitted for no longer than five days use during a special event.
3. The maximum height of a temporary facility is 50 feet from grade.
4. Temporary facilities must comply with all applicable portions of these Regulations.

Section 670 - Continuing Obligations

Upon receiving a permit, the permittee shall annually demonstrate that he or she is in compliance with all FCC standards and requirements regarding radiofrequency exposure by retaining an independent party chosen by the town at the permittee's expense to file a report with the town health officer.

Section 675 - Facility Removal

Abandoned, unused, obsolete, or noncompliant towers or facilities governed under these Regulations shall be removed as follows:

1. The owner of a facility/tower shall annually, on January 15, file a declaration with the Town of Marlboro's Zoning Administrator certifying the continuing safe operation of every facility/tower installed subject to these Regulations. Failure to file a declaration shall mean that the facility/tower is no longer in use and considered abandoned.
2. Abandoned or unused towers or facilities shall be removed within 180 days of cessation of operations at the site unless a time extension is approved by the Development Review Board. In the event the tower or facility is not removed within 180 days of the cessation of operations at a site, the town shall notify the owner and may remove the tower or facilities. Costs of removal shall be assessed against the property or tower owner.
3. Towers and facilities which are constructed in violation of permit conditions or application representations shall, immediately upon notification of violation, cease operation and shall be removed within 180 days of notification of violation. In the event the tower or facility is not removed within 180 days of notification of such a violation, the town may remove the tower or facilities. Costs of removal shall be assessed against the property or tower owner.
4. An owner who has failed to file an annual declaration with the Zoning Administrator by January 15 may, by February 15, file a declaration of use or intended use and may request the ability to continue use of the facility/tower.
5. The Applicant shall, as a condition of the Conditional Use Permit, provide a financial surety bond payable to the Town of Marlboro and acceptable to the Development Review Board to cover the cost of removal of the facility and remediation of the landscape, should the above clauses be invoked.
6. Unused portions of a Wireless Telecommunication Facility shall be removed within 180 days of the time that such portion is no longer used. Replacement of portions of a Facility previously removed shall require a new permit, pursuant to Section 620.

Section 680 - Maintenance Requirements

The Applicant shall maintain all facilities. Such maintenance shall include, but not be limited to painting, structural integrity and landscaping. In the event the applicant fails to maintain the facility, the Town of Marlboro may undertake such maintenance at the expense of the applicant or landowner.

Section 685 - Insurance Requirements

The facility owner shall maintain adequate insurance on all facilities.

Section 690 - Fees

Fees for filing an application to build or alter a wireless telecommunications facility shall be established by the Marlboro Development Review Board. Additional fees may include the reasonable costs of an independent technical assessment of the application that may be incurred during the review and permitting process.

Section 695 - Enforcing Agent

The Zoning Administrator shall be the agent to enforce the provisions of these Regulations.

Section 696 - Severability

If any portion of this bylaw is held unconstitutional or invalid by a court of competent jurisdiction, the remainder of this bylaw shall not be affected.

Section 697 - Glossary of Telecommunications Terms

Adequate Capacity: Capacity for wireless telephony is considered to be “adequate” if the grade of service (“GOS”) is p.02 or better for median teletraffic levels offered during the typical busy hour, as assessed by direct measurement of the facility in question. The GOS shall be determined by the use of standard Erlang B calculations. As call blocking may occur in either the land line or radio portions of a wireless network, Adequate Capacity for this regulation shall apply only to the capacity of the radio components. Where capacity must be determined prior to the installation of the personal wireless services facility in question, Adequate Capacity shall be determined on the basis of a 20% busy hour (20% of all offered traffic occurring within the busiest hour of the day), with total daily traffic based on aggregate estimates of the expected traffic in the coverage area. Some definitions or terminology may evolve with technical advances, regulatory revision, and court decisions; and may not be appropriate for all applicants or types or service. The applicant may submit evidence to justify its use of alternate language or to demonstrate why a particular definition does not apply.

Adequate Coverage: Coverage for wireless telephony is “adequate” within that area surrounding a base station where the predicted or measured median field strength of the transmitted signal is such that 90% of the time, transceivers properly installed and operated will be able to communicate with the base station without objectionable noise (or excessive bit-error-rate for digital) and without calls being dropped. In the case of cellular communications in a rural environment, this would be a signal strength of at least -90 dBm. It is acceptable for there to be holes within the area of adequate coverage as long as the signal regains its strength further away from the base station. The outer boundary of the area of adequate coverage, however, is that location past which the signal does not regain.

Affiliate: When used in relation to an operator, another person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or common control with the operator, or an operator’s principal partners, shareholders, or owners of some other ownership interest. When used in relation to the municipality, any agency, board, authority or political subdivision affiliated with the municipality or other person in which the municipality has legal or financial interest.

Alternative Design Tower Structure: Artificial trees, clock towers, bell steeples, light poles, silos, and similar alternative-design mounting structures that camouflage or conceal the presence of antennas or towers (see also Stealth Facility).

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

Antenna Height: The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

Antenna Support Structure: Any pole, telescoping mast, tower tripod, or any other structure which supports a device used in the transmitting and/or receiving of electromagnetic waves.

Applicant: A person who applies for a telecommunications facility siting. An applicant can be the telecommunications service provider with the owner’s written permission (or other legally designated representative) or the owner of the property.

Available Space: The space on a tower or structure to which antennas of a telecommunications provider are both structurally able and electromagnetically able to be attached.

Base Station: The primary sending and receiving site in a telecommunications facility network. More than one base station and/or more than one variety of telecommunications provider can be located on a single tower or structure.

Bulletin 65: Published by the Federal Communications Commission (FCC) Office of Engineering and Technology specifying radiofrequency radiation levels and methods to determine compliance.

Cell Site: A tract or parcel of land that contains a cellular communication antenna, its support structure, accessory building(s), and parking, and may include others uses associated with and ancillary to cellular communications transmission.

Cellular Service: A telecommunications service that permits customers to use wireless, mobile telephones to connect, via low-power radio transmission sites called cell sites, either to the public switched network or to other mobile cellular phones.

Cellular Telecommunications: A commercial Low Power Mobile Radio Service bandwidth licensed by the FCC to providers in a specific geographical area in which the radio frequency spectrum is divided into discrete channels which are assigned in groups to geographic cells within a service area and which are capable of being reused in different cells within the service area.

Cellular Telecommunications Facility: Consists of the equipment and structures at a particular site involved in receiving telecommunication or radio signals from mobile radio communications sources and transmitting those signals to a central switching computer which connects the mobile unit with the land-based telephone lines.

Channel: The segment of the radiation spectrum to or from an antenna which carries one signal. An antenna may radiate on many channels simultaneously.

Collocation: Locating wireless communications equipment from more than one provider on a single site.

Common Carrier: An entity licensed by the FCC or a state agency to supply local and/or long distance telecommunications services to the general public at established and stated rates.

Communication Equipment Shelter: A structure located at a base station designed principally to enclose equipment used in connection with telecommunications transmissions.

Communication Tower: A guyed, monopole, or self-supporting tower, constructed as a free standing structure or in association with a building, other permanent structure or equipment, containing one or more antennas intended for transmitting and/or receiving television, AM/FM radio, digital, microwave, cellular, telephone, or similar forms of electronic communication.

Communications Facility: A land facility supporting antennas and/or microwave dishes that sends and/or receives radio frequency signals. Communications facilities may include structures, towers, or accessory buildings.

dBm: Unit of measure of the power level of a signal expressed in decibels above 1 milliwatt.

Directional Antenna: An antenna or array of antennas designed to concentrate a radio signal in a particular area.

Dish Antenna: A dish-like antenna used to link communications sites together by wireless transmission of voice or data. Also called microwave antenna or microwave dish antenna.

Electromagnetically Able: The determination that the signal from and to the proposed new antenna will not significantly interfere with the existing signals from and to other facilities or antennas located on the same tower or structure as determined by a qualified radio frequency engineer. The use of available technologies to alleviate such interference shall be considered when making this determination.

Erlang: An international unit created to measure telephone use. One Erlang is equivalent to one caller talking for one hour on one telephone.

Erlang B Calculations: The Erlang B traffic model is used to mathematically relate Busy Hour Traffic (BHT), call Blocking, and the number of Lines in a trunk group. For the purposes of this document, Erlang B Calculations are used to verify Adequate Capacity.

Facility Site: A property, or any part thereof, which is owned or leased by one or more telecommunications facility(s) and where required landscaping is located.

FCC: Federal Communications Commission. The government agency responsible for regulating telecommunications in the United States.

Frequency: The number of cycles completed each second by an electromagnetic wave measured in hertz (Hz).

GHz: Gigahertz. One billion hertz.

Grade of Service: GOS is an estimate of customer satisfaction with a particular aspect of service such as noise, echo, or blocking. For the purposes of this document, GOS refers to the percentage of calls that are blocked in the radio portion of the wireless network. A GOS of 98% equates to 2 dropped calls for every 100 attempted calls.

Hertz: (Hz) One hertz is the frequency of an electric or magnetic field which reverses polarity once each second, or one cycle per second.

Location: References to site location shall be the exact longitude and latitude, to the nearest second. Bearing or orientation shall be referenced to true North.

MHz: Megahertz, or one million hertz.

Micro-Cell: A low power mobile radio service telecommunications facility used to provide increased capacity in high call-demand areas or to improve coverage in areas of weak coverage.

Microwave Antenna: A dish-like antenna manufactured in many sizes and shapes used to link communication sites together by wireless transmission of voice or data.

Monitoring: The measurement, by the use of instruments in the field, of radiofrequency exposure from telecommunications facilities, towers, antennas, or repeaters.

Monopole: A single self-supporting vertical pole with no guy wire anchors, usually consisting of a galvanized or other unpainted metal or a wooden pole with below grade foundations.

Omnidirectional Antenna: An antenna that is equally effective in all directions and whose size varies with the frequency and gain for which it is designed.

Permit: Embodies the rights and obligations extended by the municipality to an operator to own, construct, maintain, and operate its facility within the boundaries of the municipality.

Personal Communications Services or PCS: Digital wireless telephone technology using higher frequency spectrum than cellular.

Personal Wireless Services: Commercial mobile services, unlicensed wireless exchange access services. These services include: cellular services, personal communications services, specialized mobile radio services, and paging services.

Pre-existing Towers and Antennas: Any tower or antenna for which a permit has been issued prior to the effective date of these Regulations.

Radiated-Signal Propagation Studies or Coverage Plots: Computer generated estimates of the signal emanating, and prediction of coverage, from antennas or repeaters sited on a specific tower or structure. The height above ground, power input and output, frequency output, type of antenna, antenna gain, topography of the site and its surroundings are all taken into account to create these simulations. They are the primary tools for determining a need and whether the telecommunications equipment will provide adequate coverage for that site.

Radio Frequency Exposure: Emissions from FCC-regulated transmitters upon the quality of the human environment. At the present time, there is no federally-mandated radio frequency (RF) exposure standard. The FCC's requirements dealing with RF exposure can be found in Part 1 of its rules at 47 CFR 1.1307(b). The exposure limits themselves are specified in 47 CFR 1.1310 in terms of frequency, field strength, power density, and averaging time. Facilities and transmitters licensed and authorized by the FCC must either comply with these guidelines or else an applicant must file an Environmental Assessment (EA) with the FCC as specified in 47 CFR 1.1301 et seq.

Repeater: A small receiver/relay transmitter and antenna of relatively low power output designed to provide service to areas which are not able to receive adequate coverage directly from a base or primary station.

Roof and/or Building Mount Facility: A facility in which antennas are mounted to an existing structure on the roof (including rooftop appurtenances) or a building face.

Scenic View: A scenic view is a wide angle or panoramic field of sight and may include natural and/or manmade structures and activities. A scenic view may be from a stationary viewpoint or be seen as one travels along a roadway, waterway, or path. A view may be to a far away object, such as a mountain, or a nearby object.

Self-Supporting Tower: A communications tower that is constructed without guy wires.

Spectrum: Relating to any transmissions or reception of electromagnetic waves.

Stealth Facility: Any communications facility which is designed to blend into the surrounding environment. Examples of stealth facilities may include architecturally screened roof-mounted antennas, building-mounted antennas painted to match the existing structure, antennas integrated into architectural elements, antenna structures designed to look like light poles, and structures designed to resemble natural features such as trees or rock outcroppings. (See also Alternative Design Tower Structure.)

Structurally Able: The determination that a tower or structure is capable of carrying the load imposed by the proposed new antenna(s) under all reasonable predictable conditions as determined by professional structural engineering analysis.

System: The communications transmission system operated by a telecommunications service provider in the municipality or region.

Telecommunications Facility: All equipment (including repeaters) and locations of equipment with which a telecommunications provider transmits and receives the waves which carry their services. This facility may be sited on one or more towers or structure(s) owned and permitted by the provider or another owner or entity.

Telecommunications Provider: An entity licensed by the FCC to provide telecommunications services to individuals or institutions.

Temporary Wireless Communication Facility: Any tower, pole, antenna, etc., designed for use while a permanent wireless facility is under construction, or for a special event or conference.

Tower: A vertical structure for antenna(s) that provide telecommunications services.

View Corridor: A three dimensional area extending out from a viewpoint. The width of the view corridor depends on the focus of the view. The focus of the view may be a single object, such as a mountain, which would result in a narrow corridor, or a group of objects, such as a downtown skyline, which would result in a wide corridor.

Panoramic views have very wide corridors and may include a 360-degree perspective. Although the view corridor extends from the viewpoint to the focus of the view, the mapped portion of the corridor extends from the viewpoint and is based on the area where base zone heights must be limited in order to protect the view.

Whip Antenna: A vertical antenna that normally transmits signals in 360 degrees. Whip antennas are typically cylindrical in shape, narrow (less than 6 inches in diameter) and long (often measure 18 inches in height or more).

Wireless Telecommunication Service Any commercial mobile service, wireless service, common carrier wireless exchange service, cellular service, personal communication service (PCS), specialized mobile radio service, paging service, wireless data service, or public or private radio dispatch service.

Wireless Telecommunication Facility: Any tower or other support structure, including antennae, that will extend 20 or more feet vertically, and any accompanying structure, building, access road, service utility or equipment that broadcasts or receives radio frequency waves carrying Wireless Telecommunication Services.

Wireless Telecommunication Service Provider: Any person or entity providing Wireless Telecommunication Services.

✧ ✧ ✧ END OF ARTICLE VI ✧ ✧ ✧

ARTICLE VII - DEFINITIONS

Doubt as to the precise meaning of any word used in these Regulations shall be clarified by the Development Review Board.

See also: Flood and Fluvial Erosion Hazard Regulations & Flood and Fluvial Erosion Hazard Area Overlay District - Section 390
Renewable Energy Systems – Section 470.3
Telecommunications Facilities’ Glossary – Section 697

Accepted Agricultural Practices: A comprehensive Agricultural Nonpoint Source Pollution Reduction Program prepared by the Vermont Agency of Agriculture, Food, and Markets. It is planned by the Vermont legislature that Accepted Agricultural Practices will be updated and replaced in the future by Required Agricultural Practices, in which case Required Agricultural Practices shall be substituted for Accepted Agricultural Practices in these Regulations.

Acceptable Management Practices (AMP’s) For Maintaining Water Quality on Logging Jobs in Vermont: The AMP’s are the proper method for the control and dispersal of water collecting on logging roads, skid trails and log landings to minimize erosion and reduce sediment and temperature changes in streams. Prepared by the Vermont Department of Forests, Parks, and Recreation.

Accessory Dwelling Unit: See Dwelling Unit, Accessory.

Accessory Use or Building: A use or building on the same lot with, and of a nature customarily and clearly incidental and subordinate to, the principal use or building. All the buildings on the lot shall not occupy a greater percentage of the lot area than listed under "Building Coverage Maximum" of the relevant Section of these Regulations.

Act: Vermont Municipal and Regional Planning and Development Act, 24 V.S.A. Chapter 117.

Administrative Officer: See Zoning Administrator.

Affordable Housing: Housing is affordable when households with an income below the county median pay no more than thirty percent (30%) of their income on housing costs. Housing costs for renters include rent and utilities. Housing costs for homeowners include principal and interest, property insurance and property taxes. To qualify as affordable housing, the units must be affordable for at least forty (40) years. "Affordable housing" means either of the following:

1. Housing that is 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, insurance, and condominium association fees is not more than 30 percent of the household's gross annual income.
2. Housing that is rented by its inhabitants whose gross annual household income does not exceed 80 percent of the county median income, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including rent, utilities, and condominium association fees, is not more than 30 percent of the household's gross annual income.

Perpetually affordable shall mean housing that meets the affordability requirements of these Regulations for a minimum period of 99 years from the date of first sale or lease.

Affordable Housing Development: A housing development of which at least 20 percent of the units or a minimum of five units, whichever is greater, are affordable housing units. Affordable housing units shall be subject to deed restrictions, covenants, or other accepted legal mechanisms that preserve their affordability for a minimum period of 99 years from the date of first sale or lease.

Agriculture and Forestry: The growing, management, and harvesting of crops including but not limited to: the raising of livestock and/or poultry; dairying; the operation of orchards, including maple sugaring; forestry; trees, timber, and forest products; the sale of farm produce on the premises where produced, including operation of a farm stand as an accessory structure; the use of farm structures and the storage of equipment incidental to the above. Includes Farming (see Farming definition in this Section). See also Forestry Operations definition in this Section.

Alteration: Structural change or rearrangement, change of location or addition to a building, other than repair and maintenance to the building and modification of equipment in the building.

Appropriate Municipal Panel: The Development Review Board of the Town of Marlboro, Vermont. The Development Review Board, until its existence is terminated by act of the legislative body, shall exercise all of the functions otherwise exercised under the Act by the board of adjustment. It also shall exercise the specified development review functions otherwise exercised under the Act by the planning commission. In municipalities that have created development review boards, the planning commission shall continue to exercise its planning and Zoning Regulations development functions and other duties established under the Act. In situations where the Act refers to functions that may be performed by a development review board or a planning commission or functions that may be performed by a development review board or a board of adjustment, it is intended that the function in question shall be performed by the development review board if one exists and by the other specified body if a development review board does not exist.

Assisted Living Facility: Assisted Living Facilities are state licensed residences that combine housing, health, and supportive services to support resident independence. 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. Assisted living shall promote resident self-direction and active participation in decision-making while emphasizing individuality, privacy, and dignity. Assisted Living Facilities must meet the Licensing Regulations as well as the Residential Care Home Licensing Regulations which are designed to protect the welfare and rights of residents to ensure that residents receive quality care. Assisted Living Facilities shall be regulated by the Vermont Division of Licensing and Protection - Department of Disabilities, Aging & Independent Living.

Bar: A place or portion thereof primarily designed for serving alcoholic beverages for consumption on the premises.

Bed and Breakfast: A building designed to room and board not more than ten (10) people, on a nightly, weekly, or seasonal basis, operating under license by the Department of Labor and Industry or the Department of Health as such. Central dining and food preparation may be provided sufficient to serve registered guests. Cooking facilities shall not be provided in individual guest rooms.

Building: A walled and roofed structure that is principally above ground.

Building Floor Area: The floor area of the principal building and attached accessory buildings, if the attached accessory buildings are used for the same general purposes as the principal building. Includes all areas within the outside dimensions of the building(s) including each floor level, (excluding attics and including basements) without deduction for hallways, stairs, closets, thickness of walls, columns, porches, or other features.

Building Coverage: That area of a lot covered by the roof area of buildings or structures, including porches and decks.

Building Density: The total area of a group of buildings in relation to the open space around the buildings.

Building Footprint: The horizontal area of a structure as seen in plan, measured from the outside of all exterior walls and supporting columns, including porches, balconies, and decks. Does not include trellises or patios.

Building Permit: See Zoning Permit, Section 202

Business Office: A room or group of rooms wherein services are performed involving predominantly administrative, clerical, or professional operations.

Camp, Primitive: A single structure including, but not limited to, a cabin, mobile home, travel trailer, recreational vehicle, tent, shelter, houseboat, or other recreational accommodation for seasonal or temporary living. Primitive Camps shall have no interior plumbing consisting of more than a sink with water, and shall be used no more than three consecutive weeks per year and no more than a total of 60 days per year.

Campground: Any development on a single lot, parcel or water area of more than one camp structure used for more than ninety (90) days per year, including tent camping facilities.

Cemetery: Any plot of ground used, or intended to be used, for the burial or disposition permanently of the remains of the human dead in a grave, a mausoleum, a columbarium, a vault, or other receptacle. The term "Cemetery" does not include "Home Burial" as defined by Vermont statute.

Child Care Facility: See Family Child Care Home or Child Care Facility.

Common Land: Land owned and used in common and restricted in purpose by covenant.

Community Building: A building used by nonprofit or public agencies for programs open to all members of the community.

Community Facility: See Municipal Facility.

Conditional Use: A use allowed in a particular zoning district only upon a finding by the Development Review Board that such use in a specified location will comply with the conditions and standards for the location or operation of such use as specified in these Regulations. (See Sections 203 and 460.)

Conference Center/Retreat Facility: A structure or group of structures used as a public or private center for the purposes of holding meetings, conferences, and conventions, educational or professional seminars, which may include facilities for overnight accommodations.

Contiguous Wildlife Habitat: An area of forested land that supports native plants and animals, including those species such as bobcats and black bears that require large areas to survive, with either no roads or low densities of Class III or Class IV roads, and little or no human development (buildings, parking areas, lawns, gravel pits). These areas may have various age classes of forest cover and, in fact, may be composed of other habitat types such as wetlands or old meadows that are part of the overall contiguous habitat complex. Ideally, these areas are connected with other similar areas (Contiguous Forest Habitat) so that the animals that use them can move freely to other forested areas and habitats. Such habitat, together with other important habitats such as wetlands, also supports natural ecological processes such as predator/prey interactions and natural disturbance.

Day Care Center: See Family Child Care Home or Child Care Facility.

Density: The number of houses, dwelling units, buildings or similar, per unit of area (usually specified as per acre) that may be created within a particular zoning district.

DEC: The Vermont Department of Environmental Conservation.

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

Development Envelope: A specific area of a lot, delineated on a subdivision plat or Site Plan, within which structures, septic systems, wells, parking, and loading areas shall be located, and outside of which no structures, septic systems, wells, parking, or loading areas shall be located.

Dormitory/Hostel: A dwelling in which lodging is provided for three or more persons by the owner or operator, distinguished from other lodging establishments by the sharing of bedrooms, bathrooms, living rooms, and/or kitchens.

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

Dwelling, Multi-unit: A building containing three or more individual dwelling units.

Dwelling, Single-Family: A structure for occupancy by one family or one household.

Dwelling, Two-Family: A structure containing two dwelling units.

Dwelling Unit: One or more rooms designed, occupied, or intended for occupancy by one family or one household as separate living quarters, with cooking, sleeping, and sanitary facilities provided within the living quarters. This shall not include motels, hotels, bed & breakfasts, or similar uses or structures.

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

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

A Conditional Use Permit shall be required if one or more of the following is involved in the creation of an accessory dwelling unit:

1. A new accessory structure,
2. An increase in the height or floor area of the existing dwelling, or
3. An increase in the dimensions of the parking areas.

Educational Facility: A public or private school or other certified institution or facility intended specifically for educational purposes.

Engineer or Professional Engineer: A registered professional engineer, licensed to practice in the State of Vermont. The specialty and qualifications of the engineer shall be appropriate to the work under review.

Erect: Shall mean to build, construct, attach, hang, place, suspend or affix, and shall also include the painting of wall signs and/or window signs.

Existing Building, Structure, Use, or Development: A building, structure, use, or development that was in existence prior to the effective date of these Regulation, is currently in conformance with all applicable laws, ordinances, and regulations, and was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present Regulations. In this context, "existing" is deemed to be synonymous with "pre-existing." See also "Non-conforming Building or Structure," and "Non-conforming Use."

Extraction of Soil, Sand, and Gravel: See Section 405.

Family Child Care Home or Child Care Facility: A home or facility where the owner or operator is to be licensed or registered by the State for child care. A **Family Child Care Home** is a child care facility which provides for care on a regular basis in the caregiver's own residence (33 V.S.A. § 4902(3)). A **Child Care Facility** is any place or program operated as a business or service on a regular or continuous basis, whether for compensation or not, whose primary function is protection, care, and supervision of children under 16 years of age outside their homes. (33 V.S.A. § 4902(2))

1. A **Family Child Care Home serving six or fewer children** shall be considered to constitute a permitted single-family residential use of property.
2. A **Family Child Care Home serving no more than six full-time children and four part-time children (four hours or less per day)**, as defined in subdivision 33 V.S.A. § 4902(3)(A), shall be considered to constitute a permitted use of property but shall require Site Plan approval based on these Zoning Regulations.
3. A **Child Care Facility serving more than six full-time and four part-time children** shall be subject to all applicable municipal bylaws and these Regulations.

Farming: Defined as follows (see 10 V.S.A. § 6001(22)), and also Section 2.05 of Accepted Agricultural Practices):

1. The cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; or
2. The raising, feeding, or management of livestock, poultry, fish, or bees; or
3. The operation of greenhouses; or
4. The production of maple syrup; or
5. The on-site storage, preparation and sale of agricultural products principally produced on the farm; or
6. The on-site storage, preparation, production, and sale of fuel or power from agricultural products or wastes principally produced on the farm; or
7. The raising, feeding, or management of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training, and the management of equines.
8. See also Agriculture & Forestry definition in this Section.

Farm Structure: A building, enclosure, or fence for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with accepted agricultural or farming practices, including a silo, as "Farming" is defined in 10 V.S.A. § 6001(22), but excludes a dwelling for human habitation.

Fences: An enclosure or barrier, such as wooden posts, wire, stone, iron, etc., used as a boundary, means of protection, privacy screening, decoration, or confinement, but not including hedges, shrubs, trees, or other natural growth. Fences and/or retaining walls may be built abutting the property line. The height of fences and/or retaining walls shall be measured on the inside face of the structure on the owner's side. (See also "Yard" and "Structure" and Section 459.)

Fire Company Facility: A structure owned and operated by the Marlboro Volunteer Fire Company, Inc., of the Town of Marlboro, Vermont.

Forest Fragmentation: The division or conversion of large tracts of contiguous forest or formerly contiguous forest into smaller pieces leaving remnant patches of forest that vary in size and isolation separated by non-forested lands or other vegetation and land-use types.

Forestry: See Agriculture and Forestry.

Forestry Operations: Activities related to the management of forests, including a timber harvest; pruning; planting; reforestation; pest, disease, and invasive species control; wildlife habitat management; and fertilization. Forestry

operations include the primary processing of forest products of commercial value on a parcel where the timber harvest occurs.

Gasoline or Motor Vehicle Service Station: A retail business selling gasoline and/or other motor vehicle fuels, and related products. See also Section 430. A gasoline station may also include a Convenience Store, a type of general retail store which carries a range of merchandise oriented to convenience and/or travelers' shopping needs. (See also Section 430.)

Habitat: The region where a plant or animal naturally grows or lives; native environment.

Habitat Fragmentation: The division or conversion of large tracts of significant wildlife habitat into smaller pieces leaving remnant patches of habitat that vary in size and isolation separated by developed or, generally, non-forested lands. The reduction in size of significant wildlife habitat as a result of fragmentation can disrupt wildlife corridors and render wildlife habitat and other habitats unsuitable for certain species of plants and animals.

Health Care Facility: A facility or institution, whether private or public, principally engaged in providing services for health maintenance, diagnosis, and treatment, which may have equipment, facilities, and staff to provide 24-hour care.

Highway: See "Road."

Historic Structure: Any structure that is:

1. 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;
2. 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;
3. 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
4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - a. By an approved state program as determined by the Secretary of the Interior or
 - b. Directly by the Secretary of the Interior in states without approved programs.

Home Enterprise: Any small craft or service type operation carried out on the premises of an owner-occupied single-family dwelling, such as hand crafts, antique, pottery, or woodworking shops, custom service or repair shops, or office, which use is clearly secondary to the dwelling and does not change the character thereof. See Section 450.

Hotel/Motel: Building containing rooms which are rented as sleeping units for transients, each unit consisting of at least a bedroom, an available bathroom, and without individual cooking facilities.

Junkyard: Land or building used for the collection, storage or sale of waste paper, rags, scrap metal or discarded material, or for the collection, wrecking, dismantling, storage, salvaging and sale of machinery parts or vehicles.

Kennel: A commercial establishment in which four or more dogs, cats, and/or other domesticated animals, which are not owned by the owner or occupant of the premises, are housed, boarded, groomed, bred, trained, or sold.

Land Development: see Development

Land Disturbance: Any activity involving the clearing, cutting, excavation, grading, filling, storing, transporting of land or any activity which causes land to be exposed to the danger of erosion and sedimentation. See also Section 475.2.

Landscape: A broad area or portion of the earth.

Light Industry: The manufacture, processing, fabrication, or storage of products not employing more than twenty (20) employees and occupying not more than six (6) thousand square feet.

Lot: A parcel of land, with or without structures, that conforms to all the requirements for minimum area and depth for the particular zoned area in which such land is situated and having the required frontage on a street, or other permanent means of access.

Lot Depth: The mean distance measured perpendicularly from the property line nearest the road to its opposite rear line.

Lot Frontage: Distance measured across that portion of a lot which is adjacent to and parallel to a public street; or if access to the lot is by right of way or private road the lot frontage shall be the distance measured across the width of the lot at the building front line or the proposed building front line.

Manufactured Home: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term "manufactured home" does not include a "recreational vehicle."

Mast Stand: Stands of oak and beech, that produce dry fruit (mast), which is a food source for a variety of mast dependent wildlife such as deer, turkey, and squirrels.

Mobile Home: A prefabricated dwelling unit which

1. is designed for long term and continuous residential occupancy; and
2. is designed to be moved on wheels, as a whole or in sections.

The provisions hereof shall also be applicable to any motor vehicle or trailer which is designed or added to so as to permit its use and occupancy for human habitation.

Mobile Home Park: A Parcel of land under a single or common ownership or control which contains, or is designed, laid out or adapted to accommodate two (2) or more mobile homes.

Motel: See Hotel.

Multi-unit Dwelling: See Dwelling, Multi-unit.

Municipal Facility: A structure or use owned and operated by the Town of Marlboro, Vermont.

Museum/Gallery: A room or group of rooms wherein objects of historical, cultural, scientific, or aesthetic interest are offered for exhibition and/or retail sale to the general public.

Non-conforming Building or Structure: A building or structure or part of a building or structure that does not conform to these Regulations but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present Regulations.

Non-conforming Use: Use of land that does not conform to the present Regulations but did conform to all applicable laws, ordinances, and regulations prior to the enactment of the present Regulations.

Normal Mean High Water Mark: The average annual high water level of a surface water, discounting unusually high or low conditions.

Parking Space: Off-street space used for the temporary location of one licensed motor vehicle, at least nine feet wide and twenty-two feet long, not including access driveway, and having direct access to a street. A parking space is considered a structure and is therefore subject to setback requirements.

Permitted: Synonymous with "allowed." For example, a "Permitted" Use is an allowed use by right.

Planned Unit Development (PUD): A PUD means an area of land, controlled by a landowner, to be developed as a single entity for a number of dwelling units, and commercial and industrial uses, if any; the plan for which does not correspond in lot size, bulk or type of dwelling, density, lot coverage and required open space to the regulations of the district within which it is located. See also Article V.

Pre-Existing: See "Existing Building, Structure, Use, or Development."

Primitive Camp: See Camp, Primitive.

Principal Structure: The primary building or structure containing the specific purpose for which land, or a building and land, is used, designed, arranged, intended, or for which it is or may be occupied or maintained.

Professional Residence-Office: Professional offices and other home occupations involving the use of a room or rooms in a dwelling, by the Owner of the dwelling, to carry on activities, provided that any such home occupation:

1. Shall be operated entirely within a dwelling unit.
2. Shall be operated only by the residents of the dwelling unit, with not more than one (1) regular employee not residing in the dwelling unit.
3. Shall utilize not more than twenty-five (25) percent of the gross floor area of the dwelling unit.

Rare, Threatened, or Endangered Species: Any plant or animal species listed by the state of Vermont or the federal government as Rare, Threatened, or Endangered.

Recreation, Active: Non-motorized leisure activity usually of an organized nature, often performed with others and often requiring equipment, taking place at prescribed places, sites, or fields.

Religious Institution: Churches and other places of worship, convents, and parish houses.

Residential Care Home or Group Home: A facility to be operated under state licensing or registration, serving not more than eight persons who have a handicap or disability as defined in 9 V.S.A. § 4501. Such a facility 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 is located within 1,000 feet of another existing or permitted such home.

Restaurant, Cafe: A place primarily designed for preparing and serving food or beverages for consumption on the premises.

Retail Area: The gross floor area of all spaces associated with and required for the retail use, including but not limited to selling areas, service areas, storage areas, support and employee areas, and rest rooms, all measured to the outside face of the exterior walls.

Retail Store: Includes an enclosed store or shop for the sale of retail goods or personal services. Excludes any drive-up service, produce or other open stand, gasoline service and motor vehicle repair service, new and used car sales and service, and trailer and mobile home sales and services.

Riparian: Related to or adjacent to a stream or watercourse, or having a high water table because of proximity to an aquatic ecosystem or subsurface water. Although originally associated with rivers and streams, this term is now also sometimes used to describe wetland areas not necessarily associated with rivers or streams.

Riverine: Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Road or Street or Highway: Public way for vehicular traffic which affords the principal means of access to abutting properties. In these Regulations, the words "road" and "street" and "highway" shall be considered synonyms.

Sawmills on-premise: A temporary or portable sawmill which uses material harvested only from the premises.

Setback: The distance from a road or property line to the nearest part of the building or structure on the lot. In the case of a public highway, the distance shall be measured from the closest point of the structure to any part of the right-of-way. In the case of a private road, the distance shall be measured assuming a 50-foot right-of-way, from the edge of that assumed right-of-way.

Shorelands: See Section 362.

Significant Wildlife Habitat: Those natural features that contribute to the survival and/or reproduction of the native wildlife of Marlboro. This shall include, but is not limited to, (1) deer wintering areas (i.e. deeryards); (2) habitat for rare, threatened and endangered species (state or federally listed); (3) concentrated black bear feeding habitat (mast stands); (4) riparian areas and surface waters; (5) wetlands and vernal pools; (6) wildlife travel corridors; (7) high elevation bird habitat (8) ledge, talus, and cliff habitat; and (9) habitat identified by the Vermont Department of Fish and Wildlife as either significant wildlife habitat or necessary wildlife habitat in accordance with 10 V.S.A. Sec. 6086(a)(8)(A).

Signs: See Town ordinance.

Silviculture: The theory and practice of controlling the establishment, composition, and growth of stands of trees for any of the goods and benefits that they may be called upon to produce.

Site Plan: See Section 204.

State Facility: State-owned and operated institutions and facilities.

Street: See "Road."

Structure: Anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground. A parking space is considered a structure.

Structure Height: The vertical distance from the average finished grade surrounding the structure to the highest point of the structure.

Steep slopes: See Section 475.

Subdivision: Any division of land into two or more lots. It includes re-subdivision and the division of a lot or parcel held in common ownership and subsequently divided into parts among the owners

Substantial Improvement: Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary or safety code specifications that are solely necessary to assure safe living conditions, or (2) any alteration of a "Historic Structure," provided that the alteration will not preclude the structure's continued designation as a "Historic Structure."

Temporary Structure: Any structure standing for six months or less in any twelve month period.

Trailer: Includes any vehicle, used as sleeping or camping or living quarters, mounted on wheels, or a camper body designed to be mounted on a truck; and any vehicle which is customarily towed by a motor vehicle and used for carrying goods, equipment, machinery, boats, or as an office.

Use: The specific purpose for which land, or a building and land, is designed, arranged, intended, or for which it is or may be occupied or maintained.

Vehicle Services: The repair, servicing, alteration, restoration, towing, painting, cleaning, or finishing of automobiles, trucks, recreational vehicles, boats, and other vehicles. Does not include vehicle parking or sales. (See also Section 430.)

Vernal Pool: A natural confined basin depression that is covered by shallow water usually or at least two months in the late winter, spring, and summer, but may be dry during much of the year, that is used by vernal pool obligate species such as but not limited to spotted salamanders, wood frogs, fingernail clams, Jefferson salamander.

Veterinary Clinic: A building whose primary use will be the medical or surgical treatment of mammals, reptiles, or birds. Patients may be boarded on the premises not longer than twenty (20) days. The building shall not be used for breeding purposes.

Waste Management Facilities: Regional solid waste management facilities certified under 10 V.S.A. Chapter 159, and hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. § 6606a. See Section 403.

Wetland: An area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs, and similar areas.

Wildlife Travel Corridor: A route that permits the direct travel or spread of animals or plants from one area or region to another, either by the gradual spread of a species' population along the route or by the movement of individual members of the species. Generally, such areas are characterized by undeveloped forested corridors, including forest cover reaching to road rights-of-way, which serve to link large tracts of unfragmented forest habitat.

Yard: An open space on a lot not occupied by a building or structure or portion of a structure from the ground upward, provided, however, that fences and walls may be permitted in any yard subject to height limitations (see Section 459) as indicated herein. Porches, whether enclosed or unenclosed, shall be considered as part of the main building.

Zoning Administrator: That person recommended by the Planning Commission and appointed by the Select Board in accordance with section 4442 of the Act to administer the Zoning Regulations, as provided for in the Act.

✧ ✧ ✧ END OF ARTICLE VII ✧ ✧ ✧

ARTICLE VIII - OFFICIAL ZONING MAP

The Official Zoning Map consists of four maps as follows, and is included in these Zoning Regulations:

Map Title

Zoning Map - 1 of 4, Zoning Districts
Date: Draft November, 2016

Zoning Map - 2 of 4, Wildlife Habitat Overlay
Date: Draft July, 2017

Zoning Map - 3 of 4, Flood and Fluvial Erosion Hazard Area Overlays
Date: Draft November, 2016

Zoning Map - 4 of 4, Shoreland and Surface Water Buffer Overlays
Date: Draft November, 2016

◆ ◆ ◆ **END OF ARTICLE VIII** ◆ ◆ ◆