

Article I. Authority & Purpose

Section 1.01 ENACTMENT

In accordance with the Vermont Planning and Development Act, hereinafter referred to as the "Act," 24 VSA, Chapter 117 [§4401], there are hereby established Zoning Regulations for the Town of Berlin, Vermont, which are set forth in the text and map that constitute these Regulations. These Regulations shall be known as the "Town of Berlin Zoning Regulations."

Section 1.02 PURPOSE

It is the intent of these Regulations to provide for orderly community growth, to implement the goals and objectives of the Berlin Town Plan, and to further the purposes established in the Act [§4302].

Section 1.03 APPLICATION & INTERPRETATION OF REGULATIONS

- (A) The application of these Regulations is subject to the provisions of all subchapters of the Act as most recently amended.
- (B) Except as hereinafter provided, no building or structure shall be erected, moved, altered or extended, and no land, building, or structure or part thereof, shall be occupied or used unless in conformity with the Regulations herein specified for the district in which it is located. Any use not permitted by these Regulations shall be deemed prohibited.
- (C) The adoption of these regulations shall not repeal or limit any permit previously issued. Where, for the purposes of a permit application, these Regulations impose a greater restriction upon use of a structure or land than is required by any other statute, ordinance, rule, regulation, permit, easement, or agreement, then these regulations shall control.

Section 1.04 AMENDMENTS

These Regulations may be amended according to the requirements and procedures established in Sections 4403 and 4404 of the Act.

Section 1.05 SEPARABILITY

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

Section 1.06 EFFECTIVE DATE

- A. These Regulations shall take effect on the date of their adoption by the Town of Berlin, in accordance with the Act [§4404]

- B. The zoning regulations and zoning map for the Town of Berlin in effect prior to the adoption of these regulations and map are hereby repealed as of the effective date of these regulations and map.

Section 1.07 MUNICIPAL ADMINISTRATIVE PROCEDURES

Appointments. The following appointments shall be made in association with the administration and enforcement of these regulations as provided for in the Act:

- A. **Zoning Administrator.** The Select Board, after consultation with the Planning Commission, shall appoint a Zoning Administrator for a term to be consistent with the Berlin Town Charter. In the absence of the Zoning Administrator, an Acting Zoning Administrator may be appointed by the Select Board in consultation with the Planning Commission. The Zoning Administrator shall literally administer and strictly enforce the provisions of these regulations, and in doing so shall inspect developments, maintain records, and perform other associated tasks as is necessary and appropriate.

- B. **Development Review Board.** Development Review Board members and alternates shall be appointed by the Select Board for specified terms in accordance with the Act [§4461]. The Board shall adopt rules of procedure to guide its official conduct in accordance with the requirements of the Act [§4462], Vermont’s Open Meeting Law [1 V.S.A., §310-314]; and shall have all powers and duties as set forth in the Act to administer the provisions of these regulations.

- C. **Planning Commission.** A Planning Commission shall be appointed by the Select Board in accordance with the Act [§ 4321]. The Select Board shall determine the Board’s members as well as their number and term of office. The Select Board may remove any member of the Planning Commission with a unanimous vote of the Board. The Planning Commission shall have all duties set forth by Act [§4325] not expressly granted to the Development Review Board.

Section 1.08 FEE SCHEDULE.. The Select Board shall establish a schedule of fees to be charged in administering these regulations, with the intent of covering the town’s administrative costs.

Article II. Establishment of Zoning Districts

Section 2.01 ESTABLISHMENT OF ZONING DISTRICTS

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

R-80	Residential 80,000
RR-40	Rural Residential
R-20	Residential 20, medium density residential
CG	General Commercial
HC	Highway Commercial
LN	Light Industrial
AR	Highland Conservation
MR	Modified Residential
IN	Industrial

Section 2.02 ZONING MAP AND INTERPRETATION OF BOUNDARIES

- A. The location and boundaries of Zoning Districts are established as shown on the attached Official Zoning Map, which is a part of these Regulations. The Flood Hazard Overlay District boundaries are depicted on the National Flood Insurance Program maps for the Town of Berlin, which are adopted by reference to be part of these regulations. The official zoning map and overlays shall be identified by the signatures of the Select Board, as attested to by the Town Clerk. No changes of any nature shall be made on the official map or overlays except in conformance with zoning amendment procedures and requirements set forth in the Act [§§4403, 4404].

- B. If uncertainty exists with respect to the boundary of any zoning district, the Development Review Board shall determine the location. If a parcel of land is located in more than one zoning district, the Development Review Board may permit, as a conditional use, the extension of the regulations for either portion of the lot not to exceed 50 feet beyond the district line into the remaining portion of the lot.

- C. When the Zoning Administrator cannot definitely determine the location of a district boundary by the scale or dimensions given on the official zoning map and associated overlays or by the above rules, the Planning Commission and/or the appropriate state official (e.g., flood hazard administrator) shall be consulted prior to making the final determination. A determination by the Zoning Administrator regarding the location of a district boundary may be appealed to the Development Review Board under Section 6.4. If the location of a boundary is uncertain, then the following rules shall apply:
 - 1. Boundaries indicated as approximately following the center lines of streams, roads, transportation and utility rights-of-way shall be construed to follow such center lines.
 - 2. Boundaries indicated as approximately following property boundaries or platted lot lines shall be construed to follow such lot lines.

3. Boundaries indicated as following lake or pond shorelines shall be construed as being parallel the normal mean lake level. In the event of change in the shoreline the boundary shall be construed as moving with the shoreline.
4. Boundaries indicated as following elevation contours shall be construed to follow such contours.
5. Boundaries indicated as parallel to or extensions of features under the subsections 1 - 4 shall be so construed. Boundaries indicated as lines perpendicular to lines or features described in subsections (1)-(3) shall be construed to proceed at right angles from such lines or features. Distances not specifically indicated shall be determined by the scale of the official zoning map.
6. The abandonment or relocation of a right-of-way or roadway, or the change in a line or feature which references a district boundary line, after the effective date of these regulations, shall not affect the location of such boundary line.
7. Where available the base flood elevations and floodway limits (i.e., in Zones 1- A30, AE and AH), provided by the National Flood Insurance Program (NFIP) in the Flood Insurance Study and accompanying maps shall be used to administer and enforce the flood hazard area overlay district provisions of these regulations.

In areas where base flood elevations and floodway limits have not been provided by the NFIP (i.e., Zone A), base flood elevations and floodway information available from state or federal agencies or other sources shall be obtained and reasonably used to administer and enforce flood hazard area overlay provisions.

Section 2.03 APPLICATION OF DISTRICT STANDARDS.

- A. The standards for each district shall apply uniformly to each class of use and/or structure, unless otherwise specified in these regulations. All uses and structures must comply with all prescribed standards for the district in which they are located as set forth in Tables 2.1 - 2.10, and as defined in Article II, unless otherwise permitted under Planned Residential Development (PRD) pursuant to Article IV. Non-conforming uses and non-complying structures shall be regulated in accordance with Section 3.11.
- B. Overlay district standards shall be applied concurrently with the standards for underlying districts. Where overlay districts impose more restrictive standards on the use of a structure or land, the standards of the overlay district shall apply.
- C. Allowed uses for each district are classified as “**permitted**,” to be reviewed in accordance with Section 5.05, or “**conditional**” to be reviewed in accordance with Section 5.06.
- D. Any use not allowed in a district by these regulations, unless specifically exempted under Section 3.10, shall be deemed to be prohibited.

Section 2.04

DISTRICT OBJECTIVES, USES & STANDARDS.

The following tables set forth the stated purpose, allowable uses and specific standards for each zoning district.

**Table 2.01
HIGHLAND CONSERVATION (AR) DISTRICT**

A. Purpose. To protect fragile natural resources, including wetlands and surface waters, steep slopes, wildlife habitat and upland areas; encourage the productive use of forest resources; promote traditional outdoor recreation uses, and allow low density residential development in a manner that is compatible with the other purposes of the district.

B. Permitted Uses. The following uses are permitted after issuance of a Zoning Permit by the Zoning Administrator: _____

1. Accessory use
2. Accessory structures
3. Agricultural and forest uses
4. Camp
5. Home Child Care
6. Home occupation
7. One-family dwelling
8. Private outdoor recreation
9. Professional residence-office
10. Public outdoor recreation
11. Two-family dwelling
12. Wildlife refuge

C. Conditional Uses. The following uses are permitted after issuance of Conditional Use approval by the Development Review Board:

1. Adaptive re-use of historic barns
2. Bed & Breakfast
3. Commercial outdoor recreation
4. Licensed day care homes for children
5. Municipal building or facility
6. Private club
7. Public utility
8. Religious institution
9. School
10. Transmission lines.

D. Area, Yard, Coverage, Height and General Regulations:

Lot Area Minimum:	Five acres
Lot Frontage Minimum:	300 feet
Lot Depth Minimum:	300 feet
Front Yard Minimum:	50 feet
Rear Yard Minimum:	75 feet
Side Yard Minimum:	25 feet each side
Building Coverage Maximum:	5 percent
Building Height Maximum:	35 feet
General Regulations:	As set forth in Article III herein

Table 2.02
RESIDENTIAL 80,000 (R-80)

A. Purpose. To protect fragile natural resources, including wetlands, surface waters and wildlife habitat; promote continued agricultural activities; prevent strip development along major road corridors; and encourage moderate density residential development, including clustered housing, and limited commercial uses in appropriate locations.

B. Permitted Uses. In Residential 80,000 Districts R. 80, the following uses are permitted:

1. Accessory use
2. Accessory structures
3. Agricultural and forest uses
4. Bed & Breakfast
5. Home Child Care
6. Home occupation
7. One-family dwelling
8. Professional residence-office
9. Two-family dwelling

C. Conditional Uses. The following uses are permitted after issuance of Conditional Use approval by the Development Review Board:

1. Adaptive re-use of historic barns
2. Cottage industry
3. Licensed day care homes for children
4. Municipal building or facility
5. Private outdoor recreation
6. Public outdoor recreation
7. Public utility substation
8. Religious institution
9. Telecommunications facility
10. Tourist homes which do not exceed fifteen guests
11. Transmission lines.
12. School
13. Veterinary office
14. Wildlife refuge

D. Area, Yard, Coverage, Height and General Regulations:

Lot Area Minimum:	80,000 sq. ft
Lot Frontage Minimum:	200 feet
Front Yard Minimum:	50 feet
Side and Rear Yard minimums:	25 feet each
Building Coverage Maximum:	10%
Building Height Maximum:	35 feet
Lot Depth Minimum:	200 feet
General Regulations:	As set forth in Article III herein

Table 2.03
RURAL RESIDENTIAL (R-40) DISTRICT

A. Purpose. To protect fragile natural resources, including wetlands, surface waters and wildlife habitat; promote continued agricultural activities; prevent strip development along major road corridors; and encourage moderate density residential development, including clustered housing, and limited commercial uses in appropriate locations.

B. Permitted Uses. The following uses are permitted after issuance of a Zoning Permit by the Zoning Administrator:

1. Accessory use
2. Accessory structures
3. Agricultural and forest uses
4. Bed & Breakfast
5. Cemetery
6. Home child care
7. Home occupation
8. One-family dwelling
9. Professional residence-office
10. Two-family dwelling

C. Conditional Uses. The following uses are permitted after issuance of Conditional Use approval by the Development Review Board:

1. Adaptive re-use of historic barns
2. Business offices
3. Cottage industry
4. Flea Market
5. Planned residential development
6. Private outdoor recreation
7. Public outdoor recreation
8. Religious institution
9. School
10. State or municipal building or facility
11. Telecommunications facility
12. Transmission lines.
13. Veterinary office

D. Area, Yard, Coverage, Height and General Regulations:

Lot Area Minimum:	40,000 sq. ft
Lot Frontage Minimum:	120 feet
Lot Depth Minimum:	200 feet
Front Yard Minimum:	50 feet
Side and Rear Yard Minimums:	25 feet each
Building Coverage Maximum:	15 percent
Building Height Maximum:	35 feet
General Regulations:	As set forth in Article III herein

Table 2.04
MODIFIED RESIDENTIAL (MR) DISTRICT

A. Purpose. To maintain the residential character of the area while allowing for commercial uses in a well designed manner that avoids the pattern of strip development that has occurred elsewhere along this highway corridor, and to permit development densities that are moderate relative to other commercial districts.

B. Permitted Uses. The following uses are permitted after issuance of a Zoning Permit by the Zoning Administrator:

1. Accessory use
2. Accessory structure.
3. Agricultural and forest uses
4. Bank
5. Bed & Breakfast
6. Home Child Care
7. Home occupation
8. One-family dwelling
9. Public outdoor recreation
10. Professional residence-office
11. Religious institution
12. School
13. Two-family dwelling

C. Conditional Uses. The following uses are permitted after issuance of Conditional Use approval by the Development Review Board:

1. Public utility substation
2. Retail store
3. Business/medical/professional office
4. Restaurant/Bar
5. Indoor recreation
6. Community center
7. Private club
8. Mixed Use
9. Mortuary
10. Telecommunications facility
11. Transmission lines.
12. Veterinary office w/o outdoor kennel

D. Area, Yard, Coverage, Height and General Regulations:

	<u>Residential Uses</u>	<u>Nonresidential Uses</u>
Lot Area Minimum:	30,000 sq. ft	30,000 sq. ft
Lot Frontage Minimum:	120 feet	200 feet
Lot Depth Minimum:	200 feet	250 feet
Front Yard Minimum:	50 feet	50 feet
Side and Rear Yard Minimums:	25 feet each	25 feet each and 100 feet abutting residential district
Building Coverage maximum:	15 percent	25 percent
Building Height maximum:	35 feet	35 feet
General Regulations:	As set forth in Article III herein	

Table 2.05
MEDIUM DENSITY RESIDENTIAL (R-20) DISTRICT

A. Purpose: To encourage moderate density residential neighborhoods in appropriate settings, and to allow for limited non-residential uses compatible with the residential setting.

B. Permitted Uses. The following uses are permitted after issuance of a Zoning Permit by the Zoning Administrator:

1. Accessory use
2. Accessory structures
3. Agricultural and forest uses
4. Bank
5. Bed & Breakfast
6. Home child care
7. Home occupation
8. Mobile home park as provided in Section 4.06
9. Multiple-family dwelling
10. One-family dwelling
11. Other residential-uses approved by the Development Review Board
12. Professional residence-office
13. Two-family dwelling

C. Conditional Uses. The following uses are permitted after issuance of Conditional Use approval by the Development Review Board:

1. Religious institution
2. School
3. Public outdoor recreation
4. State or municipal building or facility
5. Planned residential development
6. Business/medical/professional office
7. Telecommunications facility.
8. Transmission lines.

D. Area, Yard, Coverage, Height and General Regulations:

Lot Area Minimum:	One-family dwelling, 20,000 sq. ft Two-family dwelling, 36,000 sq. ft Multiple-family dwelling, average at least 12,000 sq. ft per dwelling unit
Lot Frontage Minimum:	100 feet
Lot Depth Minimum:	150 feet
Front Yard Minimum:	50 feet
Side Yard Minimum:	25 feet
Rear Yard Minimum:	25 feet
Building Height Maximum	35 feet
Building Coverage Maximum:	20 percent
General Regulations:	As set forth in Article III herein

**Table 2.06
COMMERCIAL (CG) DISTRICT**

A. Purpose. To allow a variety of commercial uses consistent with the area’s function as a regional commercial and service center; strengthen the integration of land uses through a system of interconnected roads, driveways and sidewalks/pathways; maintain consistently high standards of site design; and protect and strengthen adjacent residential neighborhoods from adverse impacts associated with incompatible uses.

B. Permitted Uses. The following uses are permitted after issuance of a Zoning Permit by the Zoning Administrator:

1. Accessory use
2. Accessory structures
3. Agricultural and forest uses
4. Automobile sales & service
5. Bank
6. Business/medical/professional office
7. Home child care
8. Home occupation
9. Hospital
10. Hotel
11. Indoor and outdoor recreation
12. Mortuary
13. Motel
14. Parking facility
15. Private club
16. Restaurant, bar
17. Retail store
18. Shopping center

C. Conditional Uses. The following uses are permitted after issuance of Conditional Use approval by the Development Review Board:

1. Commercial drive-through facilities
2. Dormitories
3. Gasoline service station
4. Mixed use
5. Light manufacturing
6. One-family dwelling
7. Public utility substation
8. Religious institution
9. School
10. State or municipal building or facility
11. Telecommunications facility
12. Transmission lines.
13. Two-family dwelling
14. Warehouse

D. Area, Yard, Coverage, Height and General Regulations:

Lot Area Minimum:	40,000 sq. ft
Lot Frontage Minimum:	150 feet
Lot Depth Minimum:	200 feet
Lot Front Yard Minimum:	50 feet
Lot Rear Yard Minimum:	25 feet, or 100 feet abutting residential districts
Side Yard Minimum:	25 feet or 50 feet abutting residential districts
Building Coverage Maximum:	30 percent
Building Height Maximum:	45 feet
General Regulations:	As set forth in Article III herein

**Table 2.07
HIGHWAY COMMERCIAL DISTRICT (HC)**

A. Purpose: To promote the continued economic viability of this important regional commercial center in a manner that improves the function and appearance of the district, improves traffic flow, enhances pedestrian circulation, protects water quality in the Stevens Branch and provides access to open space and important natural features.

B. Permitted Uses. The following uses are permitted after issuance of a Zoning Permit by the Zoning Administrator:

1. Accessory use
2. Accessory structures
3. Agricultural and forest uses
4. Automobile sales & service
5. Bank
6. Business/medical/professional office
7. Commercial drive-through facilities
8. Freight or trucking terminals
9. Home child care
10. Home occupation
11. Hospital
12. Hotel
13. Indoor and outdoor recreation
14. Mortuary
15. Motel
16. Motor vehicle, mobile home, trailer, farm implement, contractor's equipment sales and service
17. One-family dwelling
18. Parking facility
19. Places of public assembly, entertainment and recreation
20. Private club
21. Restaurant, bar
22. Retail store
23. Shopping center
24. Warehouse
25. Wholesale sales and distribution service

C. Conditional Uses. The following uses are permitted after issuance of Conditional Use approval by the Development Review Board:

1. Animal hospital, veterinary office, provided that any structures for the housing of animals shall be at least 200 feet from any residential district
2. Car wash
3. Drive-in theater
4. Gasoline service station
5. Mixed Use
6. Multiple family dwelling
7. Light manufacturing with retail
8. Religious institution
9. School institution
10. State or municipal building or facility
11. Telecommunications facility
12. Transmission lines.
13. Two family dwelling

D. Area, Yard, Coverage, Height and General Regulations:

Lot Area Minimum:	25,000 sq. ft
Lot Frontage Minimum:	120 feet
Lot Depth Minimum:	150 feet
Front Yard Minimum:	50 feet
Rear Yard Minimum:	25 feet, or 100 feet abutting residential districts
Side Yard Minimum:	25 feet of 50 feet abutting residential districts
Building Coverage Maximum:	25 percent
Building Height Maximum:	45 feet

General Regulations:

As set forth in Article III herein

Table 2.08
LIGHT INDUSTRIAL (LN) DISTRICT

A. Purpose: to encourage a wide range of industrial and commercial enterprises at low densities while maintaining the rural character of the surrounding area and protecting adjacent residential neighborhoods from adverse impacts associated with incompatible uses.

B. Permitted Uses. The following uses are permitted after issuance of a Zoning Permit by the Zoning Administrator:

1. Accessory use
2. Accessory structures
3. Agricultural and forest uses
4. Airport
5. Animal hospital, veterinary office, provided that any structures for the housing of animals shall be at least 200 feet from any residential district
6. Automobile sales and services
7. Business/medical/professional office
8. Contractor's yard
9. Freight & trucking terminal
10. Gasoline station
11. Indoor and outdoor recreation
12. Light manufacturing and on-premises products related retail sales
13. Machinery and transportation equipment, sales, service and repair
14. Mine, quarry, sand or gravel pit
15. Research or laboratory facilities
16. Retail store
17. Service and repair facilities
18. State or municipal building or facility
19. Warehouse or wholesale use

C. Conditional Uses. The following uses are permitted after issuance of Conditional Use approval by the Development Review Board:

1. Hazardous waste management facilities.
2. Motel
3. Public utility
4. Restaurant/Bar
5. Mixed use
6. Solid waste management facilities certified by the State - excluding Transfer Station.
7. Telecommunications facility
8. Transmission lines.

D. Area, Yard, Coverage, Height and General Regulations:

Lot Area Minimum:	40,000 sq. ft
Lot Frontage Minimum:	150 feet
Lot Depth Minimum:	200 feet
Front Yard Minimum:	50 feet
Rear Yard Minimum:	25 feet, or 100 feet abutting residential districts
Side Yard Minimum:	25 feet or 100 feet abutting residential districts
Building Coverage Maximum:	40 percent
Building Height Maximum:	40 feet
General Regulations:	As set forth in Article III herein

**Table 2.09
INDUSTRIAL (IN) DISTRICT**

A. Purpose: to promote a regional industrial and employment center by allowing a variety of industrial, manufacturing, service and office uses are permitted at moderate densities; maintain consistently high standards of site design; and protect and strengthen adjacent residential neighborhoods from adverse impacts associated with incompatible uses.

B. Permitted Uses. The following uses are permitted after issuance of a Zoning Permit by the Zoning Administrator:

1. Accessory use
2. Accessory structures
3. Agricultural and forest uses
4. Animal hospital, veterinary office, provided that any structures for the housing of animals shall be at least 200 feet from any residential district
5. Contractor's yard
6. Freight or trucking terminal
7. Health, welfare or education facilities or centers serving the needs of the community.
8. Manufacturing industries - warehouse or wholesale use
9. Machinery and transportation equipment, sales, service and repair
10. Mine, quarry, sand or gravel pit
11. Salvage Yard
12. One or two-family dwelling in accordance with subsection E, below.
13. Service and repair facilities

C. Conditional Uses. The following uses are permitted after issuance of Conditional Use approval by the Development Review Board:

1. Public utility
2. Gasoline station
3. State or municipal building or facility
4. Hazardous waste management facilities.
5. Indoor and outdoor recreation
6. Mixed Use
7. Solid waste management facilities certified by the State - excluding Transfer Station.
8. Telecommunications facility
9. Transmission lines.

D. Area, Yard, Coverage, Height and General Regulations:

Lot Area Minimum:	40,000 sq. ft
Lot Frontage Minimum:	100 feet
Lot Depth Minimum:	150 feet
Front Yard Minimum:	50 feet
Rear Yard Minimum:	25 feet or 100 feet abutting residential districts
Side Yard Minimum:	25 feet or 50 feet abutting residential districts
Building Coverage Maximum:	40 percent
Building Height Maximum:	50 feet
General Regulations	As set forth in Article III herein

E. Pre-existing Dwellings: One and two-family dwellings which are in existence and occupied for residential purposes prior to January 1, 2001 may be altered or expanded with the approval of the Zoning

Administrator in accordance with Section 3.01. Home occupations and home child care facilities are also permitted in accordance with Section 4.04.

Table 2.10
FLOOD HAZARD OVERLAY DISTRICT

(A) Purpose: The purpose of the Flood Hazard Area Overlay District is to promote public health, safety and welfare by preventing or minimizing hazards to life or property due to flooding. It is also the intent to the Town of Berlin to regulate development within identified flood hazard areas in accordance with state and federal law in order to ensure that private property owners are eligible for flood insurance through the National Flood Insurance Program (NFIP) (**see also Article V**).

(B) Permitted Uses

The following uses are permitted, provided they are not prohibited by any other ordinance and provided that they do not require the erection of structures, the storage of materials and equipment, the placement of fill, channel modification or relocation or obstruct flood flows:

1. Any repair, reconstruction or improvement of a structure provided that it does not constitute a substantial improvement
2. Open space recreation
3. Commercial parking
4. Agricultural and forest uses
5. Lawns, parks
6. Transient amusement or entertainment

(D) Dimensional Standards__

As set forth for the underlying district unless otherwise specified under Article III and/or Article IV.

(E) Flood Hazard Standards:

- a. Uses permitted within the Flood Hazard Area Overlay specifically include those listed in subsection (2), in addition to those uses generally permitted within existing single family dwellings (i.e., day care facilities and group homes as defined, and home occupations). All other uses and structures, including but not limited to new or expanded single family dwellings, shall be subject to conditional use review under Section 5.06, as well as all other applicable municipal and state regulations. Projects reviewed under this provision shall only be subject to the standards pertaining to flood hazard review set forth in Section 5.08 unless they are otherwise identified as a conditional use in the underlying district.
- b. Mandatory state [§4412] and federal [44 CFR 60.3 and 60.6] requirements for continued eligibility in the National Flood Insurance Program – including but not limited to associated structural standards, definitions, administrative and variance requirements – are hereby adopted by reference and shall be applied to all development in this district. Accordingly:
 - i. Applications for development within the Flood Hazard Area Overlay District shall be submitted in accordance with the provisions of Section 5.08, and are subject to state and federal agency referral requirements in accordance with Section 5.09.

Table 2.10
FLOOD HAZARD OVERLAY DISTRICT
[continued]

- ii. Development in the Flood Hazard Area Overlay District shall be subject to site plan review if for a permitted use or conditional use review if for a conditional use, although such review shall be limited to review under the criteria set forth in subsection 5.08 specific to development within designated flood hazard areas, as well as applicable requirements of the underlying zoning district. Where this overlay imposes more restrictive standards on the construction and use of structures or land, the most restrictive standards shall apply.
- iii. Requests for variances for development within the Flood Hazard Area Overlay District shall be subject to review under Section 5.07, including but not limited to variance criteria under subsection 5.08 specific to variances with designated flood hazard areas.
- iv. Permits, certifications and variance actions for development within the Flood Hazard Area Overlay District shall be recorded by the Zoning Administrator in accordance with Section 6.01.

Article III. General Regulations

Section 3.01 ABANDONMENT OF STRUCTURES

Within two (2) years after work on an excavation for a building has begun and substantial progress toward completion has not occurred, or within two (2) years after a permanent or temporary building or structure has been destroyed, demolished or abandoned, all structural materials shall be removed, covered over or filled to the normal grade by the owner.

Section 3.02 ACCESS, DRIVEWAYS & FRONTAGE REQUIREMENTS

- c. No land development may be permitted on lots which do not either have frontage on a public Class I, II, III road or on public waters, or, with the approval of the Development Review Board, frontage by means of a Class IV road or by a permanent easement or right-of-way at least twenty feet in width, to such lots or water.
 - 1. All driveways entering onto Town roads must be approved by the Select Board with regard to grade, culverts, ditching, safety, and visibility. (See Subdivision Regulations.) Driveways entering State roads must be approved by VTrans (Vermont Agency of Transportation).
 - 2. A lot which is the terminus of a private right-of-way need not have a specific amount of frontage on the right-of-way.
- (B) Single family and two-family residences are subject to the following requirements:
 - 1. A lot or parcel of land shall have only one driveway, except that for every whole multiple of three hundred feet of continuous road frontage in excess of the district frontage minimum, a lot or parcel of land may have one additional driveway. Driveways constructed under this provision shall be no closer than 200 feet to each other.
 - i. All driveways shall be no more than twenty feet wide at the junction of the driveway and the public traveled way. This width shall be measured twenty feet from the edge of the traveled way.
 - ii. Where two separate lots adjoin each other, the two lots may combine their driveways into a single driveway located at the common property line. Any such driveway may not exceed twice the width of a single driveway.
 - iii. All driveways shall join the public road at an angle as close to ninety (90) degrees as is reasonably possible, and no driveway shall join the public way where the angle formed by the centerline of the driveway and the centerline of the public road is less than forty-five (45) degrees nor more than one hundred thirty-five (135) degrees.
- (C) For all uses other than those enumerated in subsection (B) above, each lot or parcel may have one or more driveways subject to the review and approval of the Development Review Board in accordance with Section 3.02 and the following:
 - i. In reviewing the proposed driveways plan, the Development Review Board may require data and studies as necessary and shall consider the following:

- a. Traffic characteristics, to include volume, density, speed, direction and composition.
 1. Sight distance.
 2. Alignment and orientation with respect to the public highway and other driveways.
 3. Predominant turning movements.

- 4. Internal traffic circulation.
- f. Public safety.
- g. Character of the area affected.

- ii. Proposals for driveways shall be supported by sufficient evidence on the impact of said driveways on area traffic. The Development Review Board may require that such evidence be prepared by a professional traffic consultant or other recognized authority.
- iii. The Development Review Board in granting approval of the proposed driveways may impose appropriate conditions and safeguards in the interest of public safety and/or to minimize the impact of the driveway on the area traffic.
- iv. Where traffic control devices are required as a condition of the approval, the applicant will be responsible for the installation of the traffic control devices.
- v. All driveways shall conform to Vermont Agency of Transportation (VTrans) standards applicable to such driveways, specifically standard sheets currently published by VTrans numbered A-76 and B71.

In no event shall a driveway be constructed less than 150 feet from the nearest public street intersection, unless no other reasonable access is available.

- vi. All driveways shall be so located and constructed so as to provide a safe distance as defined in Sight Distance Standards, Appendix 2, and said Standards are hereby incorporated in and made a part of these Regulations.

(D) Lots with frontage on Route 302 and Paine Turnpike north of Crosstown Road, and subject to site plan approval by the Development Review Board in accordance with Section 3.12, shall meet the following requirements intended to better manage access and improve vehicular and pedestrian safety, economic vitality and scenic character of the streetscape.

- i. Parking areas shall be located to the side and rear of buildings unless such location is not feasible due to site conditions, existing site development, or nature of the business which prevent an alternative arrangement.
- ii. Sidewalks shall be required within each site to connect building entries with parking areas and public sidewalks where they exist.
- iii. Where possible, the number and size of curb cuts shall be limited to a single access. In instances involving pre-existing curb cuts not in compliance with these standards, the Development Review Board may require the reduction, consolidation or elimination of non-complying curb cuts. The Board may approve additional accesses in the event that:
 - 1. The additional access is necessary to ensure vehicular and pedestrian safety; or
 - 2. The strict compliance with this standard would, due to the presence of one or more physical features (e.g., rivers and streams, steep slopes, wetlands), result in a less desirable site layout and design than would be possible with the allowance of an additional access; or
 - 3. A traffic management plan is developed and implemented which will improve vehicular and pedestrian safety and result in a traffic circulation and parking arrangement within the site that better achieves the standards set forth under Section 3.02 than would be possible with a single access; or

4. The parcel(s) is occupied by multiple uses (e.g., shopping centers, PRDs) and the additional access would result in better traffic circulation and safety than a single access.
1. Access shall be limited to an approved width, and shall not extend along the length of road frontage; in the case of excessively wide pre-existing driveways, the Development Review Board shall may require the reduction in driveway width as a condition of site plan approval unless such reduction would place an undue burden on the continued operation of an existing land use.
2. In appropriate instances, including the presence of compatible adjacent uses, areas characterized by congestion and frequent and/or unsafe turning movements, or parcels having direct access to more than one public road, the Development Review Board shall may require provision for shared access between adjoining properties or limit access to the property to a side street or secondary road. Requirements for shared access shall may be made either at the time of site plan approval if similar provision has been made on contiguous parcels, or contingent upon future development of neighboring properties.
3. Driveway connections to parking areas on adjacent properties, or provision for future connection, shall be required unless such connections are not practical due to site conditions. In the event that such connections allow for shared parking between properties, the overall parking requirements may be reduced pursuant to Section 3.02.

Section 3.03 CONVERSIONS AND CHANGES IN USE

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

- a. The proposed use shall be subject to all the requirements of these regulations pertaining to such use, including but not limited to any district, access, and/or parking requirements, as well as any other applicable municipal, state or federal regulations currently in effect.
- b. A conversion or change of use from one permitted use to another permitted use, except as provided, requires a zoning permit issued by Zoning Administrator under Section 5.02.
- c. A conversion or change of use from a permitted to a conditional use, or from a conditional use to another conditional use, requires conditional use approval under Section 5.06.
- d. Where there is a conversion or change of use involving increased water use and wastewater generation, including but not limited to the conversion of a seasonal or accessory dwelling to a single family dwelling, a zoning permit shall not be issued by the Zoning Administrator until a wastewater disposal permit has been approved by the Berlin Sewage Officer or Health Officer.
- e. Changes or conversions involving nonconforming uses and/or noncomplying structures also are subject to and will be reviewed under Section 3.11.
- f. Existing buildings may be used for seasonal storage in any district, excluding the Highland Conservation District.

Section 3.04 EQUAL TREATMENT OF HOUSING

- (A) In accordance with the Act [§4406(4)], no provision of this bylaw shall have the effect of excluding mobile homes, modular housing, or other forms of prefabricated housing from the municipality except upon the same terms and conditions as conventional housing is excluded.
- (B) Provisions for the establishment of mobile home parks are included under Section 4.06 , and pursuant to Chapter 153 of Title 10.
- (C) Accessory dwelling units, as required by the Act, may be permitted as a two-family dwelling in all districts in which one-family dwellings are permitted.
- (D) Group homes occupied by six or fewer residents, as defined by the Act, shall be treated as a one-family dwelling under these regulations.

Section 3.05 EXISTING SMALL LOTS

A. Any lot in individual and separate, non-affiliated 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 the minimum lot dimensional (width, depth, or square footage) requirements, if such lot is not less than one eighth acre in area with a minimum depth or dimension of forty feet, provided that

- 1. Any wastewater disposal system shall be designed by a registered professional engineer or certified site technician. The registered professional engineer or certified site technician shall certify in writing to the Zoning Administrator that it was installed as designed.
- 2. Safe and adequate water supply shall be assured.

(B) An existing small lot which is in affiliated or common ownership with one or more contiguous lots as of the effective date of these regulations, or which subsequently comes under affiliated or common ownership with one or more contiguous lots, shall be deemed merged with the contiguous lot(s) for the purposes of these regulations. However, such lots shall not be deemed merged and may be separately conveyed if, in accordance with the Act, all of the following requirements are met:

- 1. The lots are conveyed in their pre-existing, nonconforming configuration; and
- 2. On the effective date of this bylaw, each lot had been developed with a water supply and wastewater disposal system; and
- 3. At the time of transfer, each water supply and wastewater system is functioning in an acceptable manner; and
- 4. The deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems in case a wastewater system fails, pursuant to the Act [§4406(1)(A)(iv)].

Section 3.06 HEIGHT REQUIREMENTS

(A) No structure shall exceed the zoning district building height maximum, except as provided in this Section. The principal structure height limit shall apply to all accessory buildings, structures and appurtenances including, but not limited to, water towers, communications

towers, antenna structures, or appurtenances other than the customary rooftop television or radio antenna.

(B) Height in excess of the zoning district building height maximum may be approved by the Development Review Board as a conditional use in accordance with Section 5.06 on its written findings, after hearing, that:

1. The additional height applied for is customary to the proposed use such as, but not limited to, church steeples, flagpoles and agricultural silos; or
2. The additional height applied for is necessary to the operation or function of the proposed use such as, but not limited to, industrial silos, elevator shafts, water towers, chimneys; or
3. The additional height applied for is required for public necessity or public safety such as, but not limited to, air navigational aids, beacons, and high voltage transmission line

(C) In granting additional height approval for any structure, accessory building or appurtenance, the Development Review Board shall be guided by and base its findings on the following criteria:

1. Public safety
2. Impact on the character of the neighborhood
3. Visual impact
4. That the additional height is not intended for habitation or full-time work station use.
5. The intended purpose of this Section
6. Conditional use standards under Section 5.06.

Section 3.07 FILL

(A) In any district, dumping of refuse and waste material for fill in a municipally unauthorized area is prohibited.

(B) Loam, soil, rock, stone, gravel, sand, cinders, and other inert materials may be used for ~~land~~fill up to 500 cubic yards to approved grades by the Zoning Administrator.

Fill exceeding 500 cubic yards must be reviewed by the Development Review Board taking into consideration the following:

1. Contours of the land before and after the fill.
2. The amount to be brought in.
3. Truck traffic including the need for road crews and traffic control.
 - i. Condition before and after of the road to be used, and weight limit permits.
5. Days of the week and hours of operation.

(C) The temporary storage (not to be confused with “commercial stockpiling”) and redistribution of materials incidental to development of a site is allowed on a parcel without approval of the Zoning Administrator, providing:

1. Such materials are not stored within setback areas.

2. Such materials are used on the site on which such materials are stored and are not removed from the site.
 3. Such materials are not stored on the site for more than one calendar year.
 4. Such materials are stored not less than fifty feet from the edge of any river, stream, or wetland.
- ii. Adequate provision is made for erosion control and dust control to prevent off-site sedimentation of surface water and impacts to air quality in the vicinity of the site.
 - iii. The development of the site has been reviewed by the Zoning Administrator or the Development Review Board.

Section 3.08 LANDSCAPING REQUIREMENTS

- b. A landscaping plan shall be required to be submitted in all districts for all development requiring Site Plan Review prior to the issuance of a zoning permit by the Zoning Administrator.
- (B) Screening and landscaping of development subject to site plan review under Section 5.05 shall be provided and maintained where required by the Development Review Board on their written findings, after hearing, that such landscaping is necessary to control soil erosion and/or to minimize adverse scenic impact.

Section 3.09 LOT & YARD

- (A) **Dwelling(s) on lots.** There shall be only one residential building on a lot unless otherwise approved under the Planned Residential Development provisions, except as provided below:

Up to two (2) detached dwelling units may be constructed on a lot, provided they meet all the zoning regulations, under site plan review by the Development Review Board, including setback, side and frontage requirements, and provided they meet such regulations under the conditions of subdivision, should such action be considered by current or future land owners.

- (B) **Reduction of Lot Area.** No lot shall be so reduced in area that the area, yards, lot width, frontage, coverage or other requirements of these Regulations shall be smaller than herein prescribed for each district. The provisions of this Section shall not apply when part of a lot is taken for a public purpose or for a development approved as a Planned Residential Development under Section 4.10.
- (C) **Lots with on-site Water Supply and Septic Disposal.** Minimum residential lot sizes in areas without public sewer and water systems shall conform to the Town of Berlin Health Regulations.

Section 3.10 MISCELLANEOUS STATUTORY REQUIREMENTS

- (A) The provisions of these regulations shall be subject to such additions, modifications or exceptions as herein provided by the following general regulations.
- (B) In accordance with the Act [§§4406 and 4409] the following provisions have been included in these regulations:
- i. Equal Treatment of Housing (Section 3.04)
 - ii. Existing Small Lots (Section 3.05)
 - iii. Group Homes (Section 3.04D)
 - iv. Home Child Care Facilities (Section 4.04)
 - v. Home Occupations (Section 4.04)
 - vi. Required Frontage on, or access to, public roads or waters (Section 3.09)
 - vii. In accordance with the Act [§4409(a)], the following uses are subject to conditional use review under Section 5.06, and may only be regulated with respect to size, height, bulk, yards, courts, setbacks, density of buildings, off-street parking and loading facilities, and landscaping or screening requirements:
 - a. Public utility power generating plants and transmission lines.
 - b. Regional solid waste management facilities certified by the State – excluding Transfer Station [10 V.S.A., Chapter 159].

- c. Hazardous waste management facilities for which a notice of intent to construct has been received under state law [10 V.S.A., §6606a].
8. In accordance with the Act [§4409(a)], reasonable provision has been made for the following uses within designated districts, which are subject to all applicable provisions of these regulations including district requirements:
- a. State or community owned and operated institutions and facilities (see State or Municipal Public Facilities).
 - b. Public and private schools and other educational institutions certified by the Vermont Department of Education (see School).
 - c. Churches, convents and parish houses (see Religious Institution).
 - d. Public and private hospitals (see Hospital)
9. If any by-law is enacted with respect to any land development subject to regulation under state statutes, the more stringent or restrictive regulation applicable shall apply. (§4409(b)).

Section 3.11 NON-CONFORMING USES & NON-COMPLYING STRUCTURES

(A) The following provisions shall apply to all structures and uses existing on the effective date of these Regulations, or which do not conform by reason of any subsequent amendment to these Regulations:

(B) **Non-Conforming Use:** Any nonconforming use may be continued indefinitely but:

- 1. Shall not, under any circumstances, be re-established if such use has been discontinued for a period of 12 months.
- 2. Shall not be changed to another nonconforming use without the approval of the Development Review Board as a conditional use in accordance with Section 5.06. The Board may only grant such approval upon finding that the change to another nonconforming use is in compliance with the standards set forth in Section 3.11, and that the proposed use of the same or a more restricted nature than the existing use with regard to the scale, intensity of operation and impact on adjacent properties.
- 3. Shall not be enlarged or expanded unless approved by the Development Review Board as a conditional use in accordance with Section 5.06.
- 4. In rendering a decision in favor of an applicant under this subsection, the Development Review Board may attach such conditions to such enlargement or expansion of a lawful use or change to another nonconforming use as it may consider necessary and appropriate under the circumstances to implement the purposes of the Zoning Regulations and the Plan of the municipality.

(C) **Noncomplying structures:**

1. May be restored to a safe condition if the structure or portions thereof are declared unsafe by a proper authority.
2. Shall not be enlarged, altered, or replaced in-kind unless approved by the Development Review Board as a conditional use in accordance with Section 3.11, except such structures requiring repair or rebuilding if damaged by fire or accident provided that reconstruction is started within one year and substantially completed within two years.
3. Nothing in this Section shall be deemed to prevent normal maintenance and repair of noncomplying structures, provided, that such action does not increase the degree of noncompliance.

Section 3.12 OFF-STREET PARKING AND LOADING SPACE REQUIREMENTS

- (A) Off-street parking spaces shall be provided as set forth below. A parking space shall be at least nine feet by nineteen feet, and shall be on or contiguous to the lot in development.
1. **Residential:** one-family, two-family dwelling units: two parking spaces for every dwelling, multiple-family dwelling units: seven parking spaces for every three units.
 2. **Professional residence office:** two parking spaces, plus one additional parking space for every three hundred square feet of office space (excluding bathroom, hallways, storage areas, and other like spaces).
 3. **Hotel, Motel, Tourist Home, Boarding House:** One space for every guest room.
 4. **Dormitory, Fraternity, Nursing Home, Hospital:** One space for every two beds.
 5. **Places of Public Assembly:** One parking space for every three seats. Where there are not seats, one parking space shall be provided for every fifty square feet of floor space (excluding bathrooms, hallways, storage areas, and other like spaces).
 6. **Business, Professional, and Medical Offices:** One space for every two hundred square feet of floor space (excluding bathrooms, hallways, storage areas, and other like spaces).
 7. **Commercial, Business, Retail Stores:** One parking space for every motor vehicle used in the business, plus one parking space for every two hundred square feet of the commercial and/or business area and one additional parking space for each employee per single shift with the largest employee count (excluding bathrooms, hallways, storage areas, and other like spaces).
 8. **Restaurant, Eating and Drinking Establishments:** One parking space for every three seats.
 9. **Other Uses:** As required by the Development Review Board
 10. In reviewing parking space requirements, the Development Review Board shall consider the adequacy of the provision for snow removal or storage, aesthetic impact, drainage and traffic circulation.

(B) The required number of contiguous off-street parking spaces may be reduced or increased by the Development Review Board under conditional use or site plan review, to the extent that the it is demonstrated that a reduction or increase is warranted as a result of:

1. unique use, or
2. overlapping coverage, or
3. the requirement is shown to be excessive *or insufficient*.

Section 3.13 SIGNS

(A) **Signs in all districts.** No signs shall be permitted in any district except as specifically permitted herein as follows:

1. The signs described in Table 3.1 are permitted in all districts and shall not require a zoning permit:

Table 3.1 Exempted Signs	
1.	One professional or home occupation sign, not exceeding five square feet.
2.	One temporary sign, not exceeding twenty-five square feet, advertising agricultural or forest products for sale for a period not to exceed one hundred and twenty (120) days.
3.	One temporary sign, not exceeding six square feet, advertising real estate for sale be posted for each 1,000 feet of lot frontage on a public road. So-called "sold by" signs are prohibited
4.	Signs erected, maintained or administered by the Town of Berlin, or the State of Vermont, whether maintained at private or public expense
5.	Small signs without advertising displayed for the direction, instruction or convenience of the public such as those identifying rest rooms, freight entrances, telephone and exits. Such signs shall be on the premises of the activity or facility described and shall not exceed two square feet in area.
6.	Temporary signs providing safety or emergency information to the public.
7.	Signs, not to exceed 32 square feet, to be maintained for not more than 45 days erected by fairs, or expositions, or signs announcing an auction, or a campaign drive, or of a civic, political, philanthropic service, or religious organization.

8.	Signs indicating Lawn or Garage Sale, and the like, to be displayed for not more than 14 continuous days.
----	---

2. All signs shall be maintained, in good repair, and in stable condition
3. No establishment shall contain more than one sign except as specifically provided below. Any such sign may designate more than one business or activity.
4. Off-premise signs are prohibited.

(B) **Commercial, business and industrial signs.** Except as specified in Table 3.1, and subsection (C), below, all signs on each commercial, business, and industrial individual establishment's premises are subject to the following restrictions:

1. No single establishment, regardless of size, shall be allowed more than three hundred square feet of total sign area, and any may have fifty square feet of total allowable permanent sign area, provided that a wall sign of area not more than two square feet for each one lineal foot of building or structure is displayed.
2. The total allowable sign area for an establishment shall be two square feet of sign area for each one lineal foot of building or structure frontage facing the thoroughfare from which the sign is to be viewed.
3. Any single sign over 80 square feet requires approval by the Development Review Board.
4. The allowable area may be contained in one wall sign or multiple signs when authorized by the Development Review Board, or may be divided between one wall sign and one free-standing ground sign.
5. No sign shall be permitted within ten feet of a property line or of the highway Right of Way.
6. No sign shall be permitted which prevents a clear and unobstructed view of official signs.
7. No sign shall contain moving parts or flashing or blinking lights.
8. No sign shall be erected, attached or maintained on trees or utility poles or drawn or painted on rocks or other natural features.
9. No lighting of signs shall be permitted which causes a public nuisance or traffic hazard.
10. Free-Standing ground signs shall meet the standards set forth in Table 3.2 below:

Table 3.2 Free Standing Sign Requirements	
(1)	All free-standing signs shall be of a type permanently mounted on a pole or similar structure. "A-Frame" signs are prohibited.
(2)	Height of free-standing signs shall not exceed twenty five feet and shall be displayed at a height similar to other free-standing signs in the area.
(3)	No more than two viewing surfaces shall be permitted. The surfaces shall be identical unless otherwise, approved by the Development Review Board.
(4)	Maximum area, excluding the support structure, shall be sixty-four square feet. The area shall be determined by measuring only one of two allowable viewing surfaces.
(5)	The owner shall provide means, such as curbing, fencing and/or locations, to minimize the traffic accident hazard potential of the pole or supporting structure.

11. All wall signs shall meet the following standards:

- a. no wall sign may display more than one viewing surface;
- b. no wall sign may exceed the highest point of the building eaves line unless approved by the Development Review Board; and
- c. no wall sign may extend more than one foot from the face of a building.

(C) **Shopping Centers Signs.** In addition to the standards set forth above, signs associated with the operation of shopping centers, and located on the same premises, shall comply with the following:

1. For new shopping centers or for extensive revision of signing in existing shopping centers, the shopping center owner shall submit a comprehensive and coordinated plan to the Development Review Board for site plan approval and shall be responsible for adherence to the permit conditions by the tenants.
2. Individual establishments within the shopping centers may display one wall sign only. Individual free-standing ground signs are prohibited.

When incorporated in a comprehensive plan for an entire shopping center, establishment name signs, not exceeding eight square feet in area, may be placed at each establishment's main entrance. Such signs shall be uniform in size, design, and color for the entire shopping center.

3. A shopping center owner may erect one free-standing ground sign not to exceed 150 square feet in total area, The owner shall be responsible for fulfilling the provision of subsection (A)(1).

(E) **Illuminated Signs.** Signs may be illuminated such that all lighting is directed so that the lighting illuminates only the surface area of the sign and is effectively shielded to prevent hazardous beams or rays of light from being directed at any portion of the main traveled way of a public road. Review criteria shall include, but is not limited to, impact on the neighborhood, uses, character of the neighborhood, nuisance, and light pollution. Flashing, oscillating and revolving signs shall not be permitted, unless necessary for public safety or welfare.

Section 3.14 STREAM PROTECTION

(A) To prevent soil erosion, protect wildlife habitat and maintain water quality, an undisturbed, vegetated buffer strip shall be maintained for a minimum of 75 feet from all streams and rivers and 50 feet from any wetland. The buffer strip shall be measured from the mean water mark or delineated wetland boundary. No development, excavation, fill or grading shall occur within the buffer strip, and vegetation shall be left in an undisturbed state, with the exception of minimum clearing and associated site development necessary to accommodate the following:

1. road, driveway and utility crossings;
2. streambank stabilization and restoration projects, in accordance with all applicable State and Federal regulations.
3. bicycle and pedestrian paths and trails.
4. public recreation facilities and improved river/lake accesses.

(B) Exceptions to the prohibitions above may be approved by the Development Review Board in accordance with Section 5.06 provided:

- i. All existing vegetation should be retained to the extent feasible;
- ii. Placement of structures will minimize impacts to the riparian buffer;

- iii. Appropriateness of any deviations from the required buffer widths shall be evaluated on a case-by-case basis after consideration of all functions and values of undisturbed including but not limited to:
 - a. Protection of water quality
 - b. Stormwater treatment
 - c. Filtration of sediment and nutrients
 - d. Protection of aquatic biota and habitat
 - e. Protection of natural stream stability
 - f. Maintenance of wildlife travel corridors
 - g. Ice damage control
 - h. Flood damage mitigation
 - i. Aesthetics
- 4. Efforts to enhance existing vegetation including supplemental plantings should be maximized.
- (C) For development subject to conditional use review, minimum required setback and/or undisturbed buffer strip distances may be increased as appropriate based on site, slope or soil conditions and the nature of the proposed use.

Section 3.15 TEMPORARY USES AND STRUCTURES

The following temporary permits may be issued by the Zoning Administrator for a period not exceeding one year, conditioned upon agreement by the owner to remove the structure or discontinue use upon expiration of the permit:

- (A) For nonconforming uses incidental to a construction project.
- (B) For temporary and seasonal roadside stands for the sale of locally grown agricultural products.

Section 3. 16 WALLS AND FENCES.

- (A) Fences used for agricultural purposes and walls and fences five feet or less, at least 10' from the traveled portion of the highway, and which do not extend into or obstruct public rights-of-way, or interfere with corner visibility or sight distances for vehicular traffic, or interfere with highway maintenance or roadway drainage, shall not be subject to these regulations.
- (B) All other walls and fences greater than five feet shall require review and approval by the Development Review Board. The Development Review Board shall, after hearing, make findings and impose conditions and safeguards based on the following criteria:
 - 1. sight distance
 - 2. highway maintenance
 - 3. traffic hazards
 - 4. drainage
 - 5. character of the area affected
 - 6. public safety

Section 3.17 OUTDOOR LIGHTING

- a. Purpose. The Town's rural character is enhanced by an ability to clearly view and enjoy the night sky. While some outdoor lighting may be necessary for safety and security, inappropriate or poorly designed or installed lighting can create unsafe conditions and nuisances for adjoining property owners, cause sky glow which obstructs night views of the sky, and results in the unnecessary use of electric power.
- b. General Standards. To ensure appropriate lighting while minimizing its undesirable effects, the following general standards apply to all outdoor lighting in the Town of Berlin, with the exception of temporary holiday lighting which is exempt:
 - a. All outdoor lighting shall be kept to the minimum required for safety, security, and intended use, consistent with the character of the neighborhood in which it is located.
 - b. Permanent outdoor lighting fixtures shall not direct light upward or onto adjacent properties, roads, or public waters; shall minimize glare; and shall not result in excessive lighting levels which are uncharacteristic of a rural area. Lighting fixtures shall be cast downward and/or designed to minimize glare. Such fixtures shall include recessed, shielded, or cutoff fixtures, and/or low luminance lamps (e.g., maximum of 75 watts or 1,000 lumens).
 - c. Outdoor lighting fixtures are to include timers, dimmers, and/or sensors to reduce energy consumption and eliminate unneeded lighting.
 - d. Exterior lighting shall be cut-off fixtures as defined by Illuminating Engineering Society of North America (IESNA). Exceptions to this standard to accommodate a particular "period" or architectural style, providing the maximum initial lumens generated by each fixture not to exceed 2,000 lumens (equivalent to a 150 watt incandescent bulb) may be permitted.
- c. Conditional Use Lighting Standards. For lighting installations associated with uses subject to conditional use review under 5.06, the Development Review Board also may require the following:
 - a. Information regarding exterior lighting fixtures, including fixture type, mounting location and height, illumination levels and distribution, and color, to be submitted as part of the conditional use application. A lighting plan, prepared by a qualified engineer or lighting expert, may be required as appropriate for larger projects.
 - b. The burial of electrical service to outdoor lighting fixtures.
 - c. Security lighting, where deemed necessary by the Board, shall be shielded and aimed so that illumination is directed only on to the designated area and not cast on other areas.
 - d. Outdoor fixtures shall only be illuminated during the hours of operation for non-residential uses unless specifically approved by the Development Review Board in accordance with Sections 5.05 and 5.06.
- d. The Board may modify or waive the requirements of this section under conditional use review under 5.06, or on appeal under section 6.04, if it finds that in so doing it will not

jeopardize the stated intent under Subsection (A), or that such a modification or waiver is required to meet an overriding public purpose

Article IV. Specific Use

Section 4.01 ADAPTIVE RE-USE OF HISTORIC BARNs.

- A. To encourage the economic viability of maintaining and restoring historic barns which are no longer associated with a viable agricultural enterprise, the following standards shall apply to all barns listed on the Vermont Historic Sites and Structures Survey as being eligible for listing on the National Register of Historic Places.
- (B) Structures which shall be considered appropriate for adaptive reuse include any structure, excluding buildings designed and used as single family dwellings, which:
1. has historical or architectural significance to the Town, as determined by listing on the Vermont Historic Sites and Structures Survey, or determined to have become eligible for listing on the Vermont Historic Sites and Structures Survey since the time of its most recent publication; and
 2. was built prior to 1940; and
 3. Has a minimum floor area of 800 square feet.
- (C) Notwithstanding the permitted and conditional uses allowed in each district, historic barns may, with the approval of the Development Review Board in accordance with Section 5.06, be converted to the following uses:
1. Cultural facilities, including religious institutions, performance space, community centers or museums;
 2. Warehouse and storage facilities;
 3. Multi-family housing (not to exceed four units);
 4. Light industry (excluding outdoor storage or display);
 5. Office space.
- (D) In approving applications for the adaptive re-use of historic barns, the Development Review Board shall ensure that the proposed use complies with all general and/or specific use regulations set forth in these regulations.

Section 4.02 CAMPERS, TEMPORARY SHELTERS, and STORAGE OF MOTOR VEHICLES

- (A) It shall be unlawful for any person to park, for the purpose of habitation, a camper (travel trailer, recreation vehicle) or other temporary shelter (e.g., tent, tipi, yurt), except in an approved campground, an approved sales lot, or on a residential or undeveloped lot, subject to the following provisions.
- (B) One camper or other temporary shelter may be parked on a residential lot (lot in which a dwelling is the principal use) or undeveloped lot provided that:

1. it is not located within required setbacks for the district in which it is located; and
 2. it is not occupied for dwelling purposes for more than 30 days within any one year period; and
 3. is not hooked up to a water system, septic system or other utilities.
- (C) A camper or other temporary shelter may be occupied up to six (6) months in accordance with the requirements for a single-family dwelling unit in the district in which it is located.
- (D) Any sewage generated by a camper or other temporary shelter shall be disposed of in accordance with all applicable local, state and federal regulations.
- (E) In all districts, any motor vehicle which is not State inspected must be stored in an enclosed building or placed in a rear or side yard and screened from view from any public road. Unregistered motor vehicles used for on-site property maintenance, such as snow plowing or agricultural purposes, are exempted from this provision.

Section 4.03 EXTRACTION OF EARTH RESOURCES

- A. The extraction of earth resources for **personal use on site** up to 500 cubic yards is permitted without approval of the Zoning Administrator or the Development Review Board provided that the proposed operation will not:
1. Cause a hazard to public health and safety, or
 2. Adversely affect neighboring properties, property values, or public facilities and services, surface water and groundwater supplies, or natural, cultural, historic, or scenic features.
- (B) The new, expanded, or resumption of extraction of earth resources **for commercial purposes** may be permitted in any district with Conditional Use approval by the Development Review Board.

The application shall include erosion control and site reclamation plans showing:

- A. Existing and proposed grades, drainage, and depth to water table;
- B. Erosion control;
- C. Extent and magnitude of the proposed operation including proposed phasing; and
- D. Site reclamation plans and finished grades at the conclusion of the operation.

In addition, the Board shall find that the proposed operation will not:

5. Cause a hazard to public health and safety, or
6. Adversely affect neighboring properties, property values, or public facilities and services, surface water and groundwater supplies, or natural, cultural, historic, or scenic features.

- (C) The Development Review Board may consider and impose conditions with regard to the following factors as it deems relevant:
 - A. Depth of excavation or quarrying;
 - B. Slopes created by removal (contours before and after);
 - C. Effects on surface drainage on and off site;
 - D. Storage of equipment and stockpiling of materials on-site;
 - E. Hours and days of operation for blasting, trucking, and processing;
 - F. Effects on adjacent properties due to noise, dust, or vibration;
 - G. Effects on traffic and road conditions, including potential physical damage to public highways and bridges.
 - H. Creation of nuisances or safety hazards;
 - I. Temporary and permanent erosion control;
 - J. Effect on ground and surface water quality and drinking water supplies;
 - K. Effect on natural, cultural, historic, or scenic resources on-site or in the vicinity of the project;
 - L. Effect on agricultural land;
 - M. Public safety and general welfare.
- (D) In accordance with the Act [Section 4407(8)] a performance bond, escrow account, or other surety acceptable to the Select Board shall be required to ensure reclamation of the land upon completion of the excavation to include any regrading, reseeding, reforestation, or other reclamation activities that may be required. This provision specifically does not apply to mining or quarrying operations; however, upon failure of the permit holder, their successors or assigns to complete site reclamation as required, the town may take legal action as appropriate to ensure site reclamation and cost recovery.

Section 4.04 HOME OCCUPATIONS, HOME CHILD CARE & COTTAGE INDUSTRIES

- (A) **Home Occupations** In accordance with the Act [§4406(3)] no provision of these regulations shall prevent a person from using a minor portion of a dwelling or accessory structure for the conduct of an ~~home~~ occupation which is customary in residential areas and which does not change the character of the surrounding area or neighborhood. A permit application shall be submitted to the Zoning Administrator for a determination as to whether the proposed use is a home occupation as defined by these regulations. Home occupations, as distinguished from cottage industries under subsection (B), are permitted as an accessory use in all districts where residential uses are permitted in accordance with the following provisions :
 - 1. The owner and operator of the home occupation shall reside in the principal dwelling.

2. The home occupation shall be conducted wholly within the principal dwelling or accessory structure.
3. Not more than fifty percent (50%) of the accessory structure or the total livable floor area in a dwelling is to be used for the home occupation. The home occupation must be incidental to the residential use of the premises.
4. No more than two (2) non-residents of the dwelling are to be engaged in said home occupation at any one time (in other words, three part-time employees are permissible provided no more than two are present at any one time), except that up to four non-members may be employed for a period not exceeding a total of 60 days in any calendar year.
5. No traffic shall be generated in volumes that would be greater than normally expected in a neighborhood of a similar type.
6. There shall be no exterior storage of materials or equipment (other than motor vehicles) for use in connection with the home occupation.

(B) **Home Child Care Facilities:** In accordance with the Act [§4409(f)], a state registered or licensed child day care facility serving 6 or fewer children on a full time basis and up to 4 additional children on a part time basis, conducted within a single family dwelling by a resident of that dwelling, shall be considered by right to constitute a permitted single family residential use of the property. Such uses shall require a permit issued by the Zoning Administrator in accordance with Section 5.02. Nonresidential day care facilities, and those facilities operated from a dwelling which serve greater than 6 children, may be permitted in designated zoning districts as a conditional use subject to review under Section 5.06.

(C) **Cottage Industry.** Cottage industries (as distinguished from Home Occupations) may be permitted in designated zoning districts subject to conditional use review in accordance with Section 5.06 and the following provisions:

1. The owner and operator of the cottage industry shall reside on the lot.
2. The cottage industry shall be carried on within the principal dwelling and/or accessory structure(s) providing the use of such space does not change the character of the property or neighborhood.
3. The business shall not necessitate any change in the outward appearance of the dwelling unit or accessory structures on the lot.
4. The residents of the dwelling unit, and no more than four (4) non-resident employees may be employed on-site at any one time.
5. The business shall not generate traffic, including but not limited to delivery truck traffic, in excess of volumes that are characteristic of the neighborhood.
6. Adequate off-street parking shall be provided for all residents, employees and customers in accordance with Section 3.02.
7. Adequate provision for water supply and wastewater disposal shall be provided.
8. The business shall be visually compatible with neighboring lots and uses; landscaping and screening may be required as appropriate. In addition, any outdoor storage of materials, including building or construction materials, unregistered vehicles or heavy equipment,

must be completely screened year-round from the road and from neighboring properties.

9. On-site wholesale and/or retail sales shall be limited to products produced on the premises.
10. The permit for a cottage industry shall clearly state that the industry is a home-based business which is accessory to the principal residential use, and shall be retained in common ownership and management. A cottage industry may be subdivided and/or converted for sale or use apart from the residential use only if it meets all current municipal and state regulations pertaining to such use, including density, dimensional, and other requirements for the district in which it is located. Separate permits shall be required as appropriate prior to subdivision, sale and/or conversion.
11. There shall be no undue adverse impact or nuisance to neighboring properties such as from, but not limited to, noise, discharge of chemicals, or excessive light.

Section 4.05 MOBILE HOMES.

It shall be unlawful for any person to park a mobile home except in accordance with these Regulations as follows:

- (A) In an approved mobile home park.
- (B) In any zoning district in which a one-family dwelling is permitted, in accordance with all density, dimensional and associated standards for the specific district.

Section 4.06 MOBILE HOME PARKS.

- (A) No person shall construct or operate a mobile home park without first obtaining Site Plan approval from the Development Review Board in accordance with Section 4.06 and a permit from the Zoning Administrator.
- (B) Application for a mobile home park site plan approval shall be made to the Development Review Board. The application shall be accompanied with a Site Plan and drawings showing property lines, area, contours showing any proposed grading, roads, walkways, lots, parking, water lines, sanitary sewer and storm sewer drainage facilities, garbage collection stations and electrical distribution.
- (C) In addition to site plan review standards set forth in Section 5.05, the following regulations shall apply to all mobile homes in mobile home parks:
 1. Mobile home park area, not less than five acres, with ten percent of total area for recreation purposes. There shall be at least 12,000 square feet of area per mobile home.
 2. Mobile home lots shall be at least 8,000 square feet in area, and at least sixty feet wide by one hundred and twenty feet in depth.
 3. Park access roads shall be at least fifty (50) feet wide, with a gravel or paved surface, at least twenty-four (24) feet wide, and at least twelve (12) inches in depth of compacted gravel.
 4. Parking, at least two spaces for each lot.

5. Each lot shall have a water supply source approved by all appropriate State agencies.
 6. Each lot shall have attachment for sewage disposal approved by all appropriate State agencies.
 7. No mobile home shall be closer to a public street than fifty (50) feet, nor closer to a property line than twenty-five (25) feet.
 8. A strip of land at least twenty-five feet in width shall be maintained as a landscaped area abutting all mobile home park property lines.
- (D) The replacement of an individual mobile home within an approved mobile home park shall require a zoning permit issued by the Zoning Administrator in accordance with Section 4.06. Such replacement is subject to review and approval under Section 5.08 if all or a portion of the new mobile home is to be located in a designated floodplain.

Section 4.07 SWIMMING POOLS AND PONDS.

- (A) All swimming pools or ponds with a capacity of more than 3,500 gallons shall be subject to these Regulations and shall require a zoning permit issued by the Zoning Administrator in accordance with Section 5.02.
- (B) No swimming pool or pond subject to these Regulations shall be placed or constructed within a front yard setback of less than fifty feet nor a side yard or rear yard setback of less than twenty-five (25) feet.

Section 4.08 WIRELESS TELECOMMUNICATIONS FACILITIES.

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

Section 4.08(a) Purpose

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

- a. Preserve the character and appearance of the Town of Berlin while allowing adequate wireless telecommunications services to be developed.
- b. Protect the scenic, historic, environmental, and natural resources of the Town of Berlin.
- c. Provide standards and requirements for the operation, siting, design, appearance, construction, monitoring, modification, and removal of wireless telecommunications facilities and towers.

- d. Minimize tower and antenna proliferation by requiring the sharing of existing communications facilities, towers, and sites where possible and appropriate.
- e. Facilitate the provision of wireless telecommunications services to the residences and businesses of the Town of Berlin.
- f. Minimize the adverse visual effects of towers and other facilities through careful design and siting standards.
- g. 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 4.08(b) Consistency with Federal Law

In addition to other findings required by the bylaw, the Development Review Board shall find that its decision regarding an application is intended to be consistent with federal law, particularly the Telecommunications Act of 1996. The bylaw does not

- A. Prohibit or have the effect of prohibiting the provision of wireless telecommunications services;
- B. Unreasonably discriminate among providers of functionally equivalent services; or
- C. Regulate wireless telecommunications 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 4.08(c) Definitions

Adequate Capacity: Capacity for wireless telephony is considered to be “adequate” if the grade of service (“GOS”) is p.05 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 wireless telecommunications 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.

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 most 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.

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

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

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.

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

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

Facility Height: The vertical distance measured from the base of the 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 facility height.

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).

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 tenth of a second. Bearing or orientation should be referenced to true North.

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

Monitoring: The measurement, by the use of instruments in the field, or radio frequency exposure from wireless 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.

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: 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.

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.

Scenic: Scenic views 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 scenic view may be to a far away object, such as a mountain or a nearby object.

Stealth Design: A telecommunications facility design intended to blend into the surrounding environment. Examples of stealth designed facilities may include architecturally screened roof-mounted antennas, building-mounted antennas painted to match the existing structure, antennas integrated into architectural elements (like clock towers, bell steeples, silos), antenna structures designed to look like light poles, and structures designed to resemble natural features such as trees or rock outcroppings.

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

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

Tower: A vertical structure for supporting antenna(s) that transmit and/or receive telecommunications signals (television, AM/FM radio, digital, microwave, cellular, telephone, or similar forms of electronic communication).

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.

Wireless Telecommunications Facility: All equipment (including repeaters) and locations of equipment with which a telecommunications provider transmits and receives the waves that 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. Wireless telecommunications facilities may include structures, towers, or accessory buildings.

Section 4.08(d) Permitted and Prohibited Locations:

Wireless telecommunications towers or facilities may be permitted as conditional uses upon compliance with the provisions of this bylaw in all zoning districts except Highland Conservation and over 1000 feet elevation west of Route 12.

Additionally, freestanding telecommunications towers or antennas over 20 feet in elevation may not be located in any of the following locations:

- A. Closer than 75 ft. or the height of the tower horizontally including antennas and other vertical appurtenances (except in the case of a tower requiring guy wire anchors which must not be closer than 2 times the height of the tower horizontally), whichever is greater, to the boundary of the property on which the tower is located; to any structure existing at the time of the application which is used as either a primary or secondary residence or to any other building; to any existing public road right-of-way; to any river or perennial stream; to a State or Federally designated wetland; or to any known archeological site.
- B. The habitat of any State listed Rare or Endangered Species.

- C. Within 500 ft. horizontally from any Historic District or property eligible to be listed on the Federal Historic Register.
- D. Closer than 1,000 ft. horizontally to any structure existing at the time of the application which is the property of any school.

Section 4.08(e) 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 approved by the Zoning Administrator, provided the antennas meet the applicable requirements of this bylaw, upon submission of

- A. A final site and building plan.
- B. A report prepared by a licensed mechanical or structural engineer indicating the structure’s suitability for the wireless 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.
- C. 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 may be located closer than 50’ to an existing residence.

- D. The following wireless telecommunications facilities are exempt from the requirements of this bylaw: police, fire, ambulance, and other emergency dispatch; amateur (ham) radio, citizens-band radio, single-use local business radio dispatch, and television antennas for home use. No FCC-licensed wireless telecommunications facility shall be considered exempt from the bylaw for any reason, whether or not said facility is proposed to share a tower or other structure with such exempt uses.

Section 4.08(f) Application Requirements for Wireless Telecommunications Facilities Not Covered under Section 4.08(e).

An applicant for a permit must be a wireless telecommunications 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 Berlin’s Zoning Bylaws, applicants for wireless telecommunications towers or facilities shall include the following supplemental information:

- A. 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.

- B. 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.
- C. The names and addresses of the record owners of all abutting property and the names and addresses of the landowner, facility operator, and the wireless service providers.

- D. A report from the appropriate qualified engineers that:
 - A. Described the facility height, design, and elevation (a licensed structural engineer for this section).
 - 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 (a radio-frequency engineer for this section).
 - C. Describes the tower's proposed capacity, including the number, height, and type(s) of antennas that the applicant expects the tower to accommodate (a licensed structural engineer for this section).
 - D. 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 residents and businesses of the Town of Berlin. 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 4.08(d) above to provide coverage to the Town of Berlin.
 - 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 five-year plan 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. 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.
 - J. Includes other information required by the Development Review Board that is necessary to evaluate the request.
 - K. Includes an engineer's stamp and registration number where appropriate.
- (E) 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.
- (F) 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).

(G) 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 probably impacts of the proposed facility.

(H) 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 4.08(g) Site Plan Requirements for Wireless Telecommunications Facilities

In addition to site plan requirements found elsewhere in the Town of Berlin's Zoning Bylaws, site plans for wireless telecommunications facilities shall include the following supplemental information:

- A. Location Map: a copy of a portion of the most recent USGS Quadrangle map showing the area within at least a two-mile radius of the proposed facility site.
- B. 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.
- C. Proposed site plans of the entire development indicating all improvements including landscaping, utility lines, guy wires, screening, and roads.
- D. Elevations showing all facades and indicating all exterior materials and color of towers, buildings, and associated facilities.
- E. 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.
- F. 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.
- G. 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 4.08(h) Collocation Requirements

An application for a new wireless telecommunications facility shall not be approved unless the Development Review Board finds 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:

- A. Existing towers in prohibited districts shall not be used for collocation sites unless the Development Review Board finds there is no more appropriate site in respect of district goals, project cost, technical feasibility, and consideration of §4409(b) in Section 4.08(a).

- B. 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.
- C. 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.
- D. The proposed antennas and equipment, either alone or together with existing facilities, equipment or antennas, would create excessive radio-frequency exposure.
- E. Existing or approved towers and structures cannot accommodate the planned equipment at a height necessary to function reasonable or are too far from the area of needed coverage to function reasonably as documented by a qualified engineer.
- F. Aesthetic reasons make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.
- G. There is no existing or approved tower in the area in which coverage is sought.
- H. Other unforeseen specific reasons make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.

Towers must be designed to allow for future placement of antennas upon the tower and to accept antennas mounted at varying heights when overall permitted height allows. Towers shall be designed structurally and in all other respects to accommodate a minimum of four antennas when overall permitted height allows.

Section 4.08(i) 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 4.08(j) 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.

- A. 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.

- B. 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 100 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 Berlin 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.
- C. Towers shall not unreasonably interfere with the view from any public park, natural scenic vista, historic building or district, or major view corridor. In determining whether a tower's aesthetic impact would be undue and adverse, the 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.

The Board shall have the authority to impose conditions consistent with the purpose of this section in approving a proposed facility. Furthermore, the Board may identify 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 may 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.

- D. All buildings and structures accessory to a tower (except for electric power poles where specifically exempted by the Board) shall meet the minimum setback requirements of the underlying zoning district or setback requirements specified in this bylaw. 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 specified in Section 4.08(d)(A).
- E. The area around the tower and telecommunications facilities shelter(s) shall be completely fenced and gated for security to a height of at least eight feet. No permanently-installed ladders shall reach below 12 feet above the ground.

- F. 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 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.

Section 4.08(k) Amendments to Existing Wireless Telecommunications Facility Permit

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

- A. Change in the number of buildings or facilities permitted on the site;
- B. Addition or change of any equipment resulting in greater visibility or structural windloading or weight load, or additional height of the tower, including profile of additional antennas, not specified in the original application.

Section 4.08(l) 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.

A sign no greater than two (2) square feet indicating the name of the telecommunications facility owner(s) and a 24-hour emergency telephone number, either local or toll-free, shall be posted adjacent to the entry gate. In addition, radio frequency radiation (RFR) warning signs, and the federal tower registration plate, where applicable, shall be posted on the fence or as specified by federal or state requirements. No Trespassing signs may be posted at the discretion of the telecommunications facility owner(s). No commercial signs or lettering shall be placed on a facility.

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

Section 4.08(m) Temporary Wireless Telecommunication Facilities

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

- A. Use of a temporary facility is permitted only if the owner has received a temporary use permit from the Town of Berlin Development Review Board.
- B. Temporary facilities are permitted not to exceed fifteen (15) days use during a special event.
- C. The maximum height of a temporary facility is 50 feet from grade.

D. Temporary facilities must comply with all applicable portions of these regulations.

Section 4.08(n) 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 radio-frequency exposure, and provide the basis for his or her representations. In addition, the report shall include names and addresses of the landowner, facility operator, and wireless service providers.

Section 4.08(o) Facility Removal

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

- A. The owner of a facility/tower shall annually, on January 15, file a declaration with the Town of Berlin'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.
- B. Abandoned or unused towers or facilities shall be removed within 180 days of abandonment or 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 abandonment or of cessation of operations at a site, the municipality shall notify the owner and may remove the tower or facilities. Costs of removal shall be assessed against the property or tower owner.
- C. Towers and facilities which are constructed in violation of permit conditions or application representations shall be removed within 180 days of a notice of violation at the site unless a time extension or negotiated solution is approved by the Development Review Board. In the event the tower or facility is not removed within 180 days of notification of such a violation, the municipality may remove the tower or facilities. Costs of removal shall be assessed against the property or tower owner.
- D. 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.
- E. The Applicant shall, as a condition of the conditional use permit, provide a financial surety bond payable to the Town of Berlin and acceptable to the Board to cover the cost of removal of the facility and remediation of the landscape, should the above clauses be invoked.

Section 4.08(p) 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 Berlin may undertake such maintenance at the expense of the applicant or landowner.

Section 4.08(q) Insurance Requirements

The facility owner shall maintain adequate insurance on all facilities and present a Certificate of Insurance annually on January 15.

Section 4.09(r) Fees

Fees for filing an application to build or alter a wireless telecommunications facility shall be established by the Select Board as provided for in 24 V.S.A. § 4446. This schedule may be amended from time to time. 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 4.08(s) Enforcing Agent

The Zoning Administrator shall be the agent to enforce the provisions of this bylaw.

Section 4.08(t) Severability

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

Section 4.09 TELEVISION/TELECOMMUNICATION SATELLITE ANTENNA STRUCTURES ("DISHES").

- (A) Television/telecommunication satellite antenna structures may be installed in all residential districts for residential use without a Zoning Permit, as long as the district's height limit, side, rear and front-yard setbacks are met.
- (B) All television/telecommunication satellite antenna structures, other than specifically exempted herein, shall be considered a structure that requires a Zoning Permit.

Section 4.10 PLANNED RESIDENTIAL DEVELOPMENT (PRD).

- (A) **Applicability.** The Development Review Board is hereby empowered to permit modifications from certain zoning regulations to permit planned residential developments under the criteria and procedure established in the Act [§4407(3)]. Modifications from the requirements of the Zoning Regulations by the Development Review Board for the Planned Residential Development is permitted subject to the conditions set forth below and Site Plan approval.
- (B) **Purpose.** The purpose of the Planned Residential Development (PRD) provision is to encourage flexibility of design and development of land in such a manner as to promote the most appropriate use of land to facilitate the adequate and economic provision of streets and utilities, to preserve the natural, historic and scenic qualities of open land, to protect and maintain viable tracts of land for agriculture and forestry, and to provide for housing at different densities.
- (C) **Application & Review Procedures.** Applications for Planned Residential Development shall be reviewed concurrently with applications for subdivision approval in accordance with the Berlin Subdivision Regulations. In addition to the application materials required for subdivision review, applicants shall submit a statement setting forth all proposed deviations from the existing Zoning Regulations.

- (D) **Standards.** The PRD shall be in conformance with the following standards:
- A. The PRD is consistent with the purpose of this Section.
 - B. The overall density of the project does not exceed the density which would result if the project were developed in a conventional manner in accordance with district regulations.
 - C. The use may be one-family or multi-family dwellings and must be a prescribed use for the district in which it is located.
 - D. The PRD is an effective and unified treatment of the development possibilities on the project site, and the development plan makes appropriate provision for protection of streams and streambanks, steep slopes, wet areas, soils unsuitable for development, forested areas and unique natural and manmade features.
 - E. The development is phased over a reasonable period of time in order that it will not cause an undue burden on municipal facilities and services.
 - F. District regulations on height and setbacks shall be met.
 - G. Adequate water supply and sewage disposal facilities shall be provided.
 - H. The Development Review Board may require that a percentage of the land be utilized for open space, recreation areas, and/or municipal purposes. The Development Review Board may establish conditions on use and maintenance of such lands as necessary to ensure preservation of said lands. Such conditions shall be recorded in the Town land records.
 - I. Proposed streets shall conform to Vermont Agency of Transportation A-76 standards, unless waived by the Development Review Board.
 - J. The land area not allocated to building lots and streets shall be permanently reserved as open space. Such land shall be held in corporate ownership by the owners of the units within the development. Membership in said corporation shall be mandatory for all residents of the development, and the developer shall include in the deed to the owners of the dwelling units the membership rights in and to the use of the open land. Such land shall be held in corporate ownership by the developer or other form of public or private interested group as acceptable to the Development Review Board.

Article V. Development Review Process

Section 5.01 EXEMPTIONS TO THE REQUIREMENT FOR A PERMIT - PERMITS NOT REQUIRED

- (A) Development where construction has commenced prior to the effective date of these regulations, and development which has obtained all Town permits provided construction is substantially completed within one year of the effective date of these regulations.
- (B) Interior repairs, alterations, decorating; exterior maintenance, repair, replacement with no increase in height or footprint.
- (C) Fuel tanks for household heating of 500 gallons or less and is an accessory to a dwelling; placed according to the Vermont Gas code and NFIP regulations.
- (D) Stairways, handicap ramps (excluding deck or porch areas) which do not extend into or obstruct public rights-of-way; or interfere with corner visibility or sight distances for vehicular traffic, and meet setback requirements for the district.
- (E) Walls and fences for agricultural purposes five feet in height or less which do not extend into or obstruct public rights-of-way; or interfere with corner visibility or sight distances for vehicular traffic.
- (F) Landscaping, grading, and excavating associated with road and driveway maintenance and restoration, and yard improvements for single and two family residences only.
- (G) Non-commercial outdoor recreation which does not involve the development or use of structures (ie, hiking, skiing).
- (H) Accessory structures (2 maximum) less than 80 sq. ft in floor area and less than 10' in height meeting setback requirements for the district.
- (I) Signs for short term events such as lawn sales, garage sales, yard sales, entertainment, auctions, etc. of infrequent occurrence and of less than 7 days duration.

Section 5.02 ZONING ADMINISTRATOR AUTHORITY

Within 30 days of receipt of a completed application, the Zoning Administrator shall

- Issue a permit in writing;
- Refer the application to the Development Review Board in cases of Site Plan Review, Conditional Use Review, or Variance; or
- Deny the application. A denial shall include a statement of the time in which appeals may be made.

If no action is taken within the 30 days, the application is deemed approved on the 31st day.

A. **Issuance:** The Zoning Administrator may issue a permit for the following, without review by the Development Review Board, if all size and dimensional requirements are met, and if the use is permitted within the district.

- A. Agricultural structures as defined by the Commissioner of Agriculture, Food and Markets in accordance with the Act [§4495]. A zoning application shall be submitted to the Zoning Administrator prior to any construction. There is no fee charged.
2. Driveways (see Section 3.02)
3. One and two family dwellings (see Section 3.09)
4. Residential accessory uses or structures.
5. Residential accessory uses or structures in an existing PRD.
6. Home occupations within a one or two family dwelling (see Section 4.04).
7. Home child care facilities (Section 4.04).
8. Fill up to 500 cubic yards (see Section 3.07).
9. Minor commercial and industrial landscaping, grading, and excavating associated with road and driveway maintenance and yard improvements,
10. Signs unless newly illuminated (see Section 3.13).
11. Walls and fences higher than five feet which do not extend into or obstruct public rights-of-way; or interfere with corner visibility or sight distances for vehicular traffic. (see Section 3.16).
12. Swimming pools and ponds (see Section 4.07)
13. Extensions for one year for previously approved permits (see Section 6.03)
14. Security lighting unless included in an application for new development (see Section 3.17)
15. A change in use from one permitted use to another permitted use except as provided in Section 3.03.
16. Small scale wireless telecommunications facilities (see Section 4.08(e))
17. Other uses specifically exempted from site plan review under these bylaws.

(B) **Refer** the application to the Development Review Board for the following:

- A. Site Plan Review (see Section 5.05)
- B. Conditional Use Review (see Section 5.06)
- C. Variance Review (see Section 5.07)
- D. Flood Hazard Approval (see Section 5.08)
- E. Appeals of the Zoning Administrator's Decision (see Section 6.04)
- F. Other approvals as appropriate (See below).

- (C) **Deny** the application if the proposed development is not allowed according to these Bylaws. The appellant may appeal the Zoning Administrator's decision to the Development Review Board (See 6.04).

Section 5.03 APPLICATIONS.

Unless listed as exempt in Section 5.01 above or elsewhere, all applications for development must include the following:

- A. A completed application.
- B. Fee as established by the Select Board
- C. One set of detailed site plans, no larger than 11"x17" showing the following:
 - A. location of property in relationship to the town and highways with scale and north arrow
 - 2. dimensions of the lot and property lines,
 - A. existing and proposed easements
 - 4. location and sizes of the existing and proposed structures and their distances from the property lines.
 - 5. entrance or curb cut plans for approval by designated authority
 - 6. location and distances to existing and proposed wells, surface water, and wetlands as applicable.
 - 7. existing and proposed contours, if applicable
 - 8. sewer plans or septic plans with approval by the proper authority
 - 9. landscaping plans.

Larger-sized site plans (3 copies) not to exceed 24"x36" may be requested for submittal in advance or at the hearing.

- (D) Other information as may be required for Site Plan Review (see Section 5.05), Conditional Use Review (see Section 5.06), or State Agency Referral Requirements (see Section and Table 5.09).

Section 5.04 NOTICE OF HEARINGS

Notice shall be given by publishing the date, place, and purpose of the hearing in a newspaper of general circulation in the Town, and posting the notice in at least two public places within the Town at least 15 days prior to the hearing date.

Notice of the hearing in the form of the written agenda shall also be sent by mail to the applicant and all abutters at least 5 days prior to the public hearing. The applicant shall provide addressed and stamped envelopes for all abutters.

Section 5.05 SITE PLAN REVIEW - PERMITTED USES

Permitted Uses as designated in Article II, Tables 2.01 through 2.10, except for those listed in Section 5.06, must be reviewed under the General Standards criteria listed here.

A completed application, site development plan, fees, and supporting data as listed in Section 5.02, must be submitted to the Zoning Administrator who, with the applicant, will review the application and data for completeness and make recommendations for any additional supporting data deemed necessary or desirable. If the application, site plan, and supporting data are deemed complete, the application shall be scheduled and warned for the next applicable public hearing (see Notice of Hearings, Article V, Section 5.04) for Development Review Board to review the completed application.

Review Procedure. In its review the Board shall determine whether the proposed use or structure conforms to the General Standards set forth below and shall act to approve, approve with conditions, or disapprove the application. The Board shall act within 60 days of receipt of the completed application and shall issue a written decision including findings, conditions if any, and provisions for appeal. Failure to act within 60 days of receipt shall deem approval.

General Standards: The Board may consider and impose appropriate safeguards, modifications, and conditions relative to the following:

- (A) **Safety of vehicular and pedestrian circulation on site and any adverse impacts on the adjacent street network.** Vehicular access and intersections with roads shall meet all applicable Town and State design standards, including those set forth in Section 3.02. The Board may limit the number and size of curb cuts to a single access. In instances involving pre-existing curb cuts not in compliance with these standards, the Board may require the reduction, consolidation, or elimination of non-complying curb cuts. In appropriate instances, including the presence of compatible adjacent uses, areas characterized by congestion and frequent and/or unsafe turning movements, or parcels having direct access to more than one road, the Board may require shared access between adjoining properties or may limit access to a side street or secondary road. Requirements for shared access shall be made either at the time of site plan approval if similar provision has been made on contiguous parcels, or contingent upon future development of neighboring properties.
- (B) **Adequacy of circulation, parking, and loading facilities.**
 - 1. Parking shall be designed to minimize the visibility of parking areas from off-site through the location, landscaping and screening of such areas. Parking shall be located to the rear or interior side (side not fronting on a public road) of buildings, unless otherwise permitted by the Board due to site conditions which would prevent the reasonable use of the property if this standard were strictly enforced. Large uninterrupted expanses of parking shall be avoided. A 10' landscaped buffer shall be provided between parking lots and property lines.
 - 2. Driveway connections to parking areas on adjacent properties, or provision for future connection, shall be required where feasible. In the event that such connections allow for shared parking between properties, the overall parking requirements may be reduced pursuant to Section 3.12.

3. Adequate parking facilities for people with disabilities shall be required
 4. Loading and delivery areas within the site shall be provided in accordance with Section 3.02, and shall be adequate to meet the anticipated needs of the use in a manner that does not interfere with parking, internal circulation, and landscaping.
 5. Provision shall be made for refuse storage and disposal, snow removal, and emergency access.
- (C) **Bicycle & Pedestrian Access.** Pedestrian circulation within the site, and access through the site to adjacent properties and along public roads, shall be provided. Such access may take the form of sidewalks, walking and/or bicycle paths, or other facilities depending upon the property's location, site conditions, and proximity to other facilities. Bicycle racks may be required for commercial and public uses intended for general public access. In addition, adequate access from the parking area and sidewalks to the building(s) that are open to the general public shall be provided for people with disabilities.
- (D) **Adequacy of Landscaping.** Landscaping shall enhance the features and conditions unique to each site, and should include a combination of shade and street trees, shrubs, planting beds, well-kept grasses, and ground covers. Landscaping is required in front and side yards, adjacent to parking areas, where rear yards abut residential properties or public roads, and as otherwise necessary to provide adequate screening.
- (E) **Hours of Operation.** Hours of operation may be limited to ensure that an approved establishment does not adversely affect the character and reasonable expectation of peace and quiet of residential neighborhoods.
- (F) **Setbacks:** Development must adhere to the district setbacks as outlined in Article II, Sections 2.01 through 2.10.
- (G) **Adequacy of exterior lighting.** Such fixtures shall not create excessive illumination or off-site glare, and shall be directed so as not to cause glare on adjacent roadways, cause excessive levels of illumination, or result in direct illumination of neighboring properties. The Board may restrict the maximum level of illumination on all or a portion of the property.
- (H) **Stormwater & Drainage.** Adequate provisions shall be made for the management of erosion, sedimentation, and stormwater runoff. Surface water runoff shall be minimized and if possible, detained on site. In instances involving the large-scale disturbance of the site, the creation of large expanses on impervious surfaces, development on slopes in excess of 15%, and/or proximity to surface waters, the Board may require a stormwater management and erosion control plan prepared by a professional engineer licensed by the State of Vermont. Such a plan shall provide detailed information regarding proposed erosion and sedimentation control measures to be employed during all stages of the development (including site preparation, construction, and post-construction).
- (I) **Utilization of renewable energy resources.** Proposed development should be designed so not to interfere with the sustainable use of renewable energy resources by diminishing the future availability of such resources or by eliminating nearby property owners' access to such resources.
- (J) **Municipal Services Impact Evaluation.** A statement by Fire Department, Police Department, and Highway Department and possibly School personnel as to the effects this

development will have on services such as traffic, fire suppression, road condition, educational needs.

- (K) **Flood Hazard Review.** If the development is determined to be in the flood plain according to NFIP, refer to Section 5.04 for requirements.

Section 5.06 CONDITIONAL USE REVIEW.

Conditional Uses as designated in Article II, Tables 2.01 through 2.10, must be reviewed by the Development Review Board under the General and Specific Standards criteria listed here.

A completed application, site development plan, fees, and supporting data as listed in Section 5.02, must be submitted to the Zoning Administrator who, with the applicant, will review the application and data for completeness and make recommendations for any additional supporting data deemed necessary or desirable. If the application, site plan, and supporting data are deemed complete, the application shall be scheduled and warned for the next applicable public hearing (see Notice of Hearings, Article V, Section 5.04) for Development Review Board to review the completed application.

Review Procedure. The Board will review the completed application and shall determine whether the proposed use or structure conforms to the General & Specific Standards set forth below and shall act to approve, approve with conditions, or disapprove the application. The Board may recess the convened hearing to require the submission of additional information from other parties. The Board shall act within 60 days of the close of the public hearing and shall issue a written decision including findings, conditions if any, and provisions for appeal. Failure to act within 60 days of close of the public hearing shall deem approval.

- A. **General Standards.** Conditional use approval shall be granted by the Development Review Board only upon finding that the proposed development will not adversely affect the following:
- A. **Safety of vehicular and pedestrian circulation on site and any adverse impacts on the adjacent street network.** Vehicular access and intersections with roads shall meet all applicable Town and State design standards, including those set forth in Section 3.02. The Board may limit the number and size of curb cuts to a single access. In instances involving pre-existing curb cuts not in compliance with these standards, the Board may require the reduction, consolidation, or elimination of non-complying curb cuts. In appropriate instances, including the presence of compatible adjacent uses, areas characterized by congestion and frequent and/or unsafe turning movements, or parcels having direct access to more than one road, the Board may require shared access between adjoining properties or may limit access to a side street or secondary road. Requirements for shared access shall be made either at the time of site plan approval if similar provision has been made on contiguous parcels, or contingent upon future development of neighboring properties.
 - 2. **Adequacy of circulation, parking, and loading facilities.**
 - a. Parking shall be designed to minimize the visibility of parking areas from off-site through the location, landscaping and screening of such areas. Parking shall be located to the rear or interior side (side not fronting on a public road) of buildings, unless otherwise permitted by the Board due to site conditions. A 10'

landscaped buffer shall be provided between parking lots and property lines. Large uninterrupted expanses of parking shall be avoided.

- b. Driveway connections to parking areas on adjacent properties, or provision for future connection, shall be required where feasible. In the event that such connections allow for shared parking between properties, the overall parking requirements may be reduced pursuant to Section 3.12.
 - c. Adequate parking facilities for people with disabilities shall be required
 - d. Loading and delivery areas within the site shall be provided in accordance with Section 3.12, and shall be adequate to meet the anticipated needs of the use in a manner that does not interfere with parking, internal circulation, and landscaping.
 - e. Provision shall be made for refuse storage and disposal, snow removal, and emergency access.
3. **Bicycle & Pedestrian Access.** Pedestrian circulation within the site, and access through the site to adjacent properties and along public roads, shall be provided. Such access may take the form of sidewalks, walking and/or bicycle paths, or other facilities depending upon the property's location, site conditions, and proximity to other facilities. Bicycle racks may be required for commercial and public uses intended for general public access. In addition, adequate access from the parking area and sidewalks to the building(s) that are open to the general public shall be provided for people with disabilities.
4. **Adequacy of Landscaping.** Landscaping shall enhance the features and conditions unique to each site, and should include a combination of shade and street trees, shrubs, planting beds, well-kept grasses, and ground covers. Landscaping is required in front and side yards, adjacent to parking areas, where rear yards abut residential properties or public roads, and as otherwise necessary to provide adequate screening.
5. **Hours of Operation.** Hours of operation may be limited to ensure that an approved establishment does not adversely affect the character and reasonable expectation of peak and quiet of residential neighborhoods.
6. **Setbacks:** Development must adhere to the district setbacks as outlined in Article II, Sections 2.01 through 2.10.
7. **Adequacy of exterior lighting.** Such fixtures shall not create excessive illumination or off-site glare, and shall be directed so as not to cause glare on adjacent roadways, cause excessive levels of illumination, or result in direct illumination of neighboring properties. The Board may restrict the maximum level of illumination on all or a portion of the property.
8. **Stormwater & Drainage.** Adequate provisions shall be made for the management of erosion, sedimentation, and stormwater runoff. Surface water runoff shall be minimized and if possible, detained on site. In instances involving the large-scale disturbance of the site, the creation of large expanses on impervious surfaces, development on slopes in excess of 15%, and/or proximity to surface waters, the Board may require a stormwater management and erosion control plan prepared by a professional engineer licensed by the State of Vermont. Such a plan shall provide detailed information regarding proposed erosion and sedimentation control measures to

be employed during all stages of the development (including site preparation, construction, and post-construction).

9. **Utilization of renewable energy resources.** Proposed development should be designed so as not to interfere with the sustainable use of renewable energy resources by diminishing the future availability of such resources or by eliminating nearby property owners' access to such resources.
10. **Municipal Services.** An impact evaluation of municipal services shall be requested from the Fire Department, Police Department, and Highway Department and School personnel if applicable as to the effects this development will have on services such as traffic, fire suppression, road condition, educational needs.

Traffic on roads and highways in the vicinity, including the level of service on roads and highways as well as the impact on the neighborhoods and the impact on pedestrian traffic.

The capacity of existing or planned community facilities including schools, waste treatment or water supply systems, fire and police protection, highway maintenance or any other municipal service.

11. **Flood Hazard Review.** If the development is determined to be in the flood plain according to NFIP, refer to Section 5.08 for requirements.
12. **The character of the area affected; neighboring uses.** The essential character of the neighborhood or district in which the proposed use is located, includes the existing uses as well as the goals articulated for the district.
13. **Bylaws then in effect** including the stated goals and objective of the Berlin Town Plan.

(B) Specific Standards. In granting such conditional use, the Board may attach such additional reasonable conditions and safeguards as it may deem necessary to implement the purposes of this chapter and the zoning regulations and as follows:

1. Installation, operation, and maintenance of devices and/or methods of operation as may be reasonably required to prevent or reduce fumes, gas, dust, smoke, odor, noise, light, discharges, diversion of flows, vibration, or similar nuisance.
- 2.. Impose conditions on open spaces between the proposed use and surrounding properties to prevent injury that might result from the proposed use to surrounding properties and neighborhoods. Care must be taken to protect existing residential neighborhoods and insure transitional buffers between districts.
3. The lot size, distances from adjacent or nearby uses and required setbacks may be increased in order to protect neighboring uses and values.
4. Intrinsic capability of the land to support the use including the fundamental nature of the land such as soils, hydrology, slope, and existing uses such as wetlands or deer yards.
5. Landscaping and fencing may be required as desirable to maintain and enhance the district character.

6. Design and location of signs, structures, and service areas may be restricted to maintain district character.
7. Water supply and sewage disposal systems designed and certified by a licensed professional engineer or licensed site technician and to the specifications and requirements of the State of Vermont agency having jurisdiction, or Town bylaws, whichever is more restrictive.
8. Controlling the location and number of vehicular access points to the property.
9. Increasing or decreasing the number of off-street parking or loading spaces required.
10. Specifying a specific time limit for construction, alteration, or enlargement of structures to accommodate a conditional use or time limit for operation of such including duration of the conditional use.

Section 5.07 VARIANCE CRITERIA REVIEW

The Development Review Board shall hear and decide upon requests for variances pursuant to the Act [§ 4468] and appeal procedures under Section 5.07. The Board may grant a variance and render a decision in favor of the appellant only if all of the following facts are found and the findings are specified in its written decision:

- (A) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located;
- (B) That because of such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is necessary to enable the reasonable use of the property;
- (C) That the unnecessary hardship has not been created by the appellant;
- (D) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and
- (E) That the variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

On an appeal for a variance from the provisions of these regulations that is requested for a structure that is primarily a **renewable energy resource structure**, the Board may grant such variance only if it finds that all of the facts listed in the Act [§ 4468 (b)] are found in the affirmative and specified in its decision.

In granting a variance, the Development Review Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the

municipal plan currently in effect. In no case shall be Board grant a variance for a use which is not permitted or conditionally permitted within the zoning district, or which results in an increase in allowable density.

Section 5.08 FLOOD HAZARD AREAS.

(A) **Required Application.** Within a designated flood hazard area, no building or other structure shall be constructed, erected, moved, replaced, altered or enlarged, nor shall any mining, excavation, filling or storage of materials be commenced or substantially extended, nor shall any watercourse be altered or relocated, except upon approval of the Development Review Board in accordance with these regulations.

The application shall include the following:

1. The elevation, in relation to mean sea level, of the lowest habitable floor, including basement, of all new or substantially improved structures;
2. The methods and levels to which any structure will be flood proofed and certification by the applicant's engineer or architect that the design and proposed methods of construction are in accordance with the flood proofing requirements of these regulations;
3. The relationship of the above to the channel, floodway and base flood elevations;
4. A description of the extent to which any water courses will be altered or relocated as a result of the proposed development;
5. Base flood elevation data, including existing and proposed contours, at one foot intervals, for any proposed building sites and/or building envelope located within the flood hazard area; and
6. Such other information deemed necessary by the Development Review Board for determining the suitability of the site for the proposed development.

(B) **Review Procedure.** The Development Review Board shall review the application for which includes flood hazard review standards as well as permitted or conditional use review standards.

(C) **General Standards.** The Development Review Board may consider and impose appropriate safeguards, modifications and conditions for development within the Flood Hazard Area Overlay District in accordance with the following standards:

1. Development within floodways is prohibited unless a registered professional engineer certifies that the proposed development will not result in any increase in flood levels during the occurrence of the base flood. Junkyards and storage facilities for floatable materials, chemicals, explosives, flammable liquids, or other hazardous or toxic materials, are specifically prohibited within the floodway.
2. All development shall be designed to minimize flood damage to the proposed development and to public facilities and utilities; and to provide adequate drainage to reduce exposure to flood hazards.

3. Structures shall be:
 - a. designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure during the occurrence of the base flood;

- b. constructed with materials resistant to flood damage;
 - c. constructed by methods and practices that minimize flood damage; and
 - d. be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
4. New and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate the infiltration of flood waters into the systems and discharges from the systems into flood waters.
 5. The flood carrying capacity within any altered or relocated portion of a watercourse shall be maintained.
 6. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
 7. New manufactured homes shall be elevated on properly compacted fill such that the top of the fill (the pad) under the entire manufactured home is above the base flood elevation.
 8. Replacement manufactured homes should be elevated on properly compacted fill such that the finished floor elevation of the mobile home is above the base flood elevation whenever feasible.
 9. Replacement manufactured homes located in the designated **FLOODWAY** shall not be permitted unless a registered professional engineer certifies that the replacement home has been designed to resist flotation, collapse, and lateral movement due to flood flow velocities.
 10. Existing buildings to be 'substantially improved' for residential purposes shall be modified or elevated to meet the requirements of Section 5.08.
 11. Existing buildings to be 'substantially improved' for nonresidential purposes shall either meet the requirements of Section 5.08, or be designed to be watertight below the base flood elevation with walls substantially impermeable and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A permit for a building proposed to be floodproofed shall not be issued until a registered professional engineer or architect has reviewed the structural design, specifications, and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.
 12. All new construction and 'substantial improvements' with fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: a minimum of two openings 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 cover coverings or devices provided that they permit the automatic entry and exit of floodwaters.

13. Recreational Vehicles placed on sites within Zones A1-A30, AH and AE, as designated on the FIRM maps, shall either (1) be on the site for fewer than 180 consecutive days, (2) be fully licensed and ready for highway use, or (3) meet all standards of Section 60.3(b)(1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for “manufactured homes” of Section 60.3(c)(6).
- (D) **State Agency Referral.** The issuance of any permit for development within the designated flood hazard is subject to state agency referral requirements under Section 5.09.
- (E) **Variance.** Variances for development within the Flood Hazard Overlay District shall be granted by the Development Review Board only in accordance with the standards set forth in Section 5.07.

Section 5.09 ISSUANCE OR DENIAL OF A ZONING PERMIT [§4443(c)].

Within 3 days of issuance of a permit, or 30 days following denial of a permit, the Zoning Administrator shall deliver a legible copy of the decision to the Town Clerk for recording as provided in 24 VSA, to the Listers, and post a copy at the Town Office for a period of 15 days.

Certain uses require State Agency Referrals. See Table 5.09 below.

TABLE 5.09 USES SUBJECT TO STATE AGENCY REFERRAL REQUIREMENTS¹
¹ as required pursuant to the Act
 [§ 4409(c)].

Use Type or Area	State Agency or Department
Use in or with The damming of a stream to form an impoundment area of 5 acres or more for reservoir or recreational purposes. in 1000 ft. of state owned or leased property under the jurisdiction of the VT Dept. of Forests, Parks & Recreation, not including rail trail corridors.	Department of Forests, Parks & Recreation
Use within a designated flood plain or wetland area	Department of Environmental Conservation
The damming of a stream to form an impoundment area of 5 acres or more for reservoir or recreational purposes.	Department of Environmental Conservation
The drilling of a well deeper than 50 ft. or with a potential yield of greater than 25,000 gallons per day, except by the owner of a farm or residence for his/her own use.	Department of Environmental Conservation
Game lands and stream bank areas owned or leased by the state	Department of Fish and Wildlife
Any use within 500 feet of the intersection of any entrance or exit ramp providing access to any limited access highway.	Vermont Agency of Transportation
Airports	Vermont Transportation Board
Ski areas with lifts or other equipment other than tows, with a total capacity of more than 500 persons per hour.	Department of Forests, Parks and Recreation
Camps with accommodations of more than 50 persons.	Department of Forests Parks and Recreation
Marinas with accommodations for 20 or more boats with lengths in excess of 20 feet.	Department of Forests, Parks and Recreation
Public beaches or land within 1,000 ft. thereof.	Department of Forests, Parks and Recreation
Natural areas as defined in Section 2607 of Title 10.	Department of Forests, Parks and Recreation

Article VI. Administration & Enforcement

Section 6.01 RECORDING REQUIREMENTS.

- A. Pursuant to the Act [§4443(c)], within 30 days after the issuance or denial of a municipal land use permit, or within 30 days of the issuance of any notice of violation, the Zoning Administrator shall deliver either the original, a legible copy, or a notice of the permit, denial or violation to the Town Clerk for recording in the land records of the town as provided in 24 V.S.A. §1154.
- B. For development within the Floodplain District, the Zoning Administrator shall also maintain a record of:
 - A. All permits issued for development in areas of special flood hazard;
 - B. The elevation, in relation to mean sea level, of the lowest floor, including basement, or all new or substantially improved buildings;
 - C. The elevation, in relation to mean sea level, to which buildings have been floodproofed;
 - D. All floodproofing certifications required under this regulation; and
- (C) All variance actions, including the justification for their issuance.

Section 6.02 EXPIRATION OF PERMIT

The zoning permit shall run with the land. A zoning permit shall become void if the work described has not been substantially commenced within one year from the date of issuance.

Section 6.03 EXTENSION OF PERMIT

One one-year extension may be granted in writing by the Zoning Administrator when determined to be in the interest of the town.

Section 6.04 APPEAL OF DECISION

- A. **Appeal of Zoning Administrator's decision/act to the Development Review Board [§4464, §4470, §4472]**
 1. In addition to the applicant, any interested person may appeal a decision or act of the Zoning Administrator by filing a notice of appeal to the Development Review Board within 15 days of the date of such decision or act.

Interested Person. In accordance with the Act [§4464 (b)], the definition of an interested person includes the following:

- The Town of Berlin or an adjoining municipality;

- A person owning or occupying property in the immediate neighborhood of a property which is the subject of a decision or act taken under these regulations, who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes or terms of the plan or regulations of the Town;
- Any ten (10) persons owning real property within the Town who, by signed petition to the Development Review Board, allege that any relief requested by a person under this section, if granted, will not be in compliance with the plan or regulations of the Town;
- Any department or administrative subdivision of the State owning property or any interest therein within the Town or adjoining municipality, and the Vermont Agency of Commerce and Community Development; and
- Berlin Conservation Commission.

2. The Development Review Board shall hold a public hearing within 60 days of receipt of the notice of appeal in accordance with the rules and bylaws set for public hearings and mail a copy of the hearing notice to the appellant not less than 7 days prior to the hearing date.

A. The Development Review Board may reject an appeal without hearing and render a decision within 10 days of the filing of the notice of appeal if it determines that the issues raised by the appellant have been decided in an earlier appeal, or are based on substantially or materially the same facts, by or on behalf of the appellant.

B. A decision on appeal, to include written findings of fact, shall be rendered within 45 days after hearing completion. Copies of the decision shall be mailed to the appellant and hearing participants, and filed with the Zoning Administrator and Town Clerk.

(B) Development Review Board's Decision to the Vermont Environmental Court [§4471, §4472, §4475, §4465, §4466]

1. Any interested person may appeal of decision of the Development Review Board within 30 days of such decision to the Vermont Environmental Court.

2. A list of interested persons who appeared and were heard at the hearing before the Board shall be provided to the appellant or his/her agent. Notice of appeal shall be sent to every interested person appearing and having been heard at the hearing before the Board.

3. The Notice of Appeal shall be in writing and include the following:

A. The name and address of the appellant;

B. A brief description of the property involved.

C. A reference to applicable bylaw provisions;

D. The relief requested by the appellant including any request for a variance from one or more provisions of this bylaw;

E. The alleged grounds why such relief is believed proper under the circumstances; and

F. Any request for a stay of enforcement which may be granted or denied by the Development Review Board.

Section 6.05 CERTIFICATE OF OCCUPANCY

- A. A Certificate of Occupancy application shall be provided with the zoning permit when issued by the Zoning Administrator. The applicant shall submit the application upon completion of the permitted development prior to occupancy or use. If the Certificate of Occupancy is not acted upon within 21 days of submission to the Zoning Administrator, the certificate is deemed approved.
- B. No Certificate of Occupancy shall be issued for any structure unless said structure has been built in accordance with the zoning permit.
- C. The failure to receive a Certificate of Occupancy for any development permitted between March 1972 and December 1997 shall not constitute a violation of the zoning regulations.

Section 6.06 VIOLATIONS [§4444, §4445]

- A. Violations. The commencement or continuation of any land development, subdivision, or use which is not in conformance with the provisions of these regulations shall constitute a violation. All violations will be pursued in accordance with the Act. Each day that a violation continues shall constitute a separate offense. The Zoning Administrator shall institute in the name of the Town any appropriate action, injunction, or other proceeding to enforce the provisions of these regulations. All fines imposed and collected for violations shall be paid over to the town.
- B. Notice of Violation. No action may be brought under this section unless the alleged offender has had at least 7 days notice by certified mail that a violation exists. The warning notice shall state that a violation exists and that the alleged offender has an opportunity to cure the violation within the 7 days, that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the 7 days. Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of the bylaw after the 7 day notice period and within the next succeeding 12 months.

Section 6.07 ENFORCEMENT LIMITATIONS [§4496]

The Town shall observe any limitations on enforcement proceedings relating to municipal permits and approvals as set forth in the Act.

Article VII. Definitions

Section 7.01 INTERPRETATION.

Except where specifically defined herein, all words used in these regulations shall carry their customary meanings, words used in the present tense include the future, and the singular includes the plural; the word "lot" includes "plot"; the word "shall" is mandatory; "occupied" or "used" shall be considered as though followed by "or intended, arranged or designed to be used or occupied"; "person" includes individual, partnership, cooperative, association, corporation, company, or organization." Doubt as to the precise meaning of any word used in these Regulations shall be clarified by the Development Review Board.

Section 7.02 DEFINITIONS.

ACCESSORY STRUCTURE: A structure which is incidental and subordinate to the primary use or structure of a lot or parcel of land, is located on the same lot as the primary structure or use, and is clearly related to the primary use.

ACCESSORY USE A use which is incidental and subordinate to the primary use of a lot or parcel of land, is located on the same lot as the primary use and is clearly related to the primary use.

AGRICULTURAL USE: A parcel of land of at least two acres in size used for animal husbandry and/or used for the growing, harvesting or selling of agricultural or forest products and permitting thereon farm structures and permitting as an accessory use riding and boarding stables thereon.

BASEMENT: Any area of the building having its floor subgrade (below ground level) on all sides.

BED & BREAKFAST: A single family dwelling occupied by the owner or operator, in which not more than five rooms within the dwelling and/or in an accessory structure located on the same lot, are rented out to provide overnight accommodations to transient travelers. Individual cooking and eating facilities shall not be provided; breakfasts shall be the only meals served and shall be limited to overnight guests. The bed and breakfast shall function as a private home with house guests.

BOUNDARY ADJUSTMENT: A division of land for the purpose of adjusting boundaries between adjacent lots or parcels where no new lot is created. A boundary adjustment shall not result in the creation of a nonconforming lot or use.

BUILDING: A walled and roofed building that is principally above ground.

BUILDING FRONT LINE: Line parallel to the front lot line intersecting that point in the building which is closest to the front lot line. This includes all projections, whether enclosed or unenclosed, but does not include steps.

CAMP: Land and structures thereon, such as cabins, trailers, shelters or tents, occupied for seasonal or temporary living quarters. [Note: It is common to include other qualifying standards, such as limitations of floor space, length of occupancy, and connection to public utilities.]

CORNER LOT: Lot which occupies the interior angle of the intersection of two street lines which make an angle of less than 135 degrees with each other.

COTTAGE INDUSTRY: A home-based business conducted by the resident of a single family dwelling, which is carried on within the principal dwelling and/or an accessory structure, and has no more than four (4) nonresident employees on-site at any one time (see Section 4.02; and Home Occupation).

DEGREE OF NON-COMPLIANCE: The extension of a structure which results in an additional encroachment of the noncomplying feature/element beyond that point which constitutes the greatest pre-existing encroachment. The expansion of the volume or area of a structure that does not comply with a building setback does not constitute an increase in the degree of noncompliance unless the expansion results in an encroachment upon the setback which is greater than the existing noncomplying encroachment.

DEVELOPMENT: The construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of any mining, excavation or fill, and any change in the use of any building or other structure, or land or extension of use of land.

DRIVEWAY: A constructed way intended for motor vehicle access to/from a land lot to/from a public highway.

DWELLING - MULTIPLE FAMILY: Building used as living quarters by three or more families independently of each other.

DWELLING - SINGLE FAMILY: A building or structure containing one dwelling unit.

DWELLING - TWO FAMILY: A building or structure containing two dwelling units.

DWELLING UNIT: Building or part thereof used as living quarter for one family. The terms "dwelling," "one-family dwelling," or "dwelling group" shall not include a motel, hotel, boarding house, tourist home, or similar structure.

EXTRACTION OF EARTH RESOURCES: The on-site removal of surface and subsurface materials, including soil, sand, gravel, stone, rock, minerals or similar materials. Typical uses include sand and gravel pits and quarries, and related operations such as the crushing, screening, and temporary storage of materials on-site (see Section 4.03). Specifically excluded from this definition is the grading and removal of dirt which is associated with and incidental to an approved site plan or subdivision, or an excavation associated with an accepted agricultural practice.

FAMILY: A group of two or more persons related by blood, marriage, adoption or civil union (as recognized by the State of Vermont), or a group of not more than five persons unrelated by blood, marriage, adoption or civil union, living together as a household, or a single person maintaining a household.

FLEA MARKET: An enterprise offering tables or space not within a permanent structure for rent to individuals from which said individuals may offer goods for sale to the public.

FLOOD HAZARD, AREA OF SPECIAL: The land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed rate-making has been completed in

preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, AI-30, AE, or A99.

FLOOD, BASE FLOOD OR 100-YEAR FLOOD: That flood having a one percent chance of being equaled or exceeded in any given year.

FLOOD INSURANCE RATE MAP (FIRM): An official map of a community, on which the Administrator (of the NFIP) has delineated both the special hazard areas and the risk premium zones applicable to the community.

FLOOD INSURANCE STUDY: An examination, evaluation, and determination of flood hazard and, if appropriate, corresponding water surface elevations.

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

FLOODPLAIN: SUBSTANTIAL IMPROVEMENTS: For the purpose of this definition and applicable to floodplain areas only, substantial improvement mean any repair, reconstruction or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either, (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. For the purposes of this definition, substantial improvement is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing State or local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

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 a designated height.

FLOODWAY FRINGE: The remaining portion of the flood hazard areas excluding the floodway.

HEIGHT: Structure height, the vertical distance from the mean ground level (finished grade) of the highest structure face to the highest point on the structure.

HOME OCCUPATION: Accessory use conducted within a minor portion of a dwelling by the residents thereof which does not change the character of the district.

LOT: Land occupied or to be occupied by a building and its accessory buildings, together with the required open spaces, having not less than the minimum area, width and depth required for a lot in the district in which such lands is situated and having frontage on a street, or other means of access as may be determined by the Development Review Board to be adequate as a condition of the issuance of a zoning permit for a building on such land. The creation of subdivisions with very irregularly shaped lots is not allowed if the purpose of the irregular shapes is solely to allow an extra lot or lots to be included in the subdivision.

LOT FRONTAGE: Distance measured along the width of the lot at the edge of the **street 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 floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

MIXED USE: A single building containing two or more permitted or conditional uses which are allowed within the district in which the building or parcel is located.

MOBILE HOME: Moveable living unit with or without wheels, used for living quarters. A sectional prefabricated house can be considered a mobile home.

MOBILE HOME PARK: Land on which two or more mobile homes are parked and occupied for living purposes.

MUNICIPAL LAND USE PERMIT: As defined in the Act [§4303(24)] to include, as issued by the municipality: (1) final zoning, subdivision, site plan or building permits or approvals relating to subdivision and land development; (2) septic or sewage system permits; (3) final official minutes of meetings which relate to permits or approvals, which serve as the sole evidence of such permits or approvals; (4) certificates of occupancy, compliance or similar certificates; and (5) any amendments to the previously listed, permits, approvals and/or certificates.

NONCOMPLYING STRUCTURE: A structure or part thereof lawfully in existence as of the effective date of these regulations, but not in compliance with one or more provision of these regulations, including but not limited to building bulk, height setbacks, area, yards, density or off-street parking or loading requirements, where such structure conformed to all applicable laws, ordinances, and regulations prior to the enactment of these regulations.

NONCONFORMING USE: The use of land or structure lawfully in existence as of the effective date of these regulations, which does not conform with these regulations, including but not limited to allowed uses within the district in which it is located, where such use conformed to all applicable laws, ordinances and regulations prior to the enactment of these regulations.

PARKING SPACE: Off-street space, which is at least nine feet wide and nineteen feet long, used for the temporary location of one licensed motor vehicle, but excluding an access driveway having direct access to a street or alley.

PROFESSIONAL RESIDENCE - OFFICE: Residence in which the occupant has an office and which is clearly secondary to the dwelling use for living purposes, provided it does not change the residential character of the district, and that not more than ~~one~~ two (2) persons outside the family is employed in said office.

PUBLIC HIGHWAY: A constructed surface in the public right-of-way intended for public vehicular traffic and meaning to be synonymous and interchangeable with the definition of public road, public street, road, street, highway, or traveled way.

RECREATIONAL VEHICLE: A vehicle which is (i) built on a single chassis, (ii) 400 square feet or less when measured at the largest horizontal projections; (iii) designed to be self propelled or permanently towable; and (iv) designed primarily not for use as a permanent dwelling but as

temporary living quarters for recreational, camping, travel, or seasonal use. Not to be confused with Manufactured Home. (Added by Town vote 11/7/00)

RELIGIOUS INSTITUTION: A facility used for conducting organized religious services on a regular basis, including accessory uses customarily associated with such a primary use. Includes church, synagogue, temple, mosque or other such place for worship and religious practice.

RESTORATION: Replace or rebuild a building or structure which has been substantially destroyed or demolished without regard to cause.

RETAIL STORE: Includes an enclosed restaurant, café, shop, store, retail service, personal service-shop, and department store selling at retail prices, but specifically excluding gasoline sales and new and used car sales and service business or a trailer and mobile home sales and service business.

RIGHT OF WAY:

1. A strip of land acquired by reservation, dedication, prescription, or condemnation and intended to be occupied by a road, trail, water line, sanitary sewer line or other public utilities or facilities.

OR

2. An area of land on a parcel that is dedicated for public or private use to accommodate a transportation system and/or public utility infrastructure (including, but not limited to, water lines, sewer lines, power lines and gas lines).

SAND & GRAVEL EXTRACTION: See Extraction of Earth Resources.

SCHOOL: Includes parochial, private, public and nursery school, college, university and accessory uses; and shall exclude commercially operated schools of beauty culture, business, dancing, driving, music, and similar establishments.

SETBACK (S):

1. Front line setback or front yard: the lineal distance from the **street line** of any highway to the building front line. Any building to be located on a corner lot at the intersection of two highways must meet the minimum front line set back from each highway.
2. Side line setback or side yard: the lineal distances from the side property line(s) to the nearest structure or building.
3. Rear line setback or rear yard: the lineal distance from the rear property line to the nearest structure or building.
4. Any building to be located on a lot containing a deeded right-of-way, must meet the minimum setback from the edge of such right-of-way.

SHOPPING CENTER: For the purposes of these Regulations, a shopping center consists of three or more directly adjoining retail and/or service establishment served by common curb cuts, access facilities or parking areas.

SIGN: Any device used for the purpose of bringing a subject displayed thereon attention of the public by visual communication, including but not limited to banners.

STREAM: Any surface water course in the Town of Berlin as depicted by the U.S. Geological Survey on topographic maps or as identified through site investigation; excluding artificially created irrigation and drainage channels

STREET FRONTAGE: The lineal distance of the lot as measured along the edge of the **street line**.

STREET LINE Edge of right-of-way of a street, either public or private, as dedicated by a deed of record. Where the width of a street is not established, the street line shall be considered to be 25 feet from the centerline of the traveled way.

STRUCTURES: For the purposes of these Regulations, “structure” shall mean an assembly of materials for occupancy or use including, but not limited to, a building or mobile home, excluding:

1. Signs, which shall be regulated as provided in Section 3.13
2. Driveways, which shall be regulated as provided in Section 3.02
3. Swimming pools and ponds, which shall be regulated as provided in Section 4.07
4. Walls and fences, which shall be regulated as provided in Section 3.16

SUBSTANTIALLY COMPLETED: The completion of a permitted building or structure to the extent that it may be safely occupied or used.

TELECOMMUNICATIONS FACILITY: See Definitions in Section 4.08(c). A support structure which is primarily for communication or broadcast purposes and which will extend vertically 20 feet, or more, in order to transmit or receive communication signals for commercial, industrial, municipal, county, state or other governmental purposes, and associated ancillary facilities that provide access and/or house equipment.

YARD: Space on a lot not occupied with a building or structure. Porches, whether enclosed or unenclosed, shall be considered as part of the main building and shall not project into a required yard.