

Town of Whitingham

Zoning Regulations

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ARTICLE I: ENACTMENT, INTENT, AND DEFINITIONS

Section 1.1 Enactment

In accordance with the Vermont Planning and Development Act hereinafter referred to as the "Development Act", Subchapter 6, Section 4401, there is hereby established a Zoning Regulation for Whitingham which is set forth in the text and map that constitutes this Regulation. This Regulation shall be known and cited as the "Whitingham Zoning Regulation".

Section 1.2 Intent

The Whitingham Zoning Regulation is designed to direct the future growth of the Town of Whitingham so that such growth will 1) conform to the wishes of the citizens, 2) avoid the adverse and sometimes irreversible effects often associated with purely random development, and 3) be in harmony with the planning measures of the state, the Windham Region, and adjoining towns. 24 VSA § 4401 authorizes a town to adopt bylaws for the purpose of implementing the town plan and such bylaws shall be in accord with the policies set forth therein.

Section 1.3 Definitions

Definitions contained in Section 4303 of the Development Act shall be applicable throughout this Regulation. Furthermore, unless otherwise expressly stated in this Regulation, the following additional terms shall, for the purpose of this Regulation, have the meaning herein indicated. Words used in the present tense include the future; the singular number includes the plural and the plural singular; the word "person" includes a corporation as well as an individual; the word "lot" includes the word "plot". The term "occupied" or "used" as applied to any building shall be construed as though followed by the words "or intended, arranged or designed to be occupied or used."

ACCESSORY - A building or use clearly incidental or subordinate to, and customary in connection with, the principal building or use on the same lot.

BED AND BREAKFAST (B&B): A single family dwelling occupied by the owner or operator within the dwelling, and/or in an accessory structure located on the same lot, in which rooms are rented out to provide overnight accommodations to transient travelers. The bed and breakfast shall function as a private home with house guests.

BUILDING - Any structure enclosed and isolated by exterior walls constructed or used for residence, business, industry, other public or private purposes, or accessory thereto.

COMMERCIAL USE - Any use of land or buildings for the purpose of selling at retail or wholesale a product, goods or services.

COVERAGE: That portion of a lot that is covered by buildings, structures and man-made improvements on the ground surface (such as paving) that prevent the absorption of storm water.

DEMOLITION/REMOVAL: A permit is required for the demolition/removal of a structure.

The permit will have immediate approval and no posting is necessary.

DISTRICT - A specific portion of the town as established by the provisions of Section 4.1 of this Regulation.

DWELLING UNIT - A room or rooms connected together containing cooking, sanitary, and sleeping facilities that constitute a separate, independent housekeeping establishment and is occupied by residents, not transients. It shall include prefabricated modular units and mobile homes, as well as recreational vehicles that remain on a parcel for more than 90 days within any consecutive twelve month period. It shall include a motel, hotel, boarding house, bed and breakfast, camp or similar structure.

DWELLING, ONE-FAMILY - A detached building containing one dwelling unit only.

DWELLING, TWO-FAMILY - A detached building containing two dwelling units only.

DWELLING, MULTIPLE - A building or portion thereof containing three or more dwelling units.

FAMILY - One or more persons related by blood, marriage, or adoption, and/or a group of not more than five (5) persons unrelated by blood or marriage, living together as a household in the same building and sharing the same kitchen and other facilities.

FAMILY CHILD CARE HOME OR FACILITY - A home or facility where the owner or operator is to be licensed or registered by the state for child care. A family childcare home serving six or fewer children shall be considered to constitute a permitted single-family residential use of property.

FAMILY UNIT - One family whose members live together in the same building and share the same kitchen and other facilities.

FRONTAGE (STREET) - That portion of a lot which is adjacent and parallel to a public street, highway, roadway, or public or private right of way used in common for vehicular purposes by two or more lot owners.

FRONTAGE (LAKE) - That portion of a lot that is adjacent and parallel to a lake at high water mark.

GROUP HOME: Any residential facility operating under a license or registration granted or recognized by a state agency, that serves not more than eight unrelated persons, who have handicap or disability as defined in 9 V.S.A. § 4501, and who live together as a single housekeeping unit. In addition to room, board, and supervision, residents of a group home may receive other services at the group home meeting their health, developmental or educational needs.

HEIGHT - The vertical distance measured from the average elevation of the finished grade at the front of the building to the highest point of the roof for flat and mansard roofs, and to the mean height between eave and ridge for other types of roofs.

HOME INDUSTRY - A home business such as, but not limited to, an antique shop, craft shop or studio, custom service shop, teaching, or similar activities that does not have an undue adverse effect upon the character of the residential area in which the dwelling is located.

HOME OCCUPATION: An accessory use of a minor portion of a dwelling by the residents thereof for an occupation which is customary in a dwelling in a residential area and that does not have an undue adverse effect upon the character of the residential area in which the dwelling is located.

INDUSTRY - An activity primarily involved with the enclosed manufacturing, processing, or warehousing of goods.

INTERESTED PERSON – In accordance with Section 4465(b) of the Development Act, an interested person means any one of the following:

- a. A person owning title to property, affected by these Regulations, who alleges that the regulations impose on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.
- b. Any municipality that adjoins the Town of Whitingham.
- c. A person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under these Regulations, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the Town Plan or these Regulations.
- d. Any ten persons who may be any combination of voters or real property owners within the Town of Whitingham who, by signed petition to the Planning Commission or Zoning Board of Adjustment, the plan or bylaw of which is at issue in any appeal brought under this title, allege that any relief requested by a person under this title, if granted, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality. This petition to the Planning Commission or the Zoning Board of Adjustment must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal.
- e. Any department and administrative subdivision of this State owning property or any interest in property within the Town of Whitingham and the Agency of Commerce and Community Development of the State.

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

JUNK MOTOR VEHICLE – A discarded, dismantled, wrecked, scrapped or ruined motor vehicle or parts thereof, or one other than an on-premise utility vehicle which is allowed to

remain unregistered for a period of ninety days from the date of discovery. [24 V.S.A. § 2241(6)]

JUNKYARD - See SALVAGE YARD; Junkyard is now salvage yard [24 V.S.A. § 2242]

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

LIGHT INDUSTRY - Includes those uses which are generally not objectionable because of noise, heavy truck traffic, or fumes. Light industrial uses are those that consist of the production, processing, cleaning, testing, and distribution of materials and goods. Light industry does not involve the substantial use of water in the manufacturing process, or the production of substantial wastes other than from employee toilets.

LOT - A parcel of land.

LOT, BUILDING - A parcel of land in one ownership meeting the dimensional requirements of this bylaw for the district in which such land is situated, and if occupied by a building or buildings, meeting the minimum acreage requirements of that district, and defined on a plan or deed recorded in the Town records.

LOT LINE ADJUSTMENT - A method of adjusting boundaries of adjacent lots without creating an additional lot (see Section 3.5.5 of these Zoning Regulations). [VT Environmental Protection Rules, Chapter 1, Wastewater System and Potable Water Supply Rules, Effective September 29, 2007, §1-304(a)(11) Exemptions, Boundary Line Adjustments]

MANUFACTURING - Any process whereby the nature, size, or shape or articles or raw materials are changed, or where articles are assembled and packaged.

MAIN FLOOR - The largest area found by the projection of a horizontal plane through the livable floor area which is enclosed by the exterior walls of the building.

MOBILE HOME - A structure or type of manufactured home that is built on a permanent chassis and is designed to be used as a dwelling with or without a permanent foundation, includes plumbing, heating, cooling, and electrical systems, and is:

- a. transportable in one or more sections; and
- b. at least eight feet wide or 40 feet long or when erected has at least 320 square feet or if the structure was constructed prior to June 15, 1976, at least eight feet wide or 32 feet long; or
- c. any structure that meets all the requirements of this subdivision except for size and for which the manufacturer voluntarily files a certification required by the U.S. Department of Housing and Urban Development and complies with the standards established under Title 42 of the U.S. Code. [10 V.S.A. § 6201(1)]

MOBILE HOME PARK – Any parcel of land under single or common ownership or control which contains, or is designed, laid out or adapted to accommodate, more than two mobile homes. Nothing herein shall be construed to apply to premises used solely for storage or display of mobile homes. Mobile Home Park does not mean any parcel of land under the ownership of an agricultural employer who may provide up to four mobile homes used by full-time workers or employees of the agricultural employer as a benefit or condition of employment or any parcel of land used solely on a seasonal basis for vacation or recreational mobile homes. [10 V.S.A. § 6201(2)]

MODULAR (OR PREFABRICATED) HOUSING – A dwelling unit constructed on-site and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation.

NONCONFORMING LOTS OR PARCELS – Lots or parcels that do not conform to the present bylaws covering dimensional requirements but were in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a lot or parcel improperly authorized as a result of error by the Zoning Administrator. [24 V.S.A. § 4303(13)]

NONCONFORMING USE – Use of land that does not conform to the present bylaws but conform to all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a use improperly authorized as a result of error by the Zoning Administrator. [24 V.S.A. § 4303 (15)]

NONCONFORMING STRUCTURE – A structure or part of a structure that does not conform to the present bylaws but was in accordance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a structure improperly authorized as a result of error by the Zoning Administrator. [24 V.S.A. § 4303(14)]

PRIMITIVE CAMP – A structure or building on its own lot with interior plumbing consisting of no more than a sink with water that is used no more than three consecutive weeks per year and no more than a total of sixty days per year.

PRINCIPAL BUILDING - A building in which is conducted the main or principal use of the lot on which said building is located.

PUBLIC WATER, PUBLIC SEWER - Sewage disposal and water supply systems approved by the Town Board of Selectmen for municipal operation.

RECREATIONAL VEHICLE/TRAVEL TRAILER – A vehicular type portable structure without permanent foundation that can be towed, hauled or driven and is designed primarily as temporary living accommodation for recreational, camping and travel use. It includes but is not limited to travel trailers, truck campers, camping trailers and self-propelled motor homes.

RESIDENTIAL CARE HOME - A place, however named, excluding a licensed foster home,

which provides, for profit or otherwise, room, board and personal care to three or more residents unrelated to the home operator. [33 V.S.A. § 7102(10)]

RIGHT OF WAY - A strip of land that is granted, through an easement or other mechanism, for transportation purposes, such as for a trail, driveway, rail line or highway.

SALVAGE YARD – Any place of outdoor storage or deposit which is maintained, operated or used in connection with a business for storing, keeping, processing, buying or selling junk or as a scrap metal processing facility. Salvage yard also means any place of outdoor storage or deposit, not in connection with a business, which is maintained or used for storing or keeping four or more junk motor vehicles which are visible from any portion of a public highway. However, the term does not include a private garbage dump or sanitary landfill which is in compliance with section 2202 of Title 24 and the regulations of the secretary of human services. It does not mean a garage where wrecked or disabled motor vehicles are stored for less than 90 days for repairs.

24 V.S.A. § 2242 (7) "Salvage yard" means any place of outdoor storage or deposit for storing, keeping, processing, buying, or selling junk or as a scrap metal processing facility. "Salvage yard" also means any outdoor area used for operation of an automobile graveyard. It does not mean a garage where wrecked or disabled motor vehicles are stored for less than 90 days for inspection or repairs.

SETBACK - The distance between the nearest portion of a building, structure, or parking lot on a lot, to a street line, a property line or a roadway right of way. **Any Structure (large, small or temporary) must meet the required setbacks.**

STREET - A thoroughfare, road, highway or public way, open and available to public use. Street shall mean the entire width of the right of way.

STREET LINE - The edge of the street right of way

STRUCTURE OR BUILDING - An assembly of materials for occupancy or use including, but not limited to, a building, mobile home or trailer, wall, fence, billboard or sign.

STRUCTURE, LARGE - Any fence, building or assembly of materials for occupancy or use with a footprint greater than 120 square feet or over eight feet in height. All Large Structures are subject to setbacks and do require a permit.

STRUCTURE, SMALL - Any fence, building or assembly of materials for occupancy or use with a footprint less than or equal to 120 square feet and eight feet or less in height. Small Structures are subject to setbacks, but do not require a permit, except for fences exceeding four feet six inches in height which do require a permit.

STRUCTURE, TEMPORARY: Any structure placed or erected without permanent foundation or footings and which is removed within a two year period does not need a permit. If the structure remains for longer than two years a permit must then be applied for.

SUBDIVISION - Means the division of a lot, tract, or parcel of land into two or more lots, excluding lot line adjustment or other divisions of land for the purpose, whether immediate or future, of sale or of building development.

ARTICLE II: AMENDMENTS, INTERPRETATION, EFFECTIVE DATE

Section 2.1 Amendments

This Regulation may be amended according to the requirements and procedures established in § 4441 and § 4442 of the Development Act.

Section 2.2 Interpretation

In their interpretation and application, the provisions of this Regulation shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Except for § 4413(c) of the Development Act and where, in this Regulation, specifically provided to the contrary, it is not intended by this Regulation to repeal, abrogate, annul or in any way to impair or interfere with any rules, regulations or permits previously adopted or issued or which shall be adopted or issued pursuant to law relating to the use of buildings, structures, shelter or premises; nor is it intended by this Regulation, to interfere with or abrogate or annul any easements, covenants or other agreements between parties; provided, however that where this Regulation imposes a greater restriction upon the use of a building or premises, or requires larger open spaces than are imposed or required by any other statute, ordinance, rule, regulation or permit, or by any easement, or agreement, the provisions of this Regulation shall control.

Section 2.3 Effective Date

This Regulation shall take effect in accordance with the voting and other procedures contained in §4442 of the Development Act.

Section 2.4 Separability

Should any section or provision of this Regulation be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Regulation as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

ARTICLE III: ADMINISTRATION AND ENFORCEMENT

Section 3.1 Zoning Administrator

The Zoning Administrator is hereby appointed to administer the Zoning Regulation, as provided for in § 4448 of the Development Act. Said Officer shall literally enforce the provisions of the Regulation, and in so doing shall inspect land developments, maintain records of his actions, report periodically to the public and the governing body, and perform all other necessary tasks to carry out the provisions of the Regulation and the duties of his office.

Section 3.2 Zoning Permits

After the effective date of the Regulation, no land or building development may commence, nor shall any land or structure be used, extended in any way or be occupied, unless a Zoning Permit shall have been duly issued by the Zoning Administrator, as provided for in § 4449 of the Development Act.

3.2.1 Permit Issuance Requirements

The Zoning Administrator shall issue a zoning permit only if all of the following requirements are met:

- a. Zoning permit application form, as established by the Planning Commission, has been properly completed and submitted.
- b. The zoning permit fee, as annually established by the Board of Selectmen in accordance with §4440 of the Act, has been paid.
- c. Wastewater and potable water supply systems permits have been applied for and proof thereof submitted. [24 V.S.A. § 4414 (13)(A)]
- d. All applicable local reviews and approvals have been secured including Site Plan Approval, Conditional Use Approval, and the granting of a variance where required under the provisions of the Regulation.
- e. The stipulations of any applicable State agencies have been satisfied in accordance with Section 3.6 of the Regulation. [24 V.S.A. § 4424 (D)(i)]

3.2.2 Permit Issuance Timeframe

The Zoning Administrator shall within 30 days of submission of all necessary application, data and approvals, either issue or deny a zoning permit. If denied, the Zoning Administrator shall so notify the applicant in writing, stating his reasons therefore. If the zoning permit is approved, all activities authorized by its issuance shall be completed within two (2) years of its date of issue, or the zoning permit shall become null and void and reapplication to complete any activities shall be required. In accordance with § 4448 of the Development Act, if the Zoning Administrator fails to act within the 30-day period,

a permit shall be deemed issued on the 31st day.

Section 3.3 Penalties

The commencement or continuation of any development that does not meet the requirements of these regulations shall constitute a violation. All violations shall be pursued in accordance with the Development Act [§§ 4451, 4452]. Each day that a violation continues shall constitute a separate offense. The Zoning Administrator shall institute, in the name of Whitingham, any appropriate action, injunction or other proceeding to enforce the provisions of these regulations. All fines imposed and collected shall be paid over to the municipality.

Section 3.4 Board of Adjustment

There is hereby established a Board of Adjustment as provided for in § 4460(b) of the Development Act. The rules of procedure, nature of appeal, public notice, conditions for variance relief, and all other matters shall be established as provided in Subchapters 10, Appropriate Municipal Panels, and 11, Appeals, of the Development Act.

3.4.1 Appeals

a. An interested person, as defined in § 4465 of the Development Act, may appeal any act or decision of the Zoning Administrator to the Board of Adjustment within fifteen (15) days of such act or decision or act by filing a notice of appeal with the Secretary of the Board of Adjustment, or the Municipal Clerk, if no Secretary has been elected, and by filing a copy of the notice with the Zoning Administrator.

- (1) The Board shall hold a public hearing on a notice of appeal within 60 days of its filing, as required under the Act [§ 4468]. The Board shall give public notice of the hearing, and mail a copy of the hearing notice to the appellant not less than 15 days prior to the hearing date.
- (2) The Board may reject an appeal or request for reconsideration without hearing, and render a decision which shall include findings of fact within ten days of the filing of a notice of appeal, if the Board determines that the issues raised by the appellant have been decided in a earlier appeal or are based on substantially or materially the same facts by or on behalf of the appellant [§ 4470].
- (3) In accordance with the Act [§ 4468], all appeal hearings shall be open to the public and the rules of evidence applicable at these hearings shall be the same as the rules of evidence applicable in contested cases in hearings before administrative agencies as set forth in these statutes [3 V.S.A. § 810]. Any interested person or body may appear and be heard in person or be represented by an agent or attorney at the hearing. The hearing may be adjourned by the Board from time to time, provided that the date and place adjourned hearing shall be announced at the hearing.
- (4) A decision on appeal shall be rendered within 45 days after the final adjournment of the hearing, as required under the Act [§ 4464(b)]. The decision shall be sent by certified mail to the appellant within the 45 day period. Copies of the decision shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Zoning

Administrator and the Municipal Clerk as part of the public records of the municipality. Failure of the Board to issue a decision within this 45 day period shall be deemed approval and shall be effective on the 46th day.

b. A notice of appeal filed under this section shall be writing and include the following information, in accordance with the Act [§ 4466]:

- (1) the name and address of the appellant,
- (2) a brief description of the property with respect to which the appeal is taken,
- (3) a reference to applicable provisions of these regulations,
- (4) the relief requested by the appellant, including any request for a variance from one or more provisions of these regulations, and
- (5) the alleged grounds why such relief is believed proper under the circumstances.

3.4.2 Conditional Use Approval

No zoning permit may be issued by the Zoning Administrator for any use or structure that requires Conditional Use Approval, per Article V, District Regulations, in the Regulation until the Board of Adjustment grants such approval. In considering its action, the Board of Adjustment shall hold hearings, make findings and attach conditions if any, as provided for in § 4414(3) of the Development Act.

a. Application. Site plans in accordance with Section 3.5.1.a shall accompany the zoning permit application for all proposed conditional uses.

b. General Standards. The proposed Conditional Use shall not have an undue adverse effect on the following:

1. The capacity of existing or planned community facilities;
2. The character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the municipal plan.

3. Traffic on roads and highways in the vicinity;

4. Any bylaws and ordinances of the Town of Whitingham then in effect;

or

5. Utilization of renewable energy resources.

c. Approval. The Board shall act to approve or disapprove any requested conditional use within forty-five (45) days after the date of final public hearing; failure to do so within such period shall be deemed approval. The decision of the

Board shall be forwarded to the Zoning Administrator.

3.4.3 Waivers

When approval for a permit for a use has been denied, or is not possible using the requirements of this bylaw, an applicant may apply for a waiver to the Zoning Administrator in some circumstances. If a permit is denied, the applicant would have to appeal the denial to the Zoning Board of Adjustment for a waiver or a variance. If the matter has only to do with dimensional requirements (for example a smaller setback than is usually required), a waiver may be possible. For special and rare circumstances a variance may be needed and must meet a five-part test as outlined in section 3.4.4 (Variances).

In all districts, waivers may be granted without a hearing by the Zoning Administrator for:

1. Reductions in front or side setbacks as necessary to allow for disability access;
2. Reductions in side setbacks to allow for necessary life safety improvements.

In all districts, waivers may be granted after a hearing by the Zoning Board of Adjustment if any of the following three criteria are met:

1. The proposed development conforms to the existing development patterns of the district;
2. The proposed development will cluster development and more effectively preserve open land, forest land, or scenic vistas; or will result in permanently affordable housing units; or,
3. The waiver will not result in a greater than 50% decrease in any dimensional requirement.

Reserved Lot waiver

In all districts, a waiver from the minimum lot size shall be granted for the creation of a so-called “reserved lot” from permanently conserved land after a hearing by the Zoning Board of Adjustment if the following criteria are met:

1. The proposed “reserved lot” involves land subject to a permanent conservation easement held by a qualified land conservation organization; and
2. The proposed “reserved lot” would not otherwise meet the minimum lot size in the applicable district; and
3. The creation of the “reserved lot” furthers the purpose(s) of the conservation easement; and
4. The easement and creation of the new lot further Vermont state planning goals, the goals of the Town Plan, and the purpose(s) of the Zoning District(s) in which the land lies.

3.4.4 Variances

a. Variance Criteria. The Board of Adjustment shall hear and decide requests for variances as required by the Act [§ 4469(a)]. In granting a variance for a structure that is not primarily a renewable energy resource structure, the 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. The Board shall grant a variance and render a decision in favor of the appellant only if *all* the following facts are found, and the findings are specified in its written decision:

- (1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located;
- (2) That because of such physical circumstances or 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 therefore necessary to enable the reasonable use of the property;
- (3) That the unnecessary hardship has not been created by the appellant;
- (4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and
- (5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

b. Renewable Energy Structures. Where a variance is requested for a structure that is primarily a renewable energy resource structure, in accordance with the Act [§ 4469(b)], the Board may grant such variance only if *all* of the following facts are found in the affirmative and specified in its written decision:

- (1) It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with these regulations;
- (2) the hardship was not created by the appellant; and
- (3) 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
- (4) the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

3.5.1 Site Plan Approval

The Planning Commission shall review and decide upon site plan applications for all uses other than one and two-family dwellings in accordance with § 4416 of the Development Act. In reviewing site plans, the Planning Commission may impose appropriate conditions and safeguards with respect only to the adequacy of traffic access, of circulation and parking, and of landscaping and screening, and to protecting the utilization of renewable energy resources, and other matters specified in the bylaw.

a. Application. The applicant shall submit two (2) sets of site plan maps drawn to scale and supporting data to the Planning Commission which shall include the following information presented in drawn form and written text:

1. Name and address of owner of property, or applicant, if different than owner, and of owners of record of adjoining lands; name and address of person or firm preparing map;
2. Property lines, acreage figures, scale of map, north arrow and date;
3. Existing features, including structures, easements and rights-of-way;
4. Proposed site grading and location of structures, sewage disposal facilities, water supply and land use areas;
5. Proposed layout of roads, driveways, walkways, traffic circulation and parking spaces;
6. Existing trees, shrubs and other vegetation to be preserved on the site;
7. Proposed landscaping and screening.
8. Any additional information necessary for adequate understanding of the project.

b. Review Criteria. The Planning Commission shall take into consideration the following criteria in reviewing the proposed site plans:

1. Maximum safety of traffic between the site and streets;
2. Adequacy of traffic circulation within the project, parking and loading facilities;
3. Adequacy of landscaping, screening and setbacks in achieving maximum compatibility and protection of adjacent property;

4. Protection of the utilization of renewable energy resources.
5. Exterior lighting, all exterior lighting shall be installed in such a manner as to conceal light sources and reflector surfaces from view beyond the perimeter of the area to be illuminated.
6. Size, location and design of signs.
7. General Performance Standards as provided in Section 6.7

c. Approval. The Planning Commission shall act to approve or disapprove any such site plan within forty-five (45) days after the date upon which it receives a complete and acceptable proposed site plan; failure to act within such period shall be deemed approval. The decision of the Planning Commission shall be forwarded to the Zoning Administrator.

3.5.2 Planned Unit Development (PUD)

The Planning Commission shall review and decide upon applications for planned unit development in accordance with Section 4417 of the Development Act.

In specified areas and as provided in the Town Plan, the modification of the Zoning Regulation by the Planning Commission may be permitted simultaneously with the approval of a subdivision plat, subject to the conditions set forth below. The purpose of such authorization shall be to enable and 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 economical provision of streets and utilities, and to preserve the natural and scenic qualities of the open lands of this state. The conditions referred to above are as follows:

- a. The submission of a site plan to the Planning Commission which meets the requirements of Section 3.5.1.a Site Plan Approval Application, and shows the existing and proposed location, height and spacing of buildings, open spaces and their landscaping, streets, driveways and off-street parking spaces, historic and cultural sites, and all other physical features including: bodies of water, wetlands, flood plains, prime agricultural soils, significant wildlife habitats, significant scenic and natural areas, and slopes over 15%, accompanied by a statement setting forth the nature of all proposed modifications, changes or supplementations of the existing Zoning Regulation;
- b. The permitted number of dwelling units shall in no case exceed the number which could be permitted in the Planning Commission's judgement, if the land were subdivided into lots in conformance with the Zoning Regulation for the districts in which such land is situated;
- c. The dwelling units permitted may, at the discretion of the Planning

Commission, be of varied types including one-family, two-family or multi-family construction. Permitted uses in a planned unit development may include and shall be limited to dwelling units in detached, semi-detached, or multi-storied structures, or any combination thereof, any nonresidential use, public and private educational facilities, and industrial uses and buildings.

d. If the application of this procedure results in lands available for park, recreation, open space or other municipal purposes, the Planning Commission shall make as a condition of approval for the project, the establishment of an open space easement, conservation restriction, or homeowner's association or similar provision or instrument for this portion of the tract as it deems necessary to assure the preservation of such lands for their intended purposes.

The open space provision or instrument shall be legally enforceable by the Town or by a designated land trust and shall run with the land. Further, the Planning Commission may impose conditions as to the ownership, uses and nature of such lands to meet the purposes of this section;

e. Any modification of the Zoning Regulation approved under this section shall be specifically set forth in terms of standards and criteria for the design, bulk and spacing of buildings and the sizes of lots and open spaces which shall be required, and these shall be noted or appended to the plat.

3.5.3 Rights-of-way

No land development may be permitted which does not have adequate means of access, either frontage on a maintained public road (Class 1, 2 or 3) or, with the approval of the planning commission granted in accordance with section 3.5.1, Site Plan Approval, of the bylaw, access by means of a permanent easement or right of way to such a public road, or to public waters. Access easements or rights-of-way shall not be less than 40 feet in width. If serving more than two lots or uses, the planning commission may require a right-of-way up to 50 feet in width to ensure public safety and orderly development. Access on a state highway may be permitted by Vermont Agency of Transportation.

3.5.4 Subdivision

A subdivision of one or more lots requires a permit from the zoning administrator and must meet all provisions of this bylaw and state law.

3.5.5 Lot Line Adjustment

Lot Line Adjustment is method of adjusting boundaries of adjacent lots without creating an additional lot. Lot line adjustments shall be issued a Zoning Permit by the Zoning Administrator provided the following specified conditions are met:

- (A) each lot being adjusted meets one or more of the following standards:
 - (i) a lot being reduced in size is being reduced by no more than two percent;
 - (ii) a lot is increased in size;

(iii) the boundary line being adjusted is located, after adjustment, at least 500 feet from the footprint of the building or structure on an improved lot;

- (B) a diagram is submitted to the Zoning Administrator that shows the existing and revised lot boundaries; and
- (C) a copy of the diagram is recorded and indexed in the land records for the municipality by the landowner.

Section 3.6 Referrals to State Agency

For any use or structure that must be referred to a state agency for review, no zoning permit shall be issued until a response has been received from the state, or the expiration of 30 days following the submission of the application to the state.

Section 3.7 Joint Hearings

The Board of Adjustment and Planning Commission may hold joint public hearings where both boards must act on approval of the same project. The Planning Commission shall present its decision to the Zoning Administrator. The Board of Adjustment shall also present its decision to the Zoning Administrator.

ARTICLE IV: ESTABLISHMENT OF ZONING DISTRICTS

Section 4.1 List of Districts

Whitingham is hereby divided into the following districts as shown on the Town Zoning Map and described below. The land use districts, defined below and shown on the Zoning map, are a guide for the growth and development in the Town of Whitingham. In order to encourage a pattern of residential, working landscape, commercial, industrial and recreational development that conforms to the goals and policies outlined in the Town Plan, the following land use classification has been developed:

- Conservation
- Rural Lands
- Rural Residential
- Villages

4.1.1 Conservation

Conservation areas are large, essentially undeveloped areas with limited access to an improved public road and to necessary facilities and services. They are predominantly forested and are important aquifer recharge areas and contain significant wildlife habitat. The district includes TransCanada and its successors' lands which are maintained for the purpose of power generation, reservoir and watershed protection, and public recreation under license granted by the Federal Energy Regulatory Commission; State of Vermont lands which are managed by the Department of Fish and Wildlife including Atherton Meadows (an 800 acre wildlife management area) and Lake Sadawga Access Area and Dam Site; Town Hill and Lake Whitingham Boat Launch.

The purpose of Conservation districts is to provide areas for forestry, low-intensity recreation and open space. These areas should be settled only at very low densities.

4.1.2 Rural Lands

Rural Lands are comprised of Whitingham's working lands and consists of farm, field and forestlands that are being used in a manner that provides an economic benefit. Many of these working landscapes provide a scenic backdrop for the community and also serve to maintain contiguous tracts of open space. Despite a decline in agriculture, prime agricultural soils are nevertheless valuable and the better areas need protection. Development should be carefully planned to ensure that it does not prevent or infringe upon existing or potentially productive working lands and does not generate excessive municipal service demands such as road maintenance and the provision of fire service.

The purpose of Rural Lands districts is to provide areas for agriculture, forestry, low-intensity recreation and open space. Residential development should only occur at low densities.

4.1.3 Rural Residential

The Rural Residential districts are those areas which are already committed to moderate density rural residential development, are easily accessible from the existing road system, or which appear capable to be developed at a low to moderate density. The development of rural areas should not damage the natural environment and should not ignore the physical limitations to development. Agriculture, forestry, open space and recreational uses should be maintained and encouraged. Road construction should be carefully planned to respect the natural environment and to promote the clustering of houses on appropriate sites.

The purpose of Rural Residential districts is to provide areas to accommodate a major proportion of the growth of year-round residences and vacation homes and associated uses.

4.1.4 Villages

This class includes all lands within the villages of Jacksonville (incorporated boundaries) and Whitingham where a concentration of residential, commercial, industrial, and governmental uses are served by roads, sewer, and power. Small, light industrial uses may be accommodated, but they should be carefully planned to minimize undesirable impact on village character.

The purpose of the Village districts is to provide areas for appropriate village uses, including residential and commercial uses, public buildings and public facilities, and associated services.

Section 4.2 Zoning Map

The location and boundaries of said districts are established as shown on the attached Zoning Map. The Zoning Map is hereby made a part of this Regulation, together with all future notations, references and amendments.

Section 4.3 Interpretation of Zoning District Boundaries

If uncertainty exists to the boundary of any district shown on the Zoning Map, the Planning Commission shall determine the location of such boundary. Where a zoning district boundary line divides any lot of record, the regulations for the less restricted part of such lot may be extended not further than 100' into the more restricted part of such lot.

Section 4.4 Application of Regulations

The Application of this Regulation is subject to Section 4411 and Section 4413 of the Development Act. Except as hereinafter provided, the following shall also apply:

4.4.1 Applicability

No building shall be erected, moved, altered, rebuilt or enlarged nor shall any land or building be used, designed or arranged to be used for any purpose or in any manner except in conformity with all regulations, requirements, and restrictions specified in this Regulation for the district in which such building or land is located.

4.4.2 Grandfathering

Nothing contained in this Regulation shall require any change in plans, construction, or designated use of a building complying with local laws in force prior to this Regulation, if a prior building permit shall have been duly issued and the entire building shall have been completed in accordance with such plans within one year from the effective date of this Regulation.

4.4.3 Prohibited Uses

Any use not permitted by this Regulation shall be deemed to be prohibited.

4.4.4 Uses Not Provided For

Provision is made for unanticipated future uses. In order for a use to obtain a permit under this provision, it must meet the following standards and criteria:

- a. The use must not be specified as permitted or conditional in any district.
- b. The Zoning Board of Adjustment shall find that:
 - i. The use is of the same character as those permitted (including as conditional uses) within the district. This excludes any use existing illegally or as a non-conforming use. The Board shall consider all uses within five hundred (500) feet of the proposed use site, as well as description of similar and dissimilar characteristics that include intensity of lot usage, hours, noise level, amount of traffic number of employees, size of structure and other distinguishing factors.
 - ii. The use will not be detrimental to the other uses within the district or to the adjoining land uses. In making a decision under this criterion, the Board shall consider whether the proposed use would attract similar ones and, if so, whether this would be detrimental to the planned development of the area as set forth under the district and Town Plan.
- c. In making its findings, the Board shall state the permitted use most similar to the proposed use. The proposed use shall then meet all standards in these Regulations for the similar permitted use, including site plan review, parking and landscaping.
- d. Upon positive findings under b.i. and b.ii. above, the proposed use shall be considered by the Board for a conditional use permit. Upon positive findings by the Board and approval for all necessary state permits, a conditional use permit may be issued.

ARTICLE V: DISTRICT REGULATIONS

5.1 District Uses and Dimensional Requirements

5.1.1 Conservation Districts

Conservation District - Permitted Uses

- Dwelling, single-family - not to exceed one dwelling on each lot
- Dwelling, two-family - not to exceed one dwelling on each lot
- Accessory apartment (as defined in 24 V.S.A. § 4412(1)(e))
- Accessory use or structure to a permitted use, such as garden house, private garage, tool house, playhouse, wading pool or swimming pool incidental to the residential use of the premises and not operated for gain.
- Agriculture
- Childcare (as defined in 24 V.S.A. § 4412(5))
- Forestry
- Home Occupation (as defined in 24 V.S.A. § 4412(4))
- On-premise signs
- Ponds and dams – manmade
- Primitive Camp
- Residential care facilities (fewer than 8 people)

Conservation District - Conditional Uses

Subject to Conditional Use Approval by the Board of Adjustment in accordance with the provisions of Article III, Section 3.4.2 and the conditions set forth below:

- Accessory use or structure to a conditional use
- Annual membership clubs providing outdoor recreational facilities such as private playgrounds, golf clubs, swimming pools, tennis courts, fishing and hunting preserves
- Bed and Breakfast
- Bridges
- Buildings, structures, and uses owned and operated by the municipality.
- Cemetery
- Home Industry
- Kennel - Commercial dog or veterinary kennel, provided that no kennel, runway or exercise pen shall be located within 300 feet of any lot line.
- Planned Unit development
- Recreation, limited outdoor
- Residential care facilities, group homes and daycare (fewer than 8 people)
- Youth camps. Associated recreation facilities are permitted for the use of tenants, boarders, roomers, or guests; including athletic fields, tennis and handball courts and locker rooms, etc.; and indoor facilities such as recreational halls.

Conservation District Dimensional Requirements

- Lot Size--Minimum 27 acres
- Frontage--(Street)--Minimum 300 feet
- Frontage--(Lake)--Minimum 300 feet
- Setback--Minimum 40 feet from street line, 50 feet from next property line, 125 feet from Lake
- Height--Maximum 35 feet
- Maximum lot coverage--10%

5.1.2 Rural Lands Districts

Rural Lands District - Permitted Uses

- Dwelling, single-family - not to exceed one dwelling on each lot
- Dwelling, two-family - not to exceed one dwelling on each lot
- Accessory apartment (as defined in 24 V.S.A. § 4412(1)(e))
- Accessory use or structure to a permitted use such as garden house, private garage, tool house, playhouse, wading pool or swimming pool incidental to the residential use of the premises and not operated for gain.
- Agriculture
- Bed and Breakfast
- Buildings, structures, and uses owned and operated by the municipality.
- Childcare (as defined in 24 V.S.A. § 4412(5))
- Forestry
- Home Occupation (as defined in 24 V.S.A. § 4412(4))
- On-premise signs
- Primitive Camp
- Ponds and dams – manmade
- Residential care facilities, group homes and daycare (fewer than 8 people)

Rural Lands District - Conditional Uses

Subject to Conditional Use Approval by the Board of Adjustment in accordance with the provisions of Article III, Section 3.4.2 and the conditions set forth below:

- Accessory use or structure to a conditional use
- Airplane landing strip/Helicopter landing pad
- Annual membership clubs providing outdoor recreational facilities such as private playgrounds, golf clubs, swimming pools, tennis courts, fishing and hunting preserves
- Bridges
- Campground
- Cemetery
- Earth and mineral extraction
- Home Industry
- Kennel - Commercial dog or veterinary kennel, provided that no kennel, runway or exercise pen shall be located within 300 feet of any lot line.

- Recreation, limited outdoor
- Recreation, outdoor
- Youth camps. Associated recreation facilities are permitted for the use of tenants, boarders, roomers, or guests; including athletic fields, tennis and handball courts and locker rooms, etc.; and indoor facilities such as recreational halls.

Rural Lands District Dimensional Requirements

- Lot Size—Minimum 3 acres
- Frontage--(Street)--Minimum 150 feet
- Frontage--(Lake)--Minimum 300 feet
- Setback--Minimum 40 feet from street line, 40 feet from next property line, 125 feet from Lake
- Height--Maximum 35 feet
- Maximum lot coverage--10%

5.1.3 Rural Residential Districts

Rural Residential District - Permitted Uses

- Dwelling, single-family - not to exceed one dwelling on each lot
- Dwelling, two-family - not to exceed one dwelling on each lot
- Accessory apartment (as defined in 24 V.S.A. § 4412(1)(e))
- Accessory use or structure to a permitted use, such as garden house, private garage, tool house, playhouse, wading pool or swimming pool incidental to the residential use of the premises and not operated for gain.
- Agriculture
- Buildings, structures, and uses owned and operated by the municipality.
- Bed and Breakfast
- Childcare (as defined in 24 V.S.A. § 4412(5))
- Forestry
- Home Occupation (as defined in 24 V.S.A. § 4412(4))
- Professional or personal studio or office
- On-premise signs
- Ponds and dams - manmade
- Residential care facilities, group homes and daycare (fewer than 8 people)

Rural Residential District - Conditional Uses

Subject to Conditional Use Approval by the Board of Adjustment in accordance with the provisions of Article III, Section 3.4.2 and the conditions set forth below:

- Accessory use or structure to a conditional use
- Airplane landing strip/Helicopter landing pad
- Annual membership clubs providing outdoor recreational facilities such as private playgrounds, golf clubs, swimming pools, tennis courts, fishing and hunting preserves.
- Bridges

- Cemetery
- Convenience retail stores, such as drug stores, grocery stores, restaurants, variety stores or combinations thereof .
- Dwelling, multi-family - construction of a three- or more family structure or the conversion of an existing structure from a one- or two-family dwelling to a three- or more family dwelling.
- Earth and mineral extraction
- Farm/garden supply
- Home Industry
- Kennel - Commercial dog or veterinary kennel, provided that no kennel, runway or exercise pen shall be located within 300 feet of any lot line.
- Motel, Hotel or Inn
- Philanthropic or charitable institutions, museums, hospitals or sanitariums for general medical care.
- Places of worship including parish houses.
- Recreation facilities, indoor or outdoor
- Schools, colleges, and other educational institutions, certified by the Vermont Department of Education.
- Youth camps. Associated recreation facilities are permitted for the use of tenants, boarders, roomers, or guests; including athletic fields, tennis and handball courts and locker rooms, etc.; and indoor facilities such as recreational halls.

Rural Residential District Dimensional Requirements

- Lot Size--Minimum 3 acre
- Frontage--(Street)--Minimum 150 feet
- Frontage--(Lake)--Minimum 240 feet
- Setback--Minimum 40 feet from street line, 25 feet from next property line, 125 feet from Lake
- Height--Maximum 35 feet
- Maximum lot coverage--10%

5.1.4 Village Districts

Village District - Permitted Uses

- Dwelling, single-family - not to exceed one dwelling on each lot
- Dwelling, two-family - not to exceed one dwelling on each lot
- Accessory apartment (as defined in 24 V.S.A. § 4412(1)(e))
- Accessory use or structure to a permitted use, such as garden house, private garage, tool house, playhouse, wading pool or swimming pool incidental to the residential use of the premises and not operated for gain.
- Agriculture
- Bed and Breakfast
- Boarding House

- Buildings, structures, and uses owned and operated by the municipality
- Childcare (as defined in 24 V.S.A. § 4412(5))
- Farm/garden supply
- Financial institutions
- Forestry
- Home Occupation (as defined in 24 V.S.A. § 4412(4))
- Office building
- On-premise signs
- Ponds and dams - manmade
- Professional or personal business office or studio
- Repair service
- Residential care facilities, group homes and daycare (fewer than 8 people)
- Retail use
- Any use permitted in Section 5.1.3 (Rural Residential Districts)

Village District - Conditional Uses

Subject to Conditional Use Approval by the Board of Adjustment in accordance with the provisions of Article III, Section 3.4.2 and the conditions set forth below:

- Accessory use or structure to a conditional use
- Automotive service station
- Bridges
- Building supply and lumber yards, bowling alleys, drive-in restaurants, movie houses, drive-in theaters, animal hospitals, and other similar establishments designed primarily to provide drive-in facilities.
- Cemetery
- Childcare (as defined in 24 V.S.A. § 4412(5))
- Convenience retail stores, such as drug stores, grocery stores, restaurants, variety stores or combinations thereof.
- Dwelling, multi-family - construction of a three- or more family structure or the conversion of an existing structure from a one- or two-family dwelling to a three- or more family dwelling.
- Entertainment/cultural facility
- Excavation contractor yard
- Garage, repair
- Governmental buildings
- Health care facility
- Home Industry
- Light Industrial Plants
- Mobile Home Park
- Motel, Hotel, or Inn
- Motor vehicle, trailer, boat or farm equipment sales or service and motor vehicle service stations
- Multi-use Building
- Parking (not associated with other existing or proposed uses on a lot)

- Personal service stores such as, but not limited to, barber shops, beauty parlors and tailors.
- Post office
- Produce stand - not grown on premises
- Public assembly facility
- Public utility facility
- Recreation, indoor
- Recreation, limited outdoor
- Recreation, outdoor
- Residential care facility
- Residential childcare facility
- Residential Apartments of four units or less
- Restaurant
- School facility, boarding
- Veterinary office
- Warehouse

Village District - Commercial Dimensional Requirements

- Lot Size--Minimum 1/4 acre
- Frontage--(Street)--Minimum 100 feet
- Lake Frontage – Minimum 240 feet
- Setback--Minimum 20 feet from street line, 10 feet from next property line
- Height--Maximum 35 feet
- Maximum lot coverage--40%

Additional Village District standards:

- i. Building size - Buildings shall have a maximum building footprint not to exceed 10,000 square feet.
- ii. Building design - Buildings shall be designed to be compatible with New England style architecture.
- iii. Building materials - Buildings shall be sided with wood, brick, stone or sided with aluminum, cement, or vinyl clapboard style siding.
- iv. Exterior Lighting - Lighting shall be designed to illuminate structures and exterior areas only at levels necessary to ensure safety and security of persons and property; so that the light source (lamp) is not directly visible from public roads, adjacent residences or distant vantage points; and so that the source light does not project above the lamp. All lighting fixtures serving parking areas shall be cut-off fixtures, shielded with down lighting only.
- v. Site Design - Planned Unit Development's (PUD's) with buildings grouped together in a village design with shared parking, open space, and integrated street tree and landscape design are encouraged.
- vi. Parking - All parking will be located in the side and rear yards.

Village District - Residential Dimensional Requirements

- Lot Size--Minimum 7,200 square feet
- Frontage--(Street)--Minimum 60 feet
- Frontage--(Lake)--Minimum 240 feet
- Setback--Minimum 20 feet from street line, 10 feet from next property line
- Height--Maximum 35 feet
- Maximum lot coverage--40%

ARTICLE VI: GENERAL REGULATIONS

Section 6.1 Miscellaneous Statutory Requirements

In accordance with the Development Act, Sections 4412, Required Provisions, and 4413, Limitations, respectively, the following shall apply:

6.1.1 Existing Small Lots

Any lot in individual and separate and non-affiliated ownership from surrounding properties in existence on the effective date of said Regulations may be developed for the purposes permitted in the district in which it is located, even though not conforming to minimum lot size requirements if such lot is not less than one-eighth acre in area with a minimum width or depth dimension of forty feet.

- a. If such lot subsequently comes under common ownership with one or more contiguous lots, the lot shall be deemed merged with the contiguous lot for purposes of this chapter. However, such lot shall not be deemed merged and may be separately conveyed, if:
 - (1) the lots are conveyed in their preexisting, nonconforming configuration; and
 - (2) on the effective date of any zoning regulations, each lot had been developed with a water supply and wastewater disposal system; and
 - (3) at the time of transfer, each water supply and wastewater system is functioning in an acceptable manner; and
 - (4) the deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems in case a wastewater system fails, which means the system functions in a manner:
 - (i) that allows wastewater to be exposed to the open air, pool on the surface of the ground, discharge directly to surface water, or back up into a building or structure unless the approved design of the system specifically requires the system to function in such a manner;
 - (ii) so that a potable water supply is contaminated or rendered not potable;
 - (iii) that presents a threat to human health; or
 - (iv) that presents a serious threat to the environment.
- b. If, subsequent to separate conveyance, as authorized under subdivision a. of this section, a wastewater system fails, the owner shall be required to obtain from the secretary of natural resources a wastewater permit as required under the subdivision regulations or a certification that the wastewater system has been modified or replaced, with the result that it no longer constitutes a failed system.

6.1.2 Required Frontage on, or Access to, Public Roads or Public Waters

No land development may be permitted on lots which do not either have frontage on a public road or public waters, or with the approval of the Planning Commission, access to

such a road or waters by a permanent easement or right-of-way at least forty feet in width.

6.1.3 Protection of Home Occupations

No regulation herein is intended to infringe upon the right of any resident to use a minor portion of a dwelling for an occupation which is customary in residential areas and which does not change the character thereof. (See Section 6.3, Home Occupations/Industries)

6.1.4 Equal treatment of housing

a. This zoning regulation shall not 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. This zoning regulation shall not have the effect of excluding from the municipality housing to meet the needs of the population as determined in Section 4382(a)(10) of this title.

c. This zoning regulation is not intended to prevent the establishment of mobile home parks pursuant to Chapter 153 of Title 10.

d. This zoning regulation shall not have the effect of excluding multiunit or multifamily dwellings from the municipality

e. This zoning regulation shall not have the effect of excluding as a permitted use one accessory dwelling unit that is located within or appurtenant to an owner-occupied single-family dwelling. An accessory dwelling unit means an efficiency or one-bedroom apartment that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:

- i. the property has sufficient wastewater capacity;
- ii. the unit does not exceed 30 percent of the total habitable floor area of the single-family dwelling;
- iii. applicable setback, coverage, and parking requirements specified in the bylaws are met.

6.1.5 Non-Conforming Structures and Nonconforming Uses

The following provisions shall apply to all structures and uses existing on the effective date of this Regulation which do not conform to the requirements set forth in this Regulation and to all structures and uses that in the future do not conform by reason of any subsequent amendment to this Regulation.

Any non-conforming use of structures or open land, except those specified below, may be continued indefinitely, but:

- a. Shall not be moved, enlarged, altered, extended, reconstructed or restored (except as provided below), nor shall any external evidence of such use be

increased by any means whatsoever.

- b. Shall not be changed to another non-conforming use without approval by the Planning Commission, and then only to a use that, in the opinion of the Commission, is of the same or of a more restricted nature.
- c. Shall not be re-established if such use has been discontinued for any reason for a period of six months, or has been changed to, or replaced by, a conforming use. Intent to resume a non-conforming use shall not confer the right to do so.
- d. Shall not be restored for other than a conforming use after damage from any cause, unless the non-conforming use is reinstated within one year of such damage; if the restoration of such building is not completed within the said one year period, the non-conforming use of such structure shall be deemed to have been discontinued, unless such non-conforming use is carried on without interruption in the undamaged portion of such structure.

6.1.6 Limitations

The following uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use:

- a. State or community owned and operated institutions and facilities.
- b. Public and private schools and other educational institutions certified by the State Department of Education.
- c. Places of worship, convents, and parish houses.
- d. Public and private hospitals.
- e. Regional solid waste management facilities certified under 10 VSA Chapter 159
- f. Hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. § 6606a.

6.1.7 Residential Care or Group Home

A state licensed or registered residential care or group home for not more than eight persons who have a handicap or disability, shall be considered by right to constitute a permitted single family residential use of property, except that no such home shall be considered a permitted use if it is located within 1,000 feet of another existing or permitted home.

6.1.8 Family Child Care Home or Facility

A “family child care home or facility” as used in this zoning regulation means a home or facility where the owner or operator is to be licensed or registered by the state for child care. A family childcare home serving six or fewer children shall be considered to constitute a permitted single-family residential use of property. A family child care

facility serving more than six full-time and four part-time children shall be permitted subject to Site Plan Review.

6.1.9 Permissible Heights on Structures

Limitations on permissible heights of structures shall not apply to antenna structures, to windmills with blades less than 20 feet in diameter or to rooftop solar collectors less than 10 feet high which are mounted on complying structures.

6.1.10 Regulation under State Statutes

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.

6.1.11 Agricultural and Silvicultural Practices

This zoning regulation shall not regulate accepted agricultural and silvicultural practices, including the construction of farm structures, as those practices are defined by the secretary of agriculture, food and markets or the commissioner of forests, parks and recreation, respectively, under 10 V.S.A. §§ 1021(f) and 1259(f) and 6 V.S.A. § 4810.

(1) For purposes of this section, "farm structure" means a building, enclosure, or fence for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with accepted agricultural or farming practices, including a silo, as "farming" is defined in 10 V.S.A. § 6001(22), but excludes a dwelling for human habitation.

(2) A person shall notify a municipality of the intent to build a farm structure and shall abide by setbacks approved by the secretary of agriculture, food and markets. No municipal permit for a farm structure shall be required.

(3) A municipality may enact a bylaw that imposes forest management practices resulting in a change in a forest management plan for land enrolled in the use value appraisal program pursuant to 32 V.S.A. chapter 124 only to the extent that those changes are silviculturally sound, as determined by the commissioner of forests, parks and recreation, and protect specific natural, conservation, aesthetic, or wildlife features in properly designated zoning districts. These changes also must be compatible with 32 V.S.A. § 3755.

Section 6.2 Outdoor Advertising Signs

6.2.1 Definition

A "Sign" is any structure, display, device or representation which is designed or used to advertise or call attention to any thing, person, business, activity or place and is visible from any road or other right-of-way. Whenever dimensions of a sign are specified they shall include panels and frames and exclude supporting structures and the building to which a sign may be attached.

6.2.2 Required Permits

On-premise outdoor advertising signs are permitted provided they are located on the same premises and that the purpose is to advertise a product, service, commercial

establishment, or goods made or manufactured in Whitingham. A zoning permit is required before an on-premise sign is erected, constructed, replaced, moved or enlarged. The maintenance of signs does not require a permit. Off-premise signs which are erected and maintained by the State (Official Business Directional Sign) are only permitted pursuant to 10 VSA Chapter 14.

6.2.3 Signs Requiring a Permit

All professional, commercial, business, or other non-residential use signs except as exempted in 6.2.7.

6.2.4 Number of Signs Allowed

- a. A business may display no more than two signs. In no case may the two signs be in excess of forty (40) square feet of signing per business.
- b. One sign per lot identifying any permitted non-residential use, such as a home occupation.

6.2.5 Size of Signs

The size of a sign in square feet shall be 50% or less than its distance in linear feet from the center of the traveled road. However, no sign shall be larger than 32 square feet in size. The square footage reflects only one side of a two sided sign. (For example, a sign that is 30 feet from the road centerline shall not be more than 15 square feet in size on each side. A sign 50 feet from road centerline shall not be more than 25 square feet in size on each side.)

Size Limitations for Signs Requiring Permits

TYPE OF BUSINESS	Maximum area in Square Feet
a. Individual Enterprise not in a Multi-Business Center	
1. Individual Business	32*
2. Home Occupation, Private Club, Non-Business Use	9
3. Home Occupation in the Village/Commercial Zone	16
b. Multi-Business Centers	
1. Total Combined Area of Multi-Business Center Sign	100
2. Center Name Sign	32*

TYPE OF BUSINESS	Maximum area in Square Feet
3. Each Individual Business Sign on Multi-Business Center Sign	8
4. Each Individual Business Sign on Building	32*

*per the formula in 6.2.5

6.2.6 Standards for On-Premise Signs

a. No sign shall be extended more than twenty (20) feet above ground level or be attached to the roof of a building.

b. All signs must be located on the owner's or occupant's real property to which the public is invited and on which the business, profession, commodity, service or entertainment to which the sign directs attention is carried on, sold, or offered. Signs shall be erected outside of a public road right-of way.

c. The sign must have for its purpose (1) the identification of the activity, or its products or services or (2) the sale or lease of the property on which the sign is located, rather than the purpose of general advertising.

d. The sign must not interfere with, imitate, or resemble any official traffic control sign, signal, or device, or attempt to direct the movement of traffic.

e. The sign or its lighting must not constitute a traffic hazard. The sign or its lighting must not obstruct the view of a driver of a motor vehicle from an official traffic control sign, or approaching or merging traffic.

f. Any sign larger than six square feet must not be internally illuminated or illuminated by neon or argon, or similar types of lighting. Illuminated signs shall not be lighted between the hours of 10 PM and 6 AM unless the premises are open for business.

g. The sign must not be illuminated by any flashing intermittent or moving lights, or must not move or have any animated or moving parts, except for an official traffic control sign.

h. The sign must not be located or painted or drawn upon an unregistered motor vehicle, trailer, or other conveyance parked so as to serve as an on-premise sign.

i. All signs shall be in good repair, readable, and securely affixed.

j. The sign must not be portable.

6.2.7 Exemptions (The following do not require a permit)

a. One small sign not exceeding four (4) square feet displayed for the direction, instruction, or convenience of the public (for example, rest rooms, bus stops, entrance, exit, parking).

b. Signs showing the meeting time and place of services or meetings of places of worship and civic organizations in the Town.

c. Official traffic control signs.

d. Signs of a duly constituted governmental body including traffic warnings and similar regulatory devices.

e. One advertising flag or pennant on premises.

f. Temporary real estate signs on premises.

g. A moveable sign not exceeding six (6) square feet to be displayed during hours of operation to designate information concerning the current status of the business such as: now serving, today's special, open, etc.

h. A sign not exceeding two (2) square feet with house name or owner/occupant name.

i. Official Business Directional Signs erected by the State of Vermont.

j. Signs restricting trespassing and restricting hunting and/or fishing on posted lands.

k. Signage not exceeding four (4) square feet advertising agricultural products.

l. Political signs for periods not over 21 days.

m. One temporary sign to be maintained for not more than four (4) weeks announcing an auction, fair, campaign, drive, or event of a civic, philanthropic or religious organization.

Section 6.3 Home Occupations/Home Industries

A home occupation or industry is an activity conducted in a dwelling unit or accessory building for gainful employment involving manufacture, provision, or sale of goods and/or services. By definition, a home occupation or industry is secondary to the residential use of the property. The Zoning Administrator may issue a permit for a home occupation in any district if it meets the

standards of Section 6.3.1: The Zoning Board of Adjustment may authorize a home industry as a conditional use with Site Plan Approval in any district per Section 6.3.2.

6.3.1 Home Occupations

This bylaw may not infringe upon the right of any resident to use a minor portion of a dwelling unit for an occupation that is customary in residential areas and that does not have an undue adverse effect upon the character of the residential area in which the dwelling is located. [24 V.S.A. § 4412 (4)]

6.3.2 Home Industries

The Zoning Board of Adjustment may authorize, as a conditional use with Site Plan Approval, in any district a home industry, such as, but not limited to, an antique shop, craft shop or studio, custom service shop, teaching, or similar activities if such use complies with all the requirements of this section:

- The home business shall be carried on by members of the family living on the property.
- Up to four employees who are not part of the family are permitted.
- The home business shall be carried on within the principal or existing accessory structures of the residence.
- Signs are permitted pursuant to Section 6.2.
- Exterior storage of materials shall be permitted only if in character with the neighborhood.
- Objectionable circumstances such as noise, vibration, smoke, dust, electrical disturbance, odors, heat or glare shall not be permitted.
- No traffic shall be generated by such home industry in greater volumes than would normally be expected in the neighborhood.
- Parking shall be provided off-street

Section 6.4 Landscaping and Screening Requirements

Under Site Plan Approval and Planned Residential/Planned Unit Development Approval, the Planning Commission is responsible for determining the adequacy of landscaping and screening associated with site development. The Zoning Board of Adjustment is also responsible for requiring suitable landscaping and screening when reviewing projects under Conditional Use Approval. The following standards shall apply:

- a. Landscaping and screening shall take the form of shade trees, deciduous shrubs,

- evergreens, well-kept grass areas, natural wooded areas, or ground covers.
- b. Plantings shall be of a type and size that serves to adequately buffer or screen land uses.
 - c. Where possible, plantings shall be plant species that are suitable to all seasons.
 - d. In determining the amount and type of plantings to be required, the following shall be taken into account:
 - 1. Existing trees, shrubs, evergreens and other vegetation to be preserved on the site.
 - 2. The visibility of incompatible or unsightly areas from roads and/or adjacent properties.
 - 3. The land form and overall landscaping plan for the site.
 - 4. Other factors which may affect the safety and appearance of the site.

Section 6.5 Fences

6.5.1 Permits required

Zoning permits are required for walls or fences over four feet six inches (4.5') high except those located on an operating farm.

6.5.2 Height limit for Zoning Administrator approval

Walls or fences with a height greater than four feet six inches (4.5 feet) and no more than six feet six inches (6.5 feet), which do not interfere with corner visibility, and which meet the requirements of this bylaw shall be approved by the Zoning Administrator.

6.5.3 Height limit requiring Planning Commission approval

Planning Commission approval is required for all walls or fences over six feet six inches (6.5 feet).

6.5.4 Location

The fence and its supporting posts shall be located wholly within the property lines unless an agreement is made between the abutting property owners to locate the fence on the property line. In such cases, the property owner and the abutting property owner(s) shall be applicants for the permit. Fences are not required to meet the setback requirements. Fences with a distinct front and back shall be erected so the front faces the street or the abutting property.

6.5.5 Setbacks

Fences do not have to comply with setback requirements as long as they are wholly within property boundaries and outside public rights-of-way.

Section 6.6 Off-Street Parking Requirements

For every building erected, altered, extended, or changed in use, there shall be provided off-street parking spaces at least as set forth below.

- a. Each parking space shall be at least nine (9) feet by eighteen (18) feet.
- b. Single family residential units will require two parking spaces for each unit. Multi-family residential units shall require 3 parking spaces for every two units.
- c. Professional residence/office uses will require one space for every 500 square feet of office area.
- d. Commercial and business uses will require one parking space for every motor vehicle used in the business and one parking space for every 500 square feet of floor area.
- e. Restaurants/lounges will require one parking space for every 150 square feet of floor area.
- f. Manufacturing uses will require one parking space for every motor vehicle used in the business and one parking space for every two employees.

Section 6.7 General Performance Standards

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

1. Agricultural operations shall at minimum observe Accepted Agricultural Practices (AAPs) as defined and administered by the Vermont Department of Agriculture.
2. Forestry operations shall at minimum observe Acceptable Management Practices (AMPs) as defined and administered by the Vermont Department of Forests, Parks and Recreation.
3. The following standards apply to all uses, with the exception of AAPs and AMPs. No existing or proposed use, under normal conditions, shall cause, create, or result in:
 - a. Persistent, repetitive, or recurring **noise** which represents a significant increase in noise levels in the vicinity of the use so as to be incompatible with the reasonable use of the surrounding lots;
 - b. Noticeable, clearly apparent **vibration** beyond the property on which the use is located during normal operations of a use so as to be incompatible with the reasonable use of the surrounding area.
 - c. Persistent **smoke, dust, odors, noxious gases or other forms of air pollution**, which constitute a nuisance or recognized health hazard beyond the property which the use is located so as to be incompatible with the reasonable use of the surrounding area.

- d. Releases of **heat, cold, moisture, mist, fog, precipitation, or condensation** likely to be detrimental to public safety, health or welfare beyond the property on which the use is located so as to be incompatible with the reasonable use of the surrounding area.
- e. **Electronic emissions or signals** which will repeatedly and substantially interfere with the reception of radio, television, or other electronic signals beyond the lines of the property on which the use is located.
- f. **Glare, lights or reflections** which are a nuisance to traffic or neighboring properties or which are detrimental to the public safety, health or welfare.
- g. **Liquid or solid wastes or refuse** which cannot be disposed of by available or existing methods, or which place an unreasonable burden on municipal facilities, or which if buried or allowed to seep into the ground will in any way endanger the health, comfort, safety, or welfare of any person, or which have a tendency to cause injury or damage to property, plants, or animals.
- h. Undue **fire, safety, explosive or other hazards** which significantly endanger any property, including the applicant's or lot owner's, or which result in a significantly increased burden on municipal facilities, such as the Fire Department.
- i. **Soil erosion and/or the discharge of sediment** into a brook, stream, river, culvert, or catch basin. The smallest practical area of land should be exposed at any one time during development. Lands should not be left exposed during the winter months. Where necessary, temporarily vegetation and/or mulching and structural measures may be required to protect areas exposed during development. Sediment basins shall be installed and maintained during development to remove sediment from run-off water and from land undergoing development, where appropriate and feasible. Development shall be accomplished so as to minimize adverse affects upon the natural or existing topography and soil conditions and to minimize the potential for erosion. Grading and storm drainage plans shall maximize the amount of natural drainage which can infiltrate into the soil and minimize direct run-off onto adjoining streets, properties, and watercourses or water bodies. Areas of grading, cut or fill and ditches shall be designed, constructed, and kept in good repair to minimize erosion and sedimentation. All changes in grade shall be controlled so as not to cause a nuisance or damage to other properties or erosion of soil.
- j. A significant increase in any **stormwater flow levels** beyond the property on which the development is located. Where possible, existing natural runoff control features, such as berms, swales, terraces, and wooded areas shall be retained in order to reduce runoff and encourage infiltration of storm waters. the exception of this rule is discharge into an approved storm drainage system. The Appropriate Municipal Panel may require that the drainage system be designed and installed under the direction of a certified engineer. Any changes in grading shall be made so that runoff is directed to established drainage courses and will not cause ponding or flooding of other properties, or exceed the capacity of downstream drainage facilities.

ARTICLE VII: FLOOD HAZARD AREA REGULATIONS

Section 7.1 Statutory Authorization

To effect the purpose of 10 V.S.A. Chapter 32, and in accord with Section 4424 of the Act, there are hereby established Flood Hazard Area Regulations for the Town of Whitingham.

Section 7.2 Purpose

It is the purpose of these regulations to promote the public health, safety, and general welfare, to prevent increases in flooding caused by the uncontrolled development of lands in flood hazard areas, to secure the community against unnecessary costs which may be caused when unsuitable development occurs in areas subject to flooding, and to minimize losses due to flooding.

Section 7.3 Establishment of Flood Hazard Area Boundaries & Map

These regulations shall apply for development in all areas in the Town of Whitingham identified as areas of special flood hazard in and on the most current flood insurance studies and maps published by the Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), National Flood Insurance Program (NFIP), as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. §753, which are hereby adopted by reference and declared to be part of these regulations.

Section 7.4 Development Permit Required

a. All zoning permit applications shall be submitted to the Zoning Administrator, who shall determine whether or not the proposed development is located within the Flood Hazard Area.

b. A permit is required, to the extent authorized by State law, for all proposed construction or other development, including the placement of manufactured homes, in areas of special flood hazard. Conditional use approval by the Zoning Board of Adjustment is required for:

1. New buildings,
2. Substantial improvement of existing buildings, and
3. Development in a floodway

prior to being permitted by the Zoning Administrator. All development and subdivisions shall be reviewed to assure that such proposals minimize potential flood damage, public facilities and utilities such as sewer, gas, electrical, and water systems are constructed so as to minimize flood damage, and adequate drainage is provided to reduce exposure to flood hazards.

Section 7.5 Conditional Use Application Requirements

Application for a permit for land development in a flood hazard area shall be made to the Zoning

Board of Adjustment for review and consideration as provided by these regulations.

In addition to items listed under application requirements in Section 3.5.2a, the following information is required:

- a. Existing and proposed structures including the elevation of the lowest habitable floor including basement.
- b. Proposed fill and/or storage of materials.
- c. Proposed flood proofing measures and the level to which any structure will be floodproofed.
- d. Relationship of the proposal to the location of the channel.
- e. Extent of the flood hazard areas and the base flood elevations.
- f. New subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions) that are greater than 50 lots or 5 acres, whichever is the lesser, shall include base flood elevation data.

Section 7.6 Review Procedures

- a. Prior to issuing a permit for the construction of new buildings, the substantial improvement of existing buildings, or for development in the floodway, a copy of the application shall be submitted to the State National Flood Insurance Program Coordinator at the Vermont Department of Environmental Conservation, River Management Section in accordance with 24 V.S.A. 4424. A permit may be issued only following receipt of comments from the Department or the expiration of 30 days from the date the application was mailed to the Department, whichever is sooner.
- b. Adjacent communities and the Stream Alteration Engineer at the Vermont Department of Environmental Conservation, River Management Section shall be notified at least 30 days prior to issuing any permit for the alteration or relocation of a watercourse and copies of such notification shall be submitted to the Administrator of the National Flood Insurance Program.
- c. Proposed development shall be reviewed by the Zoning Administrator to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal, State, or Local law.

Section 7.7 Base Flood Elevations and Floodway Limits

- a. Where available, base flood elevations and floodway limits (or data from which a community can designate regulatory floodway limits) provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps

shall be used to administer and enforce these regulations.

b. In areas where base flood elevations and floodway limits have not been provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps, base flood elevations and floodway data provided by FEMA or available from State or Federal agencies or other sources, shall be obtained and utilized to administer and enforce these regulations.

c. Until a regulatory floodway has been designated, no new construction, substantial improvements, or other development shall be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community.

Section 7.8 Development Standards

Prior to approving a conditional use permit for any development in flood hazard areas, the Zoning Board of Adjustment shall find that the proposed development meets or exceeds the following standards, as well as all other provisions of this Whitingham Zoning Bylaw.

Floodway Areas

a. Development within the regulatory floodway, as determined by Section 7.7(b), is prohibited unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice by a registered professional engineer certifying that the proposed development will not result in any increase in flood levels during the occurrence of the base flood.

b. Junkyards and storage areas or facilities for floatable materials, chemicals, explosives, flammable liquids, or other hazardous or toxic materials, are prohibited within the floodway.

Fringe Areas

a. All development shall be designed to (i) minimize flood damage to the proposed development and to public facilities and utilities, and (ii) to provide adequate drainage to reduce exposure to flood hazards.

b. All development shall be reasonably safe from flooding and: (i) designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure during the occurrence of the base flood, (ii) be constructed with materials resistant to flood damage (iii) be constructed by methods and practices that minimize flood damage and (iv) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

c. Watercourse Carrying Capacity. The flood carrying capacity within any altered or relocated portion of a watercourse shall be maintained.

d. Water Supply and Sanitary Sewage Systems. New and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

e. On-Site Disposal Systems. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding. The lowest elevation of the wastewater distribution field shall be located at least 1 foot above the base flood elevation.

f. Residential Development.

(i) The lowest floor, including basement, of all new construction and existing buildings to be substantially improved that are located in Zones A1-30, AE, and AH shall be at or above the base flood elevation.

(ii) Manufactured homes to be placed and existing manufactured homes to be substantially improved that are:

(a) located in a new manufactured home park or subdivision, outside of a manufactured home park or subdivision, in an expansion to an existing manufactured home park or subdivision, or in a manufactured home park or subdivision which has incurred substantial damage from a flood shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to at or above the base flood and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement during the occurrence of the base flood.

(b) located in an existing manufactured home park, where elevating a replacement home to or above base flood elevation is not possible, the lowest floor shall be supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored system to resist floatation, collapse, and lateral movement.

g. Non-Residential Development.

(i) New construction and existing buildings to be substantially improved located in Zones A1-30, AE, and AH shall have the lowest floor, including basement, elevated one foot above the base flood elevation or together with attendant utility and sanitary facilities be designed so that below the base flood elevation the structure is watertight with walls substantially impermeable to

the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(ii) A permit for a building proposed to be flood-proofed 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 or practice for meeting the provisions of this subsection.

j. Enclosed Areas Below the Lowest Floor.

(i) Enclosed areas below the lowest floor which are subject to flooding shall be used solely for parking of vehicles, building access, or storage.

(ii) 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 coverings or devices provided that they permit the automatic entry and exit of floodwaters.

k. Areas to be used for junkyards or for storage of floatable, hazardous or toxic materials shall be filled and graded to at least one foot above the base flood elevation.

l. Recreational Vehicles. Recreational Vehicles placed on sites with special flood hazard areas shall either:

- (i) be on the site for fewer than 180 consecutive days,
- (ii) be fully licensed and ready for highway use, or
- (iii) be permitted in accordance with the elevation and anchoring requirements for “manufactured homes” in section B.2.(b).

m. Accessory Buildings. A small accessory building that represents a minimal investment need not be elevated to the base flood elevation provided the building:

- (i) shall not be used for human habitation and the building must only be used for parking and/or storage;
- (ii) shall be designed to have low flood damage potential and be constructed using flood resistant materials below the base flood elevation;
- (iii) shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters and have required openings to allow floodwaters in and out;

- (iv) shall be adequately anchored to resist flotation, collapse, and lateral movement; and
- (iv) shall have all building equipment (such as electrical and heating) elevated or floodproofed.

n. Subdivisions (including manufactured home parks) shall be reasonably safe from flooding and designed to assure:

- (i) such proposals minimize flood damage within the flood-prone area,
- (ii) public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and
- (iii) adequate drainage is provided to reduce exposure to flood hazards.

Section 7.9 Administration

The provisions of these regulations shall be administered and enforced as provided by Article III. In addition, the Zoning Administrator shall maintain a record of:

- a. All permits issued for development in areas of special flood hazard.
- b. Elevation, consistent with the datum of the elevation on the NFIP maps for the community, of the lowest floor, including basement, of all new or substantially improved buildings.
- c. Elevation, consistent with the datum of the elevation on the NFIP maps for the community, to which buildings have been floodproofed.
- d. Floodproofing certifications required under this regulation.
- e. Variance actions, including justification for their issuance.

Section 7.10 Variances to the Development Standards

Variances shall be granted by the Board of Adjustment only in accordance with the provisions of 24 V.S.A. S. 4469 and in accordance with the criteria for granting variances found in 44 CFR, Section 60.6, of the National Flood Insurance Program regulations.

Section 7.11 Warning of Disclaimer of Liability

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

Section 7.12 Precedence of Ordinance

The provisions of this ordinance shall not in any way impair or remove the necessity of compliance with any other applicable ordinances. Where this ordinance imposes a greater restriction, the provisions of this ordinance shall take precedence.

Section 7.13 Enforcement and Penalties

It shall be the duty of the Zoning Administrator to enforce the provisions of this ordinance. Whenever any development occurs contrary to these flood hazard area regulations, the Zoning Administrator, in his/her discretion, shall institute appropriate action in accordance with the provisions of 24 V.S.A. §1974a or pursuant to 24 V.S.A. § 4451 or 24 V.S.A. § 4452 to correct the violation. No action may be brought unless the alleged offender has had at least a seven-day warning notice by certified mail. An action may be brought without the seven-day notice and opportunity to cure if the alleged offender repeats the violation after the seven-day notice period and within the next succeeding twelve months. The seven-day warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days.

If the structure is still noncompliant after the opportunity to cure has passed, the Administrator Officer shall submit a declaration to the Administrator of the NFIP requesting a denial of flood insurance. Section 1316 of the National Flood Insurance Act of 1968, as amended, authorizes FEMA to deny flood insurance to a property declared by a community to be in violation of their flood hazard area regulations. The declaration shall consist of: (a) the name of the property owner and address or legal description of the property sufficient to confirm its identity or location, (b) a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance, (c) a clear statement that the public body making the declaration has authority to do so and a citation to that authority, (d) evidence that the property owner has been provided notice of the violation and the prospective denial of insurance, and (e) a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

Section 7.14 Definitions

The following definitions shall apply to the Flood Hazard regulations and shall not be affected by the provisions of any other sections of this bylaw or ordinance of the Town of Whitingham.

Area of special flood hazard - the land in the floodplain 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 Flood Hazard Boundary Map. After detailed ratemaking has been completed in preparation for publication of the Flood Insurance Rate Map, Zone A usually is refined into Zones A, AO, AH, A1-30, AE, or A99. For purposes of these regulations, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".

Base flood - the flood having a one percent chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE) - the height of the base flood, usually in feet, in relation to the National Geodetic Vertical Datum of 1929, the North American Vertical Datum of 1988, or other datum referenced in the Flood Insurance Study report, or average depth of the base flood, usually in feet, above the ground surface.

Basement - area of the building having its floor elevation (below ground level) on all sides.

Building - a walled and roofed building including a gas or liquid storage tank that is principally above ground.

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

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

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

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

Flood Insurance Rate Map (FIRM) - an official map of a community, on which the Federal Insurance Administrator 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 hazards and, if appropriate, corresponding water surface elevations or an examination, evaluation and determination of mudslide (i.e., mudflow) and /or flood related erosion hazards.

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

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

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

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

Lowest floor - the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of Section 44 CFR 60.3 of the National Flood Insurance Program regulations.

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. The term “manufactured home” does not include a “recreational vehicle”.

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

Mean sea level - the National Geodetic Vertical Datum of 1929 or other datum, to which base flood elevations are referenced.

New construction - for the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, *new construction* means structures for which

the *start of construction* commenced on or after the effective date of the floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

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

Recreational vehicle - a vehicle which is: (a) Built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) Designed to be self-propelled or permanently towable by a light duty truck; and (d) Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

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

Structure - for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. *Structure*, for insurance purposes, means: (a) A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site; (b) A manufactured home (“a manufactured home,” also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or (c) A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community’s floodplain management and building ordinances or laws. For the latter purpose, “structure” does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in (c) of this definition, or a gas or liquid storage tank.

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

Substantial improvement - any repair, reconstruction, or improvement of a structure, the cost of

which equals or exceeds 50% 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. The term does not, however, include either (1) any project for improvement of the 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 "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure." (see above for definition of "Historic Structure")

Violation - the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR 60.3 is presumed to be in violation until such time as that documentation is provided.