

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 "Act," Subchapter 6, Section 4401, as may be amended from time to time, there are hereby established Zoning Regulations for Whitingham which are set forth in the text and map that constitutes these Regulations. This civil ordinance shall be known and cited as the "Whitingham Zoning Regulations."

SECTION 1.2 INTENT

These Whitingham Zoning Regulations are designed to direct the future growth of the Town of Whitingham so that such growth will:

- a. Conform to the wishes of the citizens.
- b. Avoid the adverse and sometimes irreversible effects often associated with purely random development.
- c. Be in harmony with the planning measures of the state, the Windham Region, and adjoining towns.

Section 4401 of the Act 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 these Regulations. Furthermore, unless otherwise expressly stated in these Regulations, the following additional terms shall, for the purpose of these Regulations, 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."

ABUTTER: a person who owns land in fee simple, if that land:

- a. shares a property boundary with a tract of land where a proposed or actual development or subdivision is located; or
- b. is adjacent to a tract of land where a proposed or actual development or subdivision is located, and
- c. the two properties are separated only by a river, stream, or public highway.

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

ACCESSORY DWELLING UNIT: as defined in 24 V.S.A. § 4412(1)(e) except that Whitingham allows the accessory unit to be up to 50% of the total habitable floor area of the single-family dwelling. See Section [6.1.1.a.5](#).

ALTERATIONS: see [REMODELING/ALTERATIONS/RENOVATIONS](#)

BALCONY: a balustraded or railed elevated platform projecting from the wall of a building.

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.

BOARDING HOUSE: a dwelling where more than two, but fewer than six rooms are provided for lodging for definite periods of times. Meals may or may not be provided.

BOUNDARY LINE ADJUSTMENT: a method of adjusting boundaries of adjacent lots without creating an additional lot. See Section **6.11** of these Zoning Regulations. [VT Environmental Protection Rules, Chapter 1, Wastewater System and Potable Water Supply Rules, Effective April, 2019 Exemptions, Boundary Line Adjustments, as may be amended from time to time].

BRIDGE: refer to State Permit Specialist.

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

CEMETERY: land used or dedicated to the burial of the human dead, including accessory structures such as mausoleums or maintenance facilities. See Section **6.7**.

CHILD CARE: see **FAMILY CHILD CARE HOME OR FACILITY**

CHANGE OF USE: to alter or vary the function, service, or purpose of a building, structure, or parcel of land. Any change of use from one category to another (i.e., residential to commercial) or within a category of use (i.e., one conditional use to another), one manufacturing use to another, or from a single-family use to a two-family use or multi-family use. A change of use shall also include a change of character of the business activity (i.e., retail to wholesale). Change of use requires a zoning permit.

CLUSTER DEVELOPMENT: see **PLANNED UNIT DEVELOPMENT (PUD)**.

COMMERCIAL USE: any use of land or buildings for the purpose of providing a product, goods, or services.

CONDITIONAL USE: a use identified in these Regulations which is permitted only upon approval by the Zoning Board of Adjustment (ZBA) in accordance with Section **3.5.2** - Conditional Use Approval.

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.

CLUB: See **PRIVATE CLUB**

DECK: a raised flat surface that can be walked on: a balcony; a porch; a raised patio; a flat rooftop.

DEMOLITION/REMOVAL: a permit is required for the demolition/removal of a structure. The permit will have immediate approval and no posting is necessary.

DEVELOPMENT: see [LAND DEVELOPMENT](#)

DIMENSIONAL REQUIREMENTS: lot size, frontage on street or lake, setbacks, height, and maximum lot coverage as described in [Article V](#) District Regulations.

DISTRICT: a specific portion of the town as established by the provisions of Section [4.1](#) of these Regulations.

DRIPLINE: the line enclosing the outermost area from which water would drip from the building or structure. Dripline is NOT used to determine footprint or setbacks.

DWELLING UNIT: a building or a portion of a building occupied or intended to be occupied for residential purposes, containing cooking, sleeping and sanitary facilities that constitute a separate independent housekeeping establishment.

DWELLING, ONE-FAMILY: a building containing one dwelling unit only.

DWELLING, TWO-FAMILY: a building containing two dwelling units only.

DWELLING, MULTIPLE: a building containing three or more dwelling units.

ENERGY: see Sections [3.5.5\(b\)](#) regarding Variances for Renewable Energy Structures, Section [6.1.6](#) regarding Heights of Renewable Energy Resource Structures, and Section [6.1.10\(d\)](#) regarding Limitations on regulating solar energy devices.

ENTERTAINMENT/CULTURAL FACILITY: a museum, art gallery, theater, concert hall, community center or other establishment offering programs, performances or exhibits of cultural, educational, historical or scientific interest to the general public.

FAMILY/FAMILY UNIT: one or more persons related by blood, marriage, or adoption, and/or a group 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. See Section [6.1.5](#).

FENCE: a freestanding structure of wood, metal, masonry, stone or any combination of materials, attached to the ground and used to restrict visual or physical access. (See Section [6.5](#)).

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

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. See Section [6.1.3](#) - Required frontage on, or access to, public roads, class 4 town highways, or public waters.

FRONTAGE (LAKE): that portion of a lot that is adjacent and parallel to a lake at high water mark. Each district lists required frontage on (and setbacks from) a lake. Those lakes are Gates Pond, Harriman Reservoir, Jacksonville Pond, Lake Sadawga, Laurel Lake, Pine Lake (formerly North Pond), Ryder Pond, Sherman Reservoir, and Shippee Pond. See Section [6.1.3](#) - Required frontage on, or access to, public roads, class 4 town highways, or public waters.

GRANDFATHERED: see Sections [3.3.2](#) - Grandfathering and [6.1.7](#) - Nonconformities

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 a handicap or disability as defined in 9 V.S.A. § 4501, and who live together as a single family unit. In addition to room, board, and supervision, residents of a group home may receive other services at the group home to meet 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 do not have an undue adverse effect upon the character of the residential area in which the dwelling is located. An income producing use that would bring customers to the location. (See Section [6.3](#) – Home Occupations/Home Industries).

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. An income producing use that would not necessarily bring customers to the location. (See Section [6.3](#) – Home Occupations/Home Industries).

HOTEL: See [MOTEL/HOTEL](#).

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, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by a bylaw, who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.

- b. The municipality that has a plan or a bylaw at issue in an appeal brought under this chapter or any municipality that adjoins that municipality.
- 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 this chapter, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality.
- d. Any ten persons who may be any combination of voters or real property owners within a municipality listed in subdivision (b) of this subsection who, by signed petition to the appropriate municipal panel of a municipality, the plan or a 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 appropriate municipal panel 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 a municipality listed in subdivision (b) of this subsection, and the agency of commerce and community development of this state.

KENNEL: a commercial establishment in which six or more dogs, cats, and/or other domesticated animals, which are not owned by the owner or occupant of the premises, are housed or boarded.

LAKE FRONTAGE: See [FRONTAGE \(LAKE\)](#)

LAND DEVELOPMENT: the division of a parcel into two or more parcels (subdivision), the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, 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 AREA: The area of a lot contained within the property lines of the individual parcels of land. Any land in the same ownership across a street or river are not included in lot area.

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: See [BOUNDARY LINE ADJUSTMENT](#)

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.

MOTEL/HOTEL: a building providing lodging for persons with or without meals and intended for accommodation of transients, on a short-term basis. Food services can be for the general public. A motel/hotel is not a dwelling unit. A hotel is so designed that normal access and egress are controlled from a central point. A motel is so designed that access and egress are not controlled from a central point.

NON-CONFORMING LOTS OR PARCELS: lots or parcels that do not conform to the present Zoning Regulations covering dimensional requirements but were in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present Zoning Regulations, including a lot or parcel improperly authorized as a result of error by the Zoning Administrator. [24 V.S.A. § 4303(13)] See Section **6.1.7(c)** – Non-Conforming Lots.

NON-CONFORMING STRUCTURE: a structure or part of a structure that does not conform to the present Zoning Regulations but was in accordance with all applicable laws, ordinances, and regulations prior to the enactment of the present Zoning Regulations, including a structure improperly authorized as a result of error by the Zoning Administrator. [24 V.S.A. § 4303(14)] See Sections **3.3.2** Grandfathering and **6.1.7(b)** Non-Conforming Structures.

NON-CONFORMING USE: use of land that does not conform to the present Zoning Regulations but conformed to all applicable laws, ordinances, and regulations prior to the enactment of these Zoning Regulations, including a use improperly authorized as a result of error by the Zoning Administrator. [24 V.S.A. § 4303(15)] See Sections **3.3.2** Grandfathering and **6.1.7(a)** – Non-Conforming Uses.

PATIO: an area, usually paved, adjoining a house and used as an area for outdoor lounging, dining, etc.

PLANNED UNIT DEVELOPMENT (PUD): an area of land to be developed as a single entity for a number of dwelling units, and may contain commercial and industrial uses, the plan for which does not conform in lot size, bulk, type of dwelling, lot coverage and required open space to the regulations established in one or more districts created under provisions of these Regulations. The density of development of the total parcel, however, shall conform to the density required in the district or districts in which it is located. See Section **3.6.2** – Planned Unit Development.

PORCH: an exterior appendage to a building, forming a covered approach or vestibule to a doorway.

PRIMITIVE CAMP: a living unit, the occupancy of which neither exceeds 3 consecutive weeks per calendar year nor exceeds a total of 60 days per calendar year, that has no interior plumbing except for one sink with water. Primitive camps may contain a composting or incinerating toilet that does not yield a liquid provided its contents are disposed of in compliance with the most current ANR Wastewater and Water Supply Rules.

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

PRIVATE CLUB: a structure and/or related facilities owned or operated by a corporation, association, or group of individuals established for fraternal, social, educational, recreational, or cultural enrichment of its members.

REBUILDING: reconstructing a structure that has been damaged or demolished. Rebuilding of a dwelling unit requires a zoning permit.

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. Any of the following modifications would make the recreational vehicle a permanent structure requiring a zoning permit:

- Placing skirting or insulation around the base of the vehicle.
- Placing the vehicle unit on a foundation or removing the wheels.
- Attaching a deck or stairs to the vehicle.

- Making the vehicle immobile in any way that inhibits the vehicle from being driven off the lot in order to fill the water holding tank and empty the wastewater holding tank.
- Connecting the vehicle to a potable water supply or wastewater system.
- The vehicle, although qualifying as a vehicle, cannot travel over Vermont roads without a special permit.
- Occupying a vehicle that is not registered and inspected to travel on the roads.

REMODELING/ALTERATIONS/RENOVATIONS: renovations that do not extend the footprint of, or livable space in, a building or structure do not require a zoning permit. If, for example, the roofline changes to allow more livable space, then a permit is required. If a window is changed to a bay window which would extend the footprint, then a permit is required.

RENEWABLE ENERGY PROJECTS (solar, wind, hydroelectric, biomass, and geothermal): See [ENERGY](#).

RESIDENTIAL CARE HOME, GROUP HOME, OR ADULT DAY CARE:

A residential care home, group home, or adult day care to be operated under State licensing or registration, serving not more than eight persons who have a disability as defined in 9 V.S.A. § 4501, shall be considered by right to constitute a permitted single family residential use of property but does require a zoning permit. See Section [6.1.1\(b\)](#).

RIGHT OF WAY: the legal right to pass along a specific route through grounds or property belonging to another. Use of a strip of land that is granted, through an easement or other mechanism, for transportation or other purposes, such as for a trail, driveway, rail line, highway, or utility line. See Section [6.9](#) – Rights-of-Way.

SERVICE BUSINESS: a business primarily engaged in providing assistance (as opposed to products) to the general public; examples include but are not limited to: hair salon, caterer, appliance repair shop, real estate agency, laundromat, pet grooming, etc.) and including incidental retail sales such as with shampoo for sale at a hair salon.

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

SIGN: a "sign" is any structure, display, device or representation which is designed or used to advertise or call attention to anything, person, business, activity or place and is visible from any road or other right-of-way. See Section [6.2](#).

SITE PLAN REVIEW HEARING: the Planning Commission conducts site plan review hearings for Conditional and specified Permitted Uses. See Section [3.6.1](#).

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. In the Whitingham Highway Specifications most roads are 3 rods wide which equals 49.5 feet. See, also, [TRAVELED WAY](#).

STRUCTURE: an assembly of materials for occupancy or use including, but not limited to, a building, mobile home or recreational vehicle/travel trailer, wall, fence, billboard or sign.

STRUCTURE, LARGE: any 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 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 dwelling units (tiny homes), and fences exceeding four feet six inches in height which do require a permit.

NOTE: Within the Special Flood Hazard Area ALL structures (large, small or temporary) require zoning permits.

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 land by sale, gift, lease, mortgage foreclosure, court-ordered partition or decree, or filing of a plat, plan, or deed in the town records where the act of division creates one or more lots. See Section [6.10](#).

TRAVELED WAY: means the portion of a road right of way for the movement of vehicles, exclusive of shoulders and auxiliary lanes.

WAIVER (DIMENSIONAL): See Section [3.5.3](#)

WAREHOUSE: a building, or a part of one, for the storage of goods, merchandise, etc.

ARTICLE II: AMENDMENTS, INTERPRETATION, EFFECTIVE DATE

SECTION 2.1 AMENDMENTS

These Regulations may be amended according to the requirements and procedures established in § 4441 and § 4442 of the Act, as may be amended from time to time.

SECTION 2.2 INTERPRETATION

In the Zoning Administrator's interpretation and application, the provisions of these Regulations shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience, and general welfare. Except for § 4413(c) of the Act and where, in these Regulations, specifically provided to the contrary, it is not intended by these Regulations 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 these Regulations, to interfere with or abrogate or annul any easements, covenants or other agreements between parties; provided, however that where these Regulations impose 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 these Regulations shall control.

SECTION 2.3 EFFECTIVE DATE

These Regulations shall take effect in accordance with § 4442 of the Act.

SECTION 2.4 SEPARABILITY

Should any section or provision of these Regulations be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of these Regulations 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 (ZA) is hereby appointed to administer these Zoning Regulations, as provided for in § 4448 of the Act. The ZA shall assist applicants in preparing applications; review applications for completeness; refer applications for Conditional Use Review, Variance Review, or other review (e.g., Waivers) to the Zoning Board of Adjustment (ZBA); refer applications for Site Plan Review to the Planning Commission (PC); issue permits; post public notices; maintain records; deliver copies of permits and decisions to the Listers and the Town Clerk; enforce these Regulations and decisions and permits issued under these Regulations; and perform all other tasks necessary and appropriate to administer these Regulations.

The ZA is the liaison between the public and the town and, therefore, should have adequate public relations and educational skills. The ZA should provide an interested person with forms required to obtain any town permit or other town authorization required under these Regulations, or under other laws or ordinances that relate to the municipal regulation of land development. If other town permits or authorizations are required, the ZA should coordinate a unified effort on behalf of the town in administering its development review programs. The ZA should direct any person applying for permits or authorizations to contact the Regional Permit Specialist employed by the Agency of Natural Resources, in order to assure timely action on any related state permits; nevertheless, the applicant retains the obligation to identify, apply for, and obtain relevant state and federal permits. The ZA shall provide information about Residential Building Energy Standards/Commercial Building Energy Standards to the applicant.

If the ZA rejects an application as incomplete or denies a request for a Zoning Permit, the ZA must advise the applicant of their right to appeal the decision or action to the ZBA.

The ZA is responsible for presenting to the PC and ZBA information relevant to the exercising of their duties in regard to consideration of permit applications. The ZA is responsible for regular reports to the PC about permit applications, permits issued, updates on existing permits, and enforcement proceedings. The compensation of the ZA shall be recommended by the PC and set by the Selectboard.

The ZA shall administer these Regulations literally and shall not have the power to permit any land development which is not in conformance with these Regulations.

SECTION 3.2 ZONING PERMITS

After the effective date of these Regulations, 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 ZA, as provided for in § 4449 of the Act. Accessory structures smaller than 120 sq. ft. do not require a Permit but must meet the District setbacks.

3.2.1 Permit Issuance Requirements

The ZA shall issue a zoning permit for permitted uses under [Article V](#), District Regulations, only if all of the following requirements are met and there is no commercial (income

producing/customer drawing) aspect to the application (i.e., child care, home industry, bed & breakfast, professional or personal studio or office; residential care facilities, group homes and adult day care, boarding house, farm/garden supply, financial institutions, office buildings, repair service, retail use, etc. – all of which would require PC Site Plan review):

- a. Zoning permit application form, as established by the PC, has been properly completed and submitted.
- b. The zoning permit fee, as established by the Selectboard 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 Review, Conditional Use Approval, and/or the granting of a variance/waiver where required under the provisions of these Regulations.
- e. The stipulations of any applicable state agencies have been satisfied in accordance with 24 V.S.A. § 4424.

Applications for Conditional Uses require ZBA approval and may require PC Site Plan Review.

3.2.2 Permit Issuance Timeframe

The ZA shall within 30 days of receipt of application, payment, and necessary data, either issue or deny a zoning permit or refer the application to the PC for Site Plan Review and/or to the ZBA for Conditional Use, Variance, or Waiver.

If denied, the ZA shall so notify the applicant in writing, stating the reasons therefore.

If the zoning permit is issued, 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. A one-time extension of one-year may be requested before the permit becomes null and void. If the activities are not completed within 3 years a new application will be required.

In accordance with § 4448 of the Act, if the ZA fails to act within the 30-day period, a permit shall be deemed issued on the 31st day.

SECTION 3.3 APPLICATION OF REGULATIONS

The application of these Regulations is subject to §4411 and §4413 of the Act. Except as hereinafter provided, the following shall also apply:

3.3.1 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 these Regulations for the district in which such building or land is located.

3.3.2 Grandfathering

Nothing contained in these Regulations shall require any change in plans, construction, or

designated use of a building complying with local laws in force prior to these Regulations, if a prior building permit shall have been duly issued and the entire building shall have been completed in accordance with such plans within its permitted timeframe. See Section **6.1.7**.

3.3.3 Prohibited Uses

Any use not permitted by these Regulations and failing to meet the provisions of Section **3.5.6** Uses Not Provided For shall be deemed to be prohibited.

SECTION 3.4 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 Act [§§ 4451, 4452]. Each day that a violation continues shall constitute a separate offense. The ZA, with the approval of the Selectboard, 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 3.5 ZONING BOARD OF ADJUSTMENT (ZBA)

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

3.5.1 Appeals

- a. An interested person, as defined in § 4465 of the Act, may appeal any act or decision of the ZA to the ZBA within fifteen (15) days of such act or decision by filing a notice of appeal with the Secretary of the ZBA, or the Municipal Clerk, if no Secretary has been elected/appointed, and by filing a copy of the notice with the ZA.
 1. The ZBA shall hold a public hearing on a notice of appeal within 60 days of its filing, as required under the Act [§ 4468]. The ZBA shall give public notice of the hearing and mail a copy of the hearing notice to the appellant and abutters not less than 15 days prior to the hearing date. [§ 4464]
 2. The ZBA 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 ZBA determines that the issues raised by the appellant have been decided in an earlier appeal or are based on substantially or materially the same facts by or on behalf of the appellant [§ 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 ZBA from time to time, provided that the date and place of the 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 ZA and the Municipal Clerk as part of the public records of the municipality. Failure of the ZBA 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 of a ZA action filed under this section shall be in 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 or waiver from one or more provisions of these regulations.
 5. The alleged grounds why such relief is believed proper under the circumstances.

3.5.2 Conditional Use Approval

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

- a. Application. Site plans in accordance with Section [3.6.1\(a\)](#) 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 Town Plan.
 3. Traffic on roads and highways in the vicinity.
 4. Any bylaws and ordinances of the Town of Whitingham then in effect.
 5. Utilization of renewable energy resources.
- c. Approval. The ZBA shall act to approve or disapprove any requested conditional use within forty-five (45) days after the close of the final public hearing(s) failure to do so within such period shall be deemed approval. The decision of the ZBA shall be forwarded to the ZA who will then issue or deny the permit based on their decision.

3.5.3 Waivers (Dimensional)

When approval for a permit for a structure is not possible using the requirements of these regulations a ZBA waiver (or variance) must be requested and the appropriate fee paid for a hearing. 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 under section [3.5.5](#) Variances, and must meet the five-part test as outlined in [3.5.5 \(a\)](#) for a structure that is not primarily a renewable energy resource structure or the four part test under [3.5.5\(b\)](#) for a structure that is primarily a

renewable energy resource structure.

ZA Waiver: In all districts, waivers may be granted without a hearing by the ZA for reductions in setbacks as necessary to allow for disability access or life safety improvements.

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

- a. The proposed development conforms to the existing development patterns of the district;
- b. 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.
- c. The waiver will not result in a greater than 50% decrease in any dimensional requirement.

3.5.4 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 ZBA if the following criteria are met:

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

3.5.5 Variances

- a. Variance Criteria. The ZBA 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 ZBA may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the Town Plan currently in effect. The ZBA 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 these Regulations 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

these Regulations 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.
 5. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from these Regulations and from the Town 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 ZBA 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.
 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.
 4. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from these Regulations and from the Town Plan.

3.5.6 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 ZBA shall find that:
 1. 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 ZBA 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.
 2. 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 ZBA 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 ZBA 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.1 and b.2 above, the proposed use shall be considered by the ZBA for a conditional use permit. Upon positive findings by the ZBA and approval for all necessary state permits, a conditional use permit may be issued by the ZBA.

SECTION 3.6 PLANNING COMMISSION

3.6.1 Site Plan Review Hearing

The PC shall review and decide upon site plan applications for all permitted uses of a commercial nature and conditional uses in accordance with § 4416 of the Development Act. In reviewing site plans, the PC may impose appropriate conditions and safeguards with respect 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 these Regulations. In considering its action, the PC shall hold hearings, make findings and attach conditions, if any, as provided for in § 4416 of the Act.

- a. Application. The applicant shall submit two (2) sets of site plan maps drawn to scale with supporting data to the PC which shall include the following information presented in drawn form and written text:
 - 1. Name and address of owner of property, and applicant, if different from owner; owners of record of adjoining lands; and 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.
 - 9. Proposed signage.
 - 10. Proposed exterior lighting.
- b. Review Criteria. The PC 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 6.8
- c. Approval. The PC shall act to approve or disapprove any such site plan within forty-five (45) days after the close of the hearing; failure to act within such period shall be deemed approval. The decision of the PC shall be forwarded to the ZA who will then issue or deny the zoning permit based on their decision.

3.6.2 Planned Unit Development (PUD)

The PC shall review and decide upon applications for planned unit development in accordance with § 4417 of the Act.

In specified areas the modification of these Regulations by the PC 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 PC which meets the requirements of Section 3.6.1(a) site plan review application, which 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 these Regulations.
- b. The permitted number of dwelling units shall in no case exceed the number which could be permitted in the PC's judgement, if the land were subdivided into lots in conformance with these Regulations for the districts in which such land is situated.
- c. The dwelling units permitted may, at the discretion of the PC, 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 PC 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 PC may impose conditions as to the ownership, uses and nature of such lands to meet the purposes of this section.

- e. Any modification of these Regulations 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.

SECTION 3.7 JOINT HEARINGS

The ZBA and PC may hold joint public hearings where both boards must act on approval of the same project. The PC shall present its decision to the ZA. The ZBA shall also present its decision to the ZA. The ZA will then approve or deny the Zoning Permit based on their decisions.

ARTICLE IV: ESTABLISHMENT OF ZONING DISTRICTS

SECTION 4.1 LIST OF DISTRICTS

Whitingham is hereby divided into the following land use districts as shown on the Town Zoning Map and described below. The districts 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 districts have been developed:

- Conservation
- Rural Lands
- Rural Residential
- Villages

4.1.1 Conservation

Conservation areas are large, public or private, 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 land of Great River Hydro and its successors' 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; and State of Vermont lands which are managed by the Department of Fish and Wildlife, including Atherton Meadows (an 800-acre wildlife management area); and private lands registered in the Current Use Program.

The primary 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 consist of farm, field and forestlands that are being used in a manner that may provide 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 the Rural Lands district 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 district 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 Residential 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 the Rural Residential district 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 these Regulations, 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 PC 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 feet into the more restricted part of such lot.

ARTICLE V: DISTRICT REGULATIONS

SECTION 5.1 DISTRICT USES AND DIMENSIONAL REQUIREMENTS

The following table lists various uses and whether they are conditional (C) or permitted (P) in a particular district. An asterisk (*) indicates that a Site Plan Review Hearing is required in accordance with Article III, Section 3.6.1.

Use	District			
	Conservation	Rural Lands	Rural Residential	Village
Accessory dwelling unit – see Definition	P	P	P	P
Accessory use or structure to a conditional use	C	C	C	C
Accessory use or structure to a permitted use, such as garden house, private garage, or tool house, incidental to the residential use of the premises	P	P	P	P
Airplane landing strip/Helicopter landing pad		C*	C*	
Automotive service station and/or repair garage		C*	C*	C*
Bed and Breakfast	C*	P*	P*	P*
Boarding House		C*	C*	P*
Building supply and lumber yards, drive-in restaurants, drive-in theaters, and other similar establishments designed primarily to provide drive-in facilities			C*	C*
Buildings, structures, and uses owned and operated by the municipality	C*	P*	P*	P*
Campground	C*	C*		
Cemetery (see Section 6.7)	C*	C*	C*	C*
Child Care (as defined in 24 V.S.A. § 4412(5)) A family child care home serving <u>no more</u> than six full-time children and four part-time children, as defined in 33 V.S.A. § 3511(7)	P	P	P	P

Use	District			
	Conservation	Rural Lands	Rural Residential	Village
Child Care (as defined in 24 V.S.A. § 4412(5)) A family child care facility serving more than six full-time and four part-time children	C*	C*	C*	C*
Convenience retail stores, such as drug stores, grocery stores, restaurants, variety stores or combinations thereof			C*	C*
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		C*	C*	C*
Dwelling, single-family - not to exceed one principle dwelling on each lot	P	P	P	P
Dwelling, two-family - not to exceed one principle dwelling on each lot	P	P	P	P
Entertainment/cultural facility			C*	C*
Excavation contractor yard		C*	C*	C*
Farm/garden supply		C*	C*	P*
Financial institutions			C*	P*
Governmental buildings			C*	C*
Health care facility		C*	C*	C*
Home Industry	C*	C*	C*	C*
Home Occupation (as defined in 24 V.S.A. § 4412(4))	P	P	P	P
Kennel - Commercial or veterinary kennel, provided that no kennel, runway or exercise pen shall be located within 300 feet of any boundary (lot) line	C*	C*	C*	
Light Industrial Plants			C*	C*

Use	District			
	Conservation	Rural Lands	Rural Residential	Village
Mobile Home/Tiny Home Park			C*	
Motel, Hotel			C*	C*
Motor vehicle, trailer, boat or farm equipment sales or service			C*	C*
Multi-use building			C*	C*
Office building			C*	P*
On-premises signs	P	P	P	P
Parking (not associated with other existing or proposed uses on a lot)				C*
Philanthropic or charitable institutions, or museums			C*	C*
Places of worship including parish houses			C*	P*
Planned Unit Development	C*	C*	C*	C*
Post office				C*
Primitive Camp	P	P	P	
Private Club	C*	C*	C*	C*
Produce stand - not grown on premises			C*	C*
Professional studio or office		C*	C*	P*
Public assembly facility		C*	C*	C*
Residential apartments of four units or less		C*	C*	C*
Residential care facility, group home, or adult day care (fewer than 8 people)	C*	P*	P*	P*
Restaurant				C*
Retail use				P*
Schools, colleges, and other educational institutions, certified by the Vermont Department of Education			C*	C*
Service business	C*	C*	C*	P*
Warehouse			C*	C*

5.1.1 Conservation Districts

Dimensional Requirements

- Lot Size--Minimum 27 acres
- Frontage--(Street)--Minimum 300 feet
- Frontage--(Lake)--Minimum 300 feet
- Setback--Minimum 65 feet from center of traveled way or road right-of-way, 50 feet from next property line, 125 feet from Lake
- Height--Maximum 35 feet
- Maximum lot coverage--10%

5.1.2 Rural Lands Districts

Dimensional Requirements

- Lot Size—Minimum 3 acres
- Frontage--(Street)--Minimum 150 feet
- Frontage--(Lake)--Minimum 300 feet
- Setback--Minimum 65 feet from center of traveled way or road right-of-way, 40 feet from next property line, 125 feet from lake.
- Height--Maximum 35 feet
- Maximum lot coverage--10%

5.1.3 Rural Residential Districts

Dimensional Requirements

- Lot Size--Minimum 3 acre
- Frontage--(Street)--Minimum 150 feet
- Frontage--(Lake)--Minimum 240 feet
- Setback--Minimum 65 feet from center of travelled way or road right-of-way, 25 feet from next property line, 125 feet from Lake
- Height--Maximum 35 feet
- Maximum lot coverage--10%

5.1.4 Village Districts

a. Village District - Residential Dimensional Requirements

- Lot Size--Minimum 7,200 square feet
- Frontage--(Street)--Minimum 60 feet
- Frontage--(Lake)--Minimum 240 feet
- Setback--Minimum 45 feet from center of traveled way or road right-of-way, 10 feet from next property line
- Height--Maximum 35 feet
- Maximum lot coverage--40%

b. Village District - Commercial Dimensional Requirements

- Lot Size--Minimum 1/4 acre
- Frontage--(Street)--Minimum 100 feet
- Lake Frontage – Minimum 240 feet
- Setback--Minimum 45 feet from center of traveled way or road right-of-way, 10 feet from next property line
- Height--Maximum 35 feet
- Maximum lot coverage--40%

c. Additional Village District standards:

- Building size - Buildings shall have a maximum building footprint not to exceed 10,000 square feet.
- Building design - Buildings shall be designed to be compatible with New England style architecture.
- Building materials - Buildings shall be sided with wood, brick, stone or sided with aluminum, cement, or vinyl clapboard style siding.
- 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.
- Site Design - Planned Unit Developments (PUD's) with buildings grouped together in a village design with shared parking, open space, and integrated street tree and landscape design are encouraged.
- Parking - All parking will be located in the side and rear yards.

ARTICLE VI: GENERAL REGULATIONS

SECTION 6.1 MISCELLANEOUS STATUTORY REQUIREMENTS

In accordance with the Development Act, § 4412, Required Provisions and Prohibited Effects, and § 4413, Limitations on Municipal Bylaws, respectively, the following shall apply:

6.1.1 Required provisions and prohibited effects

a. Equal treatment of housing and required provisions for affordable housing

1. These Regulations shall not have the effect of excluding from the municipality housing to meet the needs of the population as determined in the housing element of its Town Plan as required under subdivision 4382(a)(10) of the Act.
2. These Regulations shall not have the effect of excluding mobile homes, modular housing, or prefabricated housing from the municipality, except upon the same terms and conditions as conventional housing is excluded.
3. These Regulations are not intended to prevent the establishment of mobile home parks as defined in 10 V.S.A Chapter 153.
4. These Regulations shall not have the effect of excluding multiunit or multifamily dwellings from the municipality.
5. These Regulations 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 (except for flood regulations pursuant to § 4424).

An accessory dwelling unit means an efficiency or small 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 50 percent of the total habitable floor area of the principle single-family dwelling
- (iii) Applicable setback, coverage, and parking requirements specified in these Regulations are met.

b. Residential Care, Group Home, or Adult Day Care

A residential care home, group home or adult day care to be operated under State licensing or registration, serving not more than eight persons who have a disability as defined in 9 V.S.A. § 4501, shall be considered by right to constitute a permitted single family residential use of property but does require a zoning permit.

6.1.2 Existing Small Lots. (See also 6.1.7(c))

Any lot that is legally subdivided, is in individual and separate and nonaffiliated ownership from surrounding properties and is in existence on the effective date of these Regulations, may be developed for the purposes permitted in the district in which it is located, even though the small lot no longer conforms 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 not less than forty feet.

If an existing small lot subsequently comes under common ownership with one or more contiguous lots, the nonconforming lot shall be deemed merged with the contiguous lot. However, a nonconforming lot shall not be deemed merged and may be separately conveyed if all the following apply:

- a. The lots are conveyed in their preexisting, nonconforming configuration.
- b. On the effective date of any bylaw, each lot was developed with a water supply and wastewater disposal system.
- c. At the time of transfer, each water supply and wastewater system is functioning in an acceptable manner.
- d. The deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems, potable water systems, or both, in case there is a failed system or failed supply as defined in 10 V.S.A. Chapter 64.

6.1.3 Required Frontage

No land development may be permitted on lots which do not have frontage either on a public road, class 4 highway, or public waters, or without the approval of the PC, access to such a road, highway, or waters by a permanent easement or right-of-way at least forty feet in width. (See, also Section [6.9](#) Rights-of-Way)

6.1.4 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 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. (See Section [6.3](#), Home Occupations/Industries)

6.1.5 Child Care

A “family child care home or facility” as used in these zoning Regulations means a home or facility where the owner or operator is to be licensed or registered by the state for child care.

- A family child care home serving six or fewer children requires a zoning permit.
- A family child care home serving no more than six full-time children and four part-time children, as defined in 33 V.S.A. § 3511(7), requires Site Plan Review with a zoning permit.
- A family child care facility serving more than six full-time and four part-time children requires Conditional Use and Site Plan Review with a zoning permit.

6.1.6 Heights of renewable energy resource structures

The height of wind turbines with blades less than 20 feet in diameter, or rooftop solar collectors less than 10 feet high on sloped roofs, any of which are mounted on complying structures, shall not be regulated unless these Regulations provide specific standards for regulation. For the purpose of this section, a sloped roof means a roof having a slope of more than five degrees.

6.1.7 Non-Conforming Uses, Structures, and Lots

The following provisions shall apply to all uses, structures, and lots existing on the effective date of these Regulations which do not conform to the requirements set forth in these

Regulations and to all uses, structures, and lots that in the future do not conform by reason of any subsequent amendment to these Regulations.

a. Non-Conforming Uses

Any use of a structure or land lawfully in existence as of the effective date of these Regulations, which does not conform to the uses allowed in the zoning district in which it is located, shall be considered a nonconforming use. A nonconforming use may be continued indefinitely, but shall not be moved, enlarged, altered, extended, reconstructed or restored by any means whatsoever, except as provided below:

1. Change: a non-conforming use shall not be changed, except to a conforming use.
2. Re-establishment: a non-conforming use shall not be re-established without the approval of the ZBA, if such use has been abandoned or otherwise discontinued for any reason for a period of 24 months, or has been changed to, or replaced by, a conforming use. Intent to re-establish a non-conforming use shall not confer the right to do so.
3. Resumption: a non-conforming use shall not be resumed after damage from any cause unless such use is resumed within 18 months of damage. A permit is required to resume the non-conforming use. If such use is not resumed within 18 months of damage, the non-conforming use shall be deemed to have been discontinued. Intent to resume a nonconforming use shall not confer the right to do so.
4. Expansion and Extension: no non-conforming use shall be expanded, extended, moved or enlarged unless the ZBA finds that such expansion, extension, movement or enlargement does not increase the degree of non-conformance. In no event shall a non-conforming use be expanded beyond the boundaries of the lot on which the nonconforming use originated. Examples of enlarged or expanded uses can include increased hours of operation, increased numbers of tables, number of employees and an increase in the size of operation through the expansion of a complying structure.
5. Variance: no new non-conforming use shall be created under the variance provisions or any other provision of these bylaws.

b. Non-Conforming Structures

Any structure lawfully in existence as of the effective date of these Regulations, which is not in compliance with the provisions of these Regulations regarding lot size, density, height, setbacks, or other dimensional requirements for the district in which it is located, or any other requirement of these Regulations, shall be considered a non-conforming structure. A non-conforming structure may be continued indefinitely, but shall not be moved, enlarged, altered, extended, reconstructed or restored by any means whatsoever, except as provided below:

1. Maintenance and Repair. A non-conforming structure may undergo normal maintenance and repair without a permit provided that such maintenance and repair does not increase the degree of or create any new non-compliance.
2. Extension or Enlargement: Extensions or enlargements may be made to any conforming portion of the non-conforming structure in accordance with all

applicable requirements of these Regulations. Extensions or enlargements of non-conforming portion of a structure requires ZBA approval.

3. Repair or Reconstruction: A non-conforming structure may be repaired, restored or reconstructed, in the same non-conforming location, if that the repair, restoration or reconstruction does not increase the degree of non-conformance.

c. Non-Conforming Lots

Any lot lawfully existing at the time that these Regulations became effective, and which does not comply with the regulations of the district in which it is located shall be considered a non-conforming lot and shall be subject to the following provisions.

1. Notwithstanding the minimum lot area, frontage, and depth requirements set forth in Article V of these Regulations, non-conforming lots may be used for any permitted use in the district provided that the following minimum yard requirements are met:

Front Yard Setback	35 feet
Side Yard Setback	15 feet
Rear Yard Setback	15 feet

2. Such a non-conforming lot shall not be further reduced in area or frontage, and if it is subsequently combined with other land in such a way as to reduce or eliminate the non-conformity, it shall not again be subdivided except in accord with these Regulations.

6.1.8 Communications antennae and facilities

Except to the extent these regulations protect historic landmarks and structures listed on the State or National Register of Historic Places, no permit shall be required for placement of an antenna used to transmit and/or receive signals on that property owner's premises if the area of the largest face of the antenna is not more than 15 square feet, and if the antenna and any mast support do not extend more than 12 feet above the roof of that portion of the building to which the mast is attached.

6.1.9 De minimis telecommunications impacts

The PC shall review telecommunications facilities applications, and upon determining that the application will impose no impact or de minimis impact upon any criteria established in these Regulations, shall recommend that the ZA approve the application.

6.1.10 Limitations

- a. The following uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use:
 1. State or community owned and operated institutions and facilities.
 2. Public and private schools and other educational institutions certified by the Agency of Education.

3. Churches and other places of worship, convents, and parish houses.
 4. Public and private hospitals.
 5. Regional solid waste management facilities certified under 10 V.S.A. chapter 159.
 6. Hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. § 6606a.
- b. Except as otherwise provided by this section and by 10 V.S.A. § 1976, if any bylaw is enacted with respect to any land development that is subject to regulation under State statutes, the more stringent or restrictive regulation applicable shall apply.

c. Agricultural, Silvicultural and Forestry Practices

These zoning regulations shall not regulate:

1. Required agricultural practices, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets;

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.

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.

2. Accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation, including practices which are in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation
3. Forestry operations. For purposes of this section "Forestry operations" has the same meaning as in 10 V.S.A. § 2602.

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.

d. Solar Energy

Notwithstanding any provision of law to the contrary, these Regulations shall not:

1. Regulate the installation, operation, and maintenance, on a flat roof of an otherwise complying structure, of a solar energy device that heats water or space or generates electricity. For the purpose of this subdivision, "flat roof" means a roof having a slope less than or equal to five degrees.

2. Prohibit or have the effect of prohibiting the installation of solar collectors not exempted from regulation under subdivision (1) of this subsection, clotheslines, or other energy devices based on renewable resources.
- e. Except as necessary to ensure compliance with the National Flood Insurance Program, these Regulations shall not regulate any of the following:
1. An ancillary improvement that does not exceed a footprint of 300 square feet and a height of 10 feet. For purposes of this section "Ancillary improvement" shall have the same definition as is established in 30 V.S.A. § 248a(b).
 2. Communications Line The following improvements associated with the construction or installation of a communications line: For purposes of this section "Communications line" means a wireline or fiber-optic cable communications facility that transmits and receives signals to and from a local, State, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or State purposes etc., ad infinitum.
 - a. The attachment of a new or replacement cable or wire to an existing electrical distribution or communications distribution pole.
 - b. The replacement of an existing electrical distribution or communications distribution pole with a new pole, so long as the new pole is not more than 10 feet taller than the pole it replaces.

SECTION 6.2 ADVERTISING SIGNS

6.2.1 Required Permits

On-premises advertising signs are allowable provided they are located on the same premises and that the purpose is to advertise a product, service, commercial establishment, or goods made, manufactured, or sold in Whitingham. A zoning permit is required before an on-premises sign is erected, constructed, replaced, moved or enlarged. The maintenance of signs does not require a permit. Off-premises signs which are erected and maintained by the State (Official Business Directional Sign) are only permitted pursuant to 10 VSA Chapter 14.

6.2.2 Signs Requiring a Permit

All professional, commercial, business, or other non-residential use signs except as exempted in [6.2.6](#) require a zoning permit.

6.2.3 Number of Signs Allowed

- a. A business may display no more than three signs without ZBA conditional use approval. In no case may the three signs be in excess of sixty (60) square feet of signage per business without ZBA conditional use approval.
- b. One sign per lot identifying any permitted non-residential use, such as a home occupation.

6.2.4 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	15
3. Home Occupation in the village/Commercial Zone	15
b. Multi-Business Centers	
1. Total Combined Area of Multi Business Center Sign	100
2. Center Name Sign	32*
3. Each Individual Business Sign on Multi-Business Center Sign	8
4. Each Individual Business Sign on Building	32*

*per the formula in Section 6.2.5

6.2.5 Standards for On-premises 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 (typically 25 feet from the center of the traveled 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 by obstructing 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 and 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-premises sign.
- i. All signs shall be in good repair, readable, and securely affixed.
- j. The sign must not be portable.

6.2.6 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 ZBA may issue a permit for a home occupation in any district if it meets the standards of Section 6.3.1. The ZBA may authorize a home industry as a conditional use with PC Site Plan Review in any district per Section 6.3.2.

6.3.1 Home Occupations

These regulations may not infringe upon the right of any resident to use a portion of a dwelling unit or accessory structure 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 ZBA may authorize, as a conditional use with PC Site Plan Review, 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:

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

SECTION 6.4 LANDSCAPING AND SCREENING REQUIREMENTS

Under Site Plan Review and Planned Residential/Planned Unit Development Review, the PC is responsible for determining the adequacy of landscaping and screening associated with site development. The ZBA 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 (54") high except those located on an operating farm.

6.5.2 Height limit for ZA 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 ZA.

6.5.3 Height limit requiring PC approval

PC Site Plan Review 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 (typically 25 feet from the center of the traveled way).

SECTION 6.6 OFF-STREET PARKING REQUIREMENTS

For every building listed in b-f below that is 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 CEMETERIES

Home burials and private burials are permitted in VT. A burial-transit permit (certificate of permission) must be obtained from the Town Clerk. A burial site map must be filed in the land records. The burial ground must be 150 feet from a water supply (100 feet from a drilled well). Accessory cemetery structures require a zoning permit if over 120 square feet.

SECTION 6.8 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 ZA 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.

- a. Agricultural operations shall at minimum observe Accepted Agricultural Practices (AAPs) as defined and administered by the Vermont Department of Agriculture.
- b. Forestry operations shall at minimum observe Acceptable Management Practices (AMPs) as defined and administered by the Vermont Department of Forests, Parks and Recreation.

- c. 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:
1. Noise: 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.
 2. Vibration: 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.
 3. Air pollution: Persistent smoke, dust, odors, noxious gases or other forms of air pollution, which constitute a nuisance or recognized health hazard beyond the property on which the use is located so as to be incompatible with the reasonable use of the surrounding area.
 4. Temperature, moisture, etc.: 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.
 5. Electronic emissions or signals: 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.
 6. Light or Reflections: Glare, lights or reflections which are a nuisance to traffic or neighboring properties, or which are detrimental to the public safety, health or welfare.
 7. Waste: 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 or 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.
 8. Hazards: 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.
 9. Erosion/Sedimentation: 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 effects upon the natural or existing topography and soil conditions and to minimize the potential for erosion. Grading and storm drainage plans shall maximize the amount of natural drainage 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.

10. Stormwater: 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.

SECTION 6.9 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 3, or 4) or public waters or, with the approval of the PC granted in accordance with section 3.6.1, Site Plan Review, of these Regulations, 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 PC 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.

SECTION 6.10 SUBDIVISION

Subdivision shall be deemed to have occurred on the conveyance of the first lot or the filing of a plat, plan, or deed in the town records, whichever first occurs. A subdivision of land shall also be deemed to have taken place when a lot is divided by a state or municipal highway, road or right-of-way or when a lot is divided by surface waters with a drainage area of greater than ten square miles. A municipal boundary does not create a subdivision. A mortgage deed does not create a subdivision unless a foreclosure occurs that results in the division of land. A lease will not be considered a subdivision unless the lease is effectuated by filing of plat, plan, lease agreement, or deed in the town records.

A subdivision of one property into less than five lots requires ZA approval. A subdivision of one property into five or more lots requires Site Plan Review by the PC. All subdivisions must meet the provisions of these Regulations, such as lot size and frontage, and state law.

SECTION 6.11 BOUNDARY LINE ADJUSTMENT

Boundary Line Adjustment is a method of adjusting boundaries of adjacent lots without creating an additional lot. The Application for Boundary Line Adjustment shall be approved by the ZA provided the following specified conditions are met:

Each lot being adjusted meets one or more of the following standards:

1. A lot being reduced in size is being reduced by no more than two percent
2. A lot is increased in size

3. 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.

A survey plat prepared by a Licensed Land Surveyor must be submitted to the ZA with the Application for Boundary Line Adjustment showing the existing and revised lot boundaries and shall be recorded and indexed in the land records for the municipality by the landowner.

Within 180 days of the approval of the Application for Boundary Line Adjustment, the property deed and mylar based on this approval must be submitted to the Whitingham Town Clerk's Office for recording or the boundary line adjustment shall expire. The deed shall also include the following language: *“Approval of this boundary line adjustment does not constitute creation of a separate parcel or lot. It adjusts the physical location of the common boundary of the adjoining parcels or lots. Any future subdivision of these parcels or lots must be approved by the Zoning Administrator.”*

ARTICLE VII: FLOOD HAZARD AREA REGULATIONS

SECTION 7.1 STATUTORY AUTHORIZATION AND EFFECT

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

SECTION 7.2 INTENT

It is the purpose of this bylaw to:

- a. Implement the goals, policies, and recommendations in the current Town Plan;
- b. Avoid and minimize the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flooding related inundation and erosion;
- c. Ensure that the selection, design, creation, and use of development in flood hazard areas is accomplished in a manner that minimizes or eliminates the potential for flood and loss or damage to life and property in a flood hazard area and does not impair stream equilibrium or floodplain services; and
- d. Manage all flood hazard areas designated pursuant to 10 V.S.A. Chapter 32 § 753, 24 V.S.A. Chapter 117 § 4424, and the local hazard mitigation plan; and make the Town of Whitingham, its citizens, and businesses eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds as may be available.

SECTION 7.3 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.

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

ACCESSORY STRUCTURE: means a structure which is:

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

NOTE: Within the Special Flood Hazard Area ALL accessory structures require zoning permits.

AREA OF SPECIAL FLOOD HAZARD: is synonymous in meaning with the phrase “special flood hazard area” for the purposes of these regulations.

BASE FLOOD: means the flood having a one percent chance of being equaled or exceeded

in any given year (also referred to as the “100-year flood” or one-percent (1%) annual chance flood).

BASE FLOOD DISCHARGE: is the volume of water resulting from a Base Flood as it passes a given location within a given time, usually expressed in cubic feet per second (cfs).

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

BASEMENT: is any area of the building having its floor below ground level on all sides.

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

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

COMMUNITY: means any State or area political subdivision thereof, or any Indian tribe or authorized tribal organization, which has authority to adopt and enforce floodplain management regulations for the areas within its jurisdiction.

CRITICAL FACILITIES: includes police stations, fire and rescue facilities, hospitals, shelters, schools, nursing homes, water supply and waste treatment facilities, and other structures the municipality identifies as essential to the health and welfare of the population and that are especially important following a disaster. For example, the type and location of a business may raise its status to a Critical Facility, such as a grocery store or gas station.

DEVELOPMENT: means any human-made change to improved or unimproved real estate, including but not limited to the construction, reconstruction, renovation, repair, expansion, or alteration of buildings or other structures, the placement of manufactured homes; streets, and other paving; utilities; filling, grading and excavation; mining; dredging; drilling operations; storage of equipment or materials; and the subdivision of land.

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

EXPANSION TO AN EXISTING MANUFACTURED HOME PARK OR SUBDIVISION: means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

FILL: means any placed material that changes the natural grade, increases the elevation, or

diminishes the flood storage capacity at the site.

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

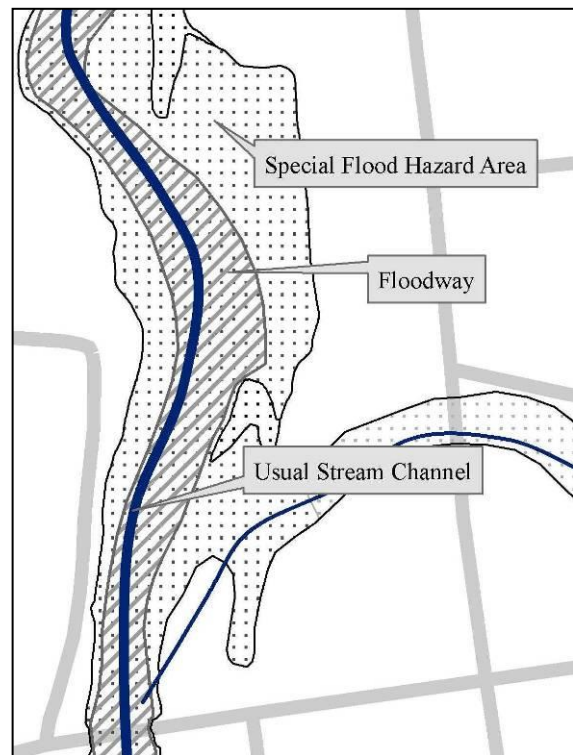
FLOOD INSURANCE RATE MAP: (FIRM) means the official map of a municipality, on which the Federal Emergency Management Agency has delineated both the special flood hazard areas and the risk premium zones applicable to the municipality.

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

FLOODPLAIN OR FLOOD-PRONE AREA: means a relatively flat or low land area which is subject to partial or complete inundation from an adjoining or nearby stream, river or watercourse; and/or any area subject to the unusual and rapid accumulation of surface waters from any source.

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

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



NOTE: There is currently no designated Floodway in the Town of Whitingham.

FLUVIAL EROSION: is erosion caused by streams and rivers. Fluvial erosion can be catastrophic when a flood event causes a rapid adjustment of the stream channel size and/or location.

FUNCTIONALLY DEPENDENT USE: means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water.

HIGHEST ADJACENT GRADE: is the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HISTORIC STRUCTURE: means any structure that is:

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

IDENTIFIED FLOODPLAIN AREA: is an umbrella term that includes all of the areas within which the municipality has selected to enforce floodplain regulations. It will always include the area identified as the Special Flood Hazard Area on the Flood Insurance Rate Maps and Flood Insurance Study but may include additional areas identified by the municipality. See Section 7.5 of this bylaw for what areas the community has included in the Identified Floodplain Area.

LETTER OF MAP AMENDMENT (LOMA): is an official amendment, by letter from FEMA, to an effective National Flood Insurance Program map. A LOMA establishes a property's location in relation to the Special Flood Hazard Area. LOMAs are usually issued because a property has been inadvertently mapped as being in the floodplain, but a licensed engineer or surveyor is able to show that the property or structure is actually above the base flood elevation.

LOWEST FLOOR: means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood resistant partially enclosed area, used solely for parking of vehicles, building access or incidental storage in an area other than a basement area is not considered a building's lowest floor provided that such enclosure is not designed and built so that the structure in violation of the applicable non-elevation design requirements of this bylaw.

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

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)]

MANUFACTURED HOME PARK OR SUBDIVISION: is a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

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.

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

NEW CONSTRUCTION: means structures for which the start of construction commenced on or after the effective start date of this floodplain management bylaw (see adoption page) and includes any subsequent improvements to such structures. Any construction started after 9/18/1985 and before the effective start date of this floodplain management bylaw (see adoption page) is subject to the bylaw in effect at the time the permit was issued, provided the start of construction was within 180 days of permit issuance.

NEW MANUFACTURED HOME PARK OR SUBDIVISION: means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities,

the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the most recent effective date of floodplain management regulations adopted by a community.

NONCONFORMING STRUCTURE: means a structure or part of a structure that does not conform to the present bylaws but was in conformance with all applicable laws, bylaws, and regulations prior to the enactment of the present bylaws, including a structure improperly authorized as a result of error by the Zoning Administrator. Structures that were in violation of the flood hazard regulations at the time of their creation, remain violations and are not nonconforming structures.

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

NONCONFORMITY: means a nonconforming use, structure, lot, or parcel.

NON-RESIDENTIAL: means a commercial or mixed-use building where the primary use is commercial or non-habitational. This includes, but is not limited to: small businesses, churches, schools, farm buildings (including grain bins and silos), pool houses, clubhouses, recreational buildings, government buildings, mercantile structures, agricultural and industrial structures, and warehouses.

NON-SUBSTANTIAL IMPROVEMENT: means any reconstruction, rehabilitation, addition, or other improvement of a structure, of which the cost is less than 50 percent of the market value of the structure before the “start of construction” of the improvement.

PERSON: means an individual, partnership, public or private association or corporation, firm, trust, estate, municipality, governmental unit, public utility or any other legal entity whatsoever, which is recognized by law as the subject of rights and duties.

POST-FIRM STRUCTURE: is a structure for which construction or substantial improvement occurred after December 31, 1974 or on or after the effective date of the community’s first Flood Insurance Rate Map (FIRM) dated 9/18/1985, whichever is later, and, as such, would be required to be compliant with the regulations of the National Flood Insurance Program.

PRE-FIRM STRUCTURE: is a structure for which construction or substantial improvement occurred on or before December 31, 1974 or before the effective date of the community’s first Flood Insurance Rate Map (FIRM) dated 9/18/1985, whichever is later, and, as such, would not be required to be compliant with the regulations of the National Flood Insurance Program.

RECREATIONAL VEHICLE: means a vehicle which is:

- a. Built on a single chassis
- b. 400 square feet or less when measured at the largest horizontal projection
- c. Designed to be self-propelled or permanently towable by a light duty truck

- d. Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use.

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

SPECIAL FLOOD HAZARD AREA (SFHA): means an area in the floodplain subject to a 1 percent or greater chance of flooding in any given year. It is shown on the FIRM as Zone A, AO, A1-A30, AE, A99, or, AH.

START OF CONSTRUCTION: for purposes of floodplain management, determines the effective map or bylaw that regulated development in the Special Flood Hazard Area. The “start of construction” includes substantial improvement and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date and shall be completed within twenty-four (24) months after the date of issuance of the permit unless a time extension is granted, in writing, by the Zoning Administrator. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footing, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, regardless of whether that alteration affects the external dimensions of the building.

STRUCTURE: means, for regulatory purposes under this bylaw, a walled and roofed building, as well as a manufactured home, and any related built systems, including gas or liquid storage tanks.

STRUCTURE: An assembly of materials for occupancy or use including, but not limited to, a building, mobile home or recreational vehicle/travel trailer, wall, fence, billboard or sign.

STRUCTURE, LARGE: Any 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 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.

NOTE: Within the Special Flood Hazard Area ALL accessory structures require zoning permits.

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 to divide land by sale, gift, lease, mortgage foreclosure, court-ordered partition or decree, or filing of a plat, plan, or deed in the town records where the act of division creates one or more lots. Subdivision shall be deemed to have occurred on the conveyance of the first lot or the filing of a plat, plan, or deed in the town records, whichever first occurs. A subdivision of land shall also be deemed to have taken place when a lot is divided by a state or municipal highway, road or right-of-way or when a lot is divided by surface waters with a drainage area of greater than ten square miles. A municipal boundary does not create a subdivision. A mortgage deed does not create a subdivision unless a foreclosure occurs that results in the division of land. A lease will not be considered a subdivision unless the lease is effectuated by filing of plat, plan, lease agreement, or deed in the town records. A subdivision of one property into less than five lots requires ZA approval. A subdivision of one property into five or more lots requires Site Plan Review by the PC. All subdivisions must meet the provisions of these Regulations, such as lot size and frontage, and state law.

SUBDIVISION: is the division or re-division of a lot, tract, or parcel of land by any means into two or more lots, tracts, parcels or other divisions of land including changes in existing boundary (lot) lines for the purpose, whether immediate or future, of lease, partition by the court for distribution to heirs, or devisees, transfer of ownership or building or lot development: Provided, however, that the subdivision by lease of land for agricultural purposes into parcels of more than five acres, not involving any new street or easement of access or any residential dwelling, shall be exempted.

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

SUBSTANTIAL IMPROVEMENT: means any reconstruction, rehabilitation, addition, or other improvement of a structure, of which the cost equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either: (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specification which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (b) Any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

TOP OF BANK: means that vertical point along a stream bank where an abrupt change in

slope is evident. For streams in wider valleys, it is the point where the stream is generally able to overflow the banks and enter the floodplain. For steep and narrow valleys, it will generally be the same as the top of slope.

VARIANCE: means a grant of relief by the ZBA from the terms of a floodplain management regulation.

VIOLATION: means the failure of a structure or other development to be fully compliant with this bylaw. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

WAIVER (As applied in Article 7, distinguished from Dimensional Waiver): means the failure of a structure or other development to be fully compliant with this bylaw. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR § 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in violation until such time as that documentation is provided.

SECTION 7.4 ADMINISTRATION

7.4.1 Designation of the Floodplain Administrator

The Zoning Administrator is hereby appointed as the Floodplain Administrator to administer and enforce this bylaw and to maintain consistency in this bylaw is referred to herein as the “Zoning Administrator” or “ZA”. The ZA may: (A) Fulfill the duties and responsibilities set forth in these regulations, (B) Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees, or (C) Enter into a written agreement or written contract with another agency or private sector entity to administer specific provisions of these regulations.

Administration of any part of these regulations by another entity shall not relieve the municipality of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations at 44 C.F.R. Section 59.22.

In the absence of a designated Floodplain Administrator, the Floodplain Administrator duties are to be fulfilled by the Selectboard Chair.

7.4.2 Floodplain Administrator Duties and Responsibilities of the Zoning Administrator

The provisions of these regulations shall be administered and enforced as provided by [Article III](#). In addition, the duties of the ZA in relation to SFHA administration are as follows:

- a. The ZA shall issue a permit only after it has been determined that the proposed work to be undertaken will be in conformance with the requirements of this and all other applicable local codes and bylaws. Within 30 days after a local land use permit has been issued or within 30 days of the issuance of any notice of violation, the ZA shall:

1. Deliver the original or a legible copy of the permit, or notice of permit, and any approvals to the town clerk for recording in the land records as provided in 24 VSA, § 1154(a), and § 4449.
 2. File a copy of the permit and any approvals in the town office in a location where all town land use permits shall be kept.
- b. Prior to the issuance of any permit, the ZA shall inform any person applying for a permit or authorization that the person should contact the regional permit specialist employed by the Agency of Natural Resources in order to assure timely action on any other related state or federal permits; nevertheless, the applicant retains the obligation to identify, apply for, and obtain relevant state and federal permits. The applicant shall provide the ZA with a copy of the Project Review Sheet issued by the regional permit specialist for awareness of what other permits are required. For development within the FEMA Identified SFHA, no permit shall be issued until all other necessary government permits required by state and federal laws have been obtained.

NOTE: Information on what other state and federal permits are or may be required is available by contacting the ANR Regional Permit Specialist.

- c. In the case of existing structures, prior to the issuance of any Development/Permit, the ZA shall review the history of repairs to the subject building, so that any Repetitive Loss issues can be addressed before the permit is issued.

NOTE: Questions about Repetitive Loss should be directed to FEMA. FEMA directly insures all Repetitive Loss properties through the National Flood Insurance Program.

- d. Within three days following the issuance of a permit, the ZA shall:
1. Deliver a copy of the permit to the Listers of the town.
 2. Post a copy of the permit in at least one public place in the town until the expiration of 15 days from the date of issuance of the permit.
- e. During the construction period, the ZA, or other authorized official (engineer or specialist) may inspect the premises to determine that the work is progressing in compliance with the information provided on the permit application and with all applicable local laws and bylaws. He/she may make as many inspections before, during and upon completion of the work as are necessary, including, but not limited to, once the site has been staked out or demarcated but before actual start of construction.
- f. In the discharge of his/her duties, the ZA shall have the authority to enter any building, structure, premises or development in the Special Flood Hazard Area, upon

- presentation of proper credentials, at any reasonable hour to enforce the provisions of this bylaw.
- g. In the event the ZA or other authorized official discovers that the work does not comply with the permit application or any applicable laws and bylaws, or that there has been a false statement or misrepresentation by any applicant, the Zoning Administrator shall revoke the Permit and report such fact to the ZBA for whatever action it considers necessary.
 - h. Upon completion of the project an engineer or specialist shall certify to the ZA that the project is in compliance with the information provided on the permit application and with all applicable local laws and bylaws.
 - i. The ZA shall maintain all records associated with the requirements of this bylaw including, but not limited to:
 - 1. All permits issued in areas covered by this bylaw.
 - 2. Elevation Certificates with the as-built elevation (consistent with the datum of the elevation on the current Flood Insurance Rate Maps for the municipality) of the lowest floor, including basement, of all new or substantially improved buildings (not including accessory buildings) in the Special Flood Hazard Areas.
 - 3. All flood proofing and other certifications required under this regulation.
 - 4. All decisions of the ZBA (including conditional use decisions, waivers, variances and violations) and all supporting findings of fact, conclusions and conditions.
 - 5. Finished construction elevation data.
 - 6. Inspection documentation
 - 7. Enforcement documentation.
 - j. The ZA is the official responsible for submitting a biennial report to the FEMA concerning community participation in the National Flood Insurance Program.

7.4.3 Public Notice

- a. Prior to the issuance of a permit, proposals needing conditional use review, nonconforming structures and uses review, or approval for a variance or waiver, must have a warned public hearing as per 24 V.S.A. Chapter 117 § 4464. A copy of the application shall be submitted to VT Agency of Natural Resources (ANR) at least 30 days prior to the date of the public hearing. Public notice of the hearing shall be provided not less than 15 days prior to the date of the public hearing by all the following:
 - 1. Publication of the date, place, and purpose of the hearing in a newspaper of general circulation in the town affected.
 - 2. Posting of the same information in three or more public places within the town including posting within view from the public right-of-way nearest to the property for which an application is made.

3. Written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to any public right-of-way and, in any situation in which a waiver or variance is sought regarding setbacks from a state highway, also including written notification to the secretary of transportation. The notification shall include a description of the proposed project and shall be accompanied by information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal.
 4. For hearings on subdivision plats located within 500 feet of a town boundary, written notification to the clerk of the adjoining town.
- b. Public notice of all other types of development review hearings, including site plan review shall be given not less than seven (7) days prior to the date of the public hearing, and shall at minimum include the following:
1. Posting of the date, place and purpose of the hearing in three (3) or more public places within the affected town.
 2. Written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way and, in any situation in which a variance is sought regarding setbacks from a highway, also including written notification to the secretary of transportation. The notification shall include a description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding, is a prerequisite to the right to take any subsequent appeal.

NOTE: The above public notice requirements includes dimensional waivers.

- c. Per 24 V.S.A. Chapter 117 § 4464(a)(5), no defect in the form or substance of any required public notice under this section shall invalidate the action of the ZBA where reasonable efforts have been made to provide adequate posting and notice. However, the action shall be invalid when the defective posting or notice was materially misleading in content. If an action is ruled to be invalid by the Environmental Court, the action shall be remanded to the ZBA to provide new posting and notice, hold a new hearing, and take a new action.

7.4.4 Decisions

The ZA shall act within 30 days of receipt of a complete application, to approve or deny the application, or refer the application to the ZBA. Applications that cannot be approved in compliance with this bylaw shall be denied. The decision shall be issued in writing and include a statement of the factual bases on which the conclusions were made. Decisions of the ZA can be appealed as per this bylaw and 24 V.S.A. Chapter 117 § 4465-4472. If the ZA fails to act within the 30-day period, a permit shall be deemed issued on the 31st day.

7.4.5 Appeals

An interested party may appeal any decision or act taken by the ZA by filing a notice of

appeal with the secretary of the ZBA of that town or with the clerk of that town if no such secretary has been elected. This notice of appeal must be filed within 15 days of that decision or act, and a copy of the appeal shall be filed with the ZA. The ZBA shall set a date and place for a public hearing of an appeal within 60 days of the filing of the notice of appeal and shall mail the appellant a copy of that notice not less than 15 days prior to the hearing date. Hearings on appeals are governed per 24 V.S.A. Chapter 117 § 4468. Decisions on appeals are governed per 24 V.S.A. Chapter 117 § 4464(b).

- a. The ZBA shall consider comments from the NFIP Coordinator at ANR. The ZBA may recess the proceedings on any application pending submission of additional information. The ZBA should close the evidence promptly after all parties have submitted the requested information, adjourn the hearing, and may deliberate prior to issuing its decision.
- b. Decisions of the ZBA shall be issued in writing within 45 days after the adjournment of the final hearing, and failure of the ZBA to issue a decision within this period shall be deemed approval and shall be effective on the 46th day. Decisions shall be in writing and shall be sent by certified mail to the applicant and the appellant. Copies of the decision shall also be mailed to every person or body appearing and having been heard at a hearing. The decision will include a notice that an interested person may appeal the decision to the Environmental Court as per 24 V.S.A. Chapter 117 § 4471.
- c. Decisions by the ZBA shall include a statement of the factual basis on which the ZBA has made its conclusions regarding how the proposed development will meet the development standards, and a statement of the conclusions. The minutes of the meeting may suffice, provided the factual bases and conclusions relating to the review standards are provided.
- d. In rendering a decision in favor of the applicant, the ZBA may attach additional reasonable conditions and safeguards as it deems necessary to implement the purposes of this bylaw and the town plan then in effect. ZBA decisions may be conditioned to assure that all necessary permits must be also received from those government agencies from which approval is required by Federal, State or local law for the approval to be valid. The ZBA may provide for the conditioning of permit issuance on the submission of a bond, escrow account, or other surety in a form acceptable to the legislative body of the town to assure one or more of the following: the completion of the project, adequate stabilization, or protection of public facilities that may be affected by a project.

NOTE: Granting of an appeal will not relieve a landowner or a town from the obligation to comply with the minimum requirements of the National Flood Insurance Program. Landowners and municipalities that fail to meet the Program's minimum requirements, notwithstanding any appellate decision to the contrary, are in violation of the National Flood Insurance Program and remain subject to the accompanying penalties.

7.4.6 Permit Validity

Each permit issued shall:

- a. Contain a statement of the period of time within which an appeal may be filed.
- b. Require posting of a notice of permit on a form prescribed by the town within view from the public right-of-way most nearly adjacent to the subject property for not less than 15 days after issuance, which is the appeal filing period.
- c. Not take effect until 15 days after issuance, or in the event that a notice of appeal of a decision by the ZA is properly filed, no such permit shall take effect until adjudication of that appeal by the ZBA is complete and the time for taking an appeal to the environmental court has passed without an appeal being taken. If an appeal is taken to the environmental court, the permit shall not take effect until adjudication by the environmental court.
- d. Be valid for a period of two years after issuance.

7.4.7 Changes

After the issuance of a permit, no changes of any kind shall be made to the application, permit or any of the plans, specifications or other documents submitted with the application without the written consent or approval of the ZA. If changes are deemed necessary, requests for such change shall be in writing, and shall be submitted by the applicant to the ZA for consideration. The ZA shall determine if the change requires a new permit application, or an amendment can be made to the existing permit. The ZA may require the applicant to hire a professional engineer, or other professional of demonstrated qualifications, to determine if the change will cause any change to the Base Flood Elevation, but that may not be the only consideration taken by the ZA in determining if a new application is required.

7.4.8 Start of Construction

Work on the proposed construction or development shall be completed within twenty-four (24) months after the date of issuance of the permit or the permit shall expire unless a time extension is granted, in writing, by the ZA.

The actual start of construction 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, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first, alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Time extensions shall be granted only if a written request is submitted by the applicant, who sets forth sufficient and reasonable cause for the ZA to approve such a request and the original permit is compliant with the bylaw & FIRM/FIS in effect at the time the extension is granted.

SECTION 7.5 ESTABLISHMENT OF THE SPECIAL FLOOD HAZARD AREA

These regulations shall apply to the Special Flood Hazard Area (SFHA) in and on the Flood Insurance Study (FIS) and the accompanying Flood Insurance Rate Maps (FIRMs) dated 9/28/2007, or the most recent revision thereof, issued by the Department of Homeland Security, Federal Emergency Management Agency (FEMA), National Flood Insurance Program, as provided by the Secretary of the Agency of Natural Resources (ANR) pursuant to 10 V.S.A. Chapter 32 § 753, which are hereby adopted by reference and declared to be part of these regulations. This includes all digital data developed as part of the FIS¹. These hazard areas overlay any other existing zoning districts and the regulations herein are the minimum standards that must be met before meeting the additional standards applicable in the underlying district.

If uncertainty exists with respect to the boundaries of the Special Flood Hazard Area or the floodway, the location of the boundary shall be determined by the ZA. If the applicant disagrees with the determination made by the ZA, he or she may appeal to the ZBA. The burden of proof shall be on the appellant. A Letter of Map Amendment from the FEMA shall constitute proof.

SECTION 7.6 DESCRIPTION OF FEMA IDENTIFIED SPECIAL FLOOD HAZARD AREAS

- a. The AE Area/District shall be those areas identified as an AE Zone on the FIRM included in the FIS prepared by FEMA for which base flood elevations have been provided.

AE Area without floodway shall be those areas identified as an AE zone on the FIRM included in the FIS prepared by FEMA for which base flood elevations have been provided but no floodway has been determined.

- b. The A Area/District shall be those areas identified as an A Zone on the FIRM included in the FIS prepared by FEMA and for which no base flood elevations have been provided. For these areas, elevation and floodway information from other Federal, State, or other acceptable sources shall be used when available. Where other acceptable information is not available, the base flood elevation shall be determined by using the elevation of a point on the boundary of the identified floodplain area which is nearest the construction site.

In lieu of the above, the town may require the applicant to determine the base flood elevation with hydrologic and hydraulic engineering techniques. Hydrologic and hydraulic analyses shall be undertaken only by professional engineers or others of demonstrated qualifications, who shall certify that the technical methods used correctly reflect currently accepted technical concepts. Studies, analyses, computations, etc., shall be submitted in sufficient detail to allow a thorough technical review by the municipality.

¹ FIS and FIRMs are available digitally on FEMA's online Map Service Center:
<https://msc.fema.gov/portal>

c. **Changes in Identification of Area**

The Identified Floodplain Area may be revised or modified by the ZBA where studies or information provided by a qualified agency or person documents the need for such revision. However, prior to any such change to the Special Flood Hazard Area, approval must be obtained from FEMA. Additionally, as soon as practicable, but not later than six (6) months after the date such information becomes available, a municipality shall notify FEMA of the changes to the Special Flood Hazard Area by submitting technical or scientific data. See Section 7.9.2 of this bylaw for situations where FEMA notification is required.

SECTION 7.7 DEVELOPMENT IN SPECIAL FLOOD HAZARD AREAS

7.7.1. Permit Requirement

A permit is required from the Zoning Administrator (ZA) for all proposed construction and development in all areas defined in Section 7.5. Development that requires conditional use approval, non-conforming use approval, a waiver, or a variance from the ZBA under these flood hazard regulations, must have such approvals prior to the issuance of a permit by the ZA. Any development subject to town jurisdiction in the SFHAs shall meet all relevant criteria in Section 7.9 of this bylaw. A permit may be issued only following receipt of comments from the Vermont Agency of Natural Resources, or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner. The ZBA should consider comments from the NFIP Coordinator at ANR. No permit shall be issued until all other necessary government permits required by state and federal laws have been obtained.

7.7.2 Permitted Development

For the purposes of review under these regulations, the following development activities in the Special Flood Hazard area, where meeting the Technical Provisions in Section 7.9 of this bylaw, require only an administrative permit from the ZA:

- a. Non-substantial improvements of less than a 500 square foot footprint to existing residential and non-residential structures
- b. Accessory structures built in accordance with Section 7.9.1(g) of this bylaw
- c. Development related to on-site septic or water supply systems in accordance with Sections 7.9.1(j) and 7.9.1(l) of this bylaw
- d. Building utilities in accordance with relevant Technical Provisions in Section 7.9 of this bylaw
- e. Open fencing and signs elevated on poles or posts that create minimal resistance to the movement of floodwater
- f. Stream crossings that do not require Stream Alteration Permits, span top-of-bank to top-of-bank, and are to be used exclusively for recreational uses
- g. At-grade parking for existing buildings
- h. Storage or parking of recreational vehicles, not to exceed 180 days, provided they are fully licensed and ready for highway use, and comply with all relevant sections of the Zoning Bylaw.

7.7.3 Prohibited Development in Special Flood Hazard Areas

For the purposes of review under these regulations, the following development activities are prohibited in any Special Flood Hazard Area, and would only be allowed via issuance of a

variance or waiver:

- a. New residential or non-residential structures (including the placement of new manufactured homes)
- b. Storage or junk yards
- c. New fill, except as necessary to elevate structures above the base flood elevation, and placed in accordance with **7.9.1(o)** of this bylaw
- d. Critical facilities in all areas affected by mapped flood hazards
- e. All development not otherwise exempted, permitted, or conditionally permitted.

7.7.4 Conditional Use Review

Conditional use review and approval by the ZBA, is required prior to the issuance of a permit by the ZA for the following proposed development, which shall be undertaken in accordance with all relevant technical provisions described in Section **7.9.1** of this bylaw:

- a. Substantial improvement, elevation, relocation, or flood-proofing of an existing residential or non-residential structure that does not expand the footprint of the existing structure more than 500 square feet.
- b. Any improvement to an existing residential or non-residential structure that does expand the footprint of the existing structure more than 500 square feet.
- c. New or replacement storage tanks for existing structures placed in accordance with Section **7.9.1(p)**, **(r)** and **(w)** of this bylaw.
- d. Grading, excavation, or the creation of a pond.
- e. Improvements to existing roads or streets, in accordance with Section **7.9.1(m)** of this bylaw.
- f. Construction or repair of stream crossing structures (bridges and culverts), associated transportation and utility networks, dams, dry hydrants, and other functionally dependent uses that must be placed in or over rivers and streams that are located in the SFHA and that have coverage under a Stream Alteration Permit, if required, under 10 V.S.A. Chapter 41 and the rules adopted thereunder.
- g. Subdivision of land in the SFHA in accordance with Section **7.9.1(n)** of this bylaw.
- h. Building utilities placed in accordance with the relevant standards of this bylaw.
- i. Power generation Facilities and telecommunications infrastructure not otherwise regulated by 30 V.S.A. Chapter 5 § 248 or § 248a.

7.7.5 Exempt Activities

The following are exempt from regulation under this bylaw:

- a. The removal of a building or other structure in whole or in part, in conjunction with an approved site stabilization plan²
- b. Previously Developed Sites:
 1. Pre-existing development may continue.
 2. A pre-existing building or developed site may be used for any purpose allowed in the zoning district.

² Approval could come from Army Corps of Engineers, Agency of Natural Resources, a grant funding entity, or the Floodplain Administrator.

- c. Maintenance of existing roads, parking areas and stormwater drainage, not including any expansions.
- d. Maintenance of existing trails, and the expansion or development of new trails that do not include any type of channel management or stabilization.
- e. Maintenance of existing bridges, culverts, and channel stabilization activities, not including any expansions.
- f. Silvicultural (forestry) activities conducted in accordance with the Vermont Department of Forests and Parks Acceptable Management Practices.
- g. Agricultural activities conducted in accordance with the Vermont Department of Agriculture's Required Agricultural Practices. Prior to the construction of farm structures, the farmer must notify the ZA in writing of the proposed activity. The notice must contain a sketch of the proposed structure including setbacks.

7.7.6 Nonconforming Structures and Uses

The ZBA may, after public notice and hearing, approve the repair, relocation, replacement, or enlargement of a nonconforming structure within a Special Flood Hazard Area provided that:

- a. The proposed development is in compliance with all the Technical Provisions in Section 7.9.1 of this bylaw.
- b. A nonconforming structure that is substantially damaged or destroyed may be reconstructed in place only in circumstances when the structure cannot be relocated to a less hazardous location on the parcel. The lowest floor of the reconstructed residential structure must be rebuilt with the lowest floor elevated to one foot or more above the base flood elevation, and a non-residential structure must be floodproofed according to Section 7.9.1(d) of this Bylaw, and the structure must otherwise comply with all requirements of the National Flood Insurance Program and this bylaw.
- c. Nonconforming structures or uses shall be considered abandoned where such structures or uses are discontinued for not less than 12 months.
- d. An individual manufactured home remaining occupied in an existing manufactured home park that is vacated shall not be considered a discontinuance or abandonment of nonconformity. Replacement manufactured homes must be placed so as to meet the development standards in this Bylaw.
- e. A nonconformity, located in a Special Flood Hazard Area, that the town deems to be a public nuisance or public health risk or hazard may be abated or removed as per 24 V.S.A. Chapter 117 § 4412.7(C).

SECTION 7.8 PERMIT APPLICATION GUIDELINES

- a. In addition to relevant items listed under application requirements in Section 3.5.2a of this bylaw, application for development in a Special Flood Hazard Area shall be made, in writing, to the ZA on forms supplied by the Town of Whitingham. Such application shall include:
 1. The name and contact information for the owner of the property, including any agents authorized to act on their behalf.
 2. A thorough description of the proposed development.
 3. General location map including the address of the property, tax parcel ID, relative locations of the existing development and the nearest public road.

4. Where applicable, a site plan that depicts the proposed development, all water bodies, Special Flood Hazard Areas, any existing and proposed drainage, any proposed fill, and pre and post development grades, and the elevation of the proposed lowest floor, as referenced to the same vertical datum as the elevation on the current Flood Insurance Rate Maps.
 5. Three copies of the application, including one to be forwarded to the State National Flood Insurance Program Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Program.
 6. The appropriate fee as determined by the Selectboard.
- b. If any proposed construction or development is located entirely or partially within any FEMA defined Special Flood Hazard Area, applicants for Permits shall provide all the necessary information listed below, in addition to that mentioned above in **7.8(a)**, in sufficient detail and clarity to enable the Zoning Administrator to determine that:
1. All such proposals are consistent with the need to minimize flood damage and conform with the requirements of this and all other applicable codes and bylaws.
 2. All utilities and facilities, such as sewer, gas, electrical and water systems are located and constructed to minimize or eliminate flood damage.
 3. Adequate drainage is provided so as to reduce exposure to flood hazards.
 4. Structures will be anchored to prevent floatation, collapse, or lateral movement;
 5. Building materials are flood-resistant.
 6. Appropriate practices that minimize flood damage have been used.
 7. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities have been designed and located to prevent water entry or accumulation.
- c. If any proposed construction or development is located entirely or partially within any FEMA defined Special Flood Hazard Area, applicants for Permits shall provide the following data and documentation, in addition to that mentioned above in Sections **7.8(a)** and **(b)**:
1. If available, information concerning flood depths, pressures, velocities, impact and uplift forces and other factors associated with a base flood.
 2. Detailed information concerning any proposed floodproofing measures and corresponding elevations.
 3. Document, certified by a registered professional engineer or architect, which states that the proposed construction or development has been adequately designed to withstand the pressures, velocities, impact and uplift forces associated with the base flood. Such statement shall include a description of the type and extent of flood proofing measures which have been incorporated into the design of the structure and/or the development.
 4. Documentation, certified by a registered professional engineer or architect, to show that the cumulative effect of any proposed development within any Special Flood Hazard Area (See Section **7.6** of this bylaw), when combined with all other existing and anticipated development will not increase the base flood elevation more than one (1) foot at any point in any Special Flood Hazard Area.

5. If a Vermont Agency of Natural Resources Project Review Sheet was completed and submitted to ANR, this shall also be included in your application to the Town. The ANR Project Review Sheet is a tool that identifies all State and Federal agencies from which permit approval may be required for the proposal. Regardless of whether a Project Review Sheet is completed, all required state and federal permits shall be submitted to the ZA and attached to the permit before work can begin in any FEMA defined Special Flood Hazard Area.
- d. For applicants seeking conditional use approval, approval under nonconforming structures and uses, a waiver, or a variance, for development within any Special Flood Hazard Area, the following also need to be provided, in addition to that mentioned above in Sections **7.8(a)**, **(b)** and **(c)**:
 1. A list of abutters names and mailing addresses.
 2. A statement of purpose and need for the proposed development.
 3. A description of the alternatives considered to the proposed development, including alternate locations on the parcel or site, especially outside of the hazard area.
 4. Such pertinent information as identified in the regulations or deemed necessary by the ZBA for determining the suitability of the proposed development for the site.
 5. For a variance, then the application must include responses to the regulations set forth in 24 VSA § 4469, and CFR 60.6, and Section **7.11** of this bylaw.
 6. For a waiver, then the application must include responses to the regulations set forth in CFR 60.6, and Section **7.10** of this bylaw.
 7. Copies of the application sufficient for the ZBA members, the State National Flood Insurance Program Coordinator, and additional parties such as the VT DEC Stream Alteration Engineer and adjacent municipalities if affected under Section **7.4.3(a)** of this bylaw.
 8. Any additional fees as required by the Selectboard.
 - e. It is the responsibility of the applicant to provide material necessary for the ZA, ZBA, and any other designated town official, to fully understand the development proposal and to be able to make appropriate determinations using the data and materials provided by the applicant. Costs incurred for the development of application materials are the responsibility of the applicant.

SECTION 7.9 TECHNICAL STANDARDS

The criteria below are the minimum standards for any development which is permitted, exempt, approved via conditional use approval, or granted via variance or waiver in Special Flood Hazard Areas. Where more than one zone or area is involved, the most restrictive standard shall take precedence.

7.9.1 Special Flood Hazard Area Development Standards

- a. All development shall be:
 1. Reasonably safe from flooding and fluvial erosion risk.

2. Designed, operated, maintained, modified, and adequately anchored to prevent flotation, collapse, release, or lateral movement of the structure.
 3. Constructed with materials resistant to flood damage³;
 4. Constructed by methods and practices that minimize flood damage.
 5. Constructed with electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities designed and/or located to prevent water from entering or accumulating within the components during conditions of flooding.
 6. Adequately drained to reduce exposure to flood hazards.
 7. Located so as to minimize conflict with changes in channel location over time and the need to intervene with such changes.
- b. Within any SFHA, no development shall be permitted without first determining the base flood elevation and demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated encroachments in the municipality, will not cause more than a one (1) foot increase in any SFHA area within the municipality during a base flood discharge. This demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and is certified by a licensed professional engineer or land surveyor.
- c. New Residential Structures or Residential Structures to be substantially improved in Zones A, A1-30, AE, and AH shall be located such that the lowest floor is at least one foot above base flood elevation. This must be documented in as-built condition, with a FEMA Elevation Certificate.
- d. Non-residential structures in the SFHA to be substantially improved shall:
1. Meet the elevation standards for Residential Structures outlined above in Section [7.9.1\(c\)](#) of this bylaw; or,
 2. Have the lowest floor, including basement, together with attendant utility and sanitary facilities designed so that two feet above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A permit for flood-proofing shall not be issued until a licensed professional engineer, architect or land surveyor has reviewed the structural design, specifications and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.
- e. Enclosed areas below the lowest floor shall:
1. Be used solely for the parking of a vehicle, building access, or incidental storage in an area other than a basement, and such a condition shall clearly be stated on any permits; and,
 2. Be designed and constructed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs

³ Refer to FEMA Technical Bulletin 2-9: Flood Resistant Materials Requirements

must be certified by a licensed professional engineer or architect to meet or exceed the following minimum criteria: (1) A minimum of two openings on two walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided; (2) The bottom of all openings shall be no higher than one foot above grade; and (3) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

f. Recreational vehicles must be fully licensed and ready for highway use.

g. Accessory structures

Structures accessory to a principal building need not be elevated or floodproofed to remain dry, but shall comply, at a minimum, with the following requirements:

1. The structure shall not be designed or used for human habitation, but shall be limited to the parking of vehicles, or to the storage of tools, material, and equipment related to the principal use or activity.
 2. Floor area shall not exceed 500 square feet.
 3. The structure will have a low damage potential.
 4. The structure will be located on the site so as to cause the least obstruction to the flow of flood waters.
 5. Power lines, wiring, and outlets will be elevated to one foot above the base flood elevation.
 6. Permanently affixed utility equipment and appliances such as furnaces, heaters, washers, dryers, etc. are prohibited.
 7. Sanitary facilities are prohibited.
 8. The structure shall be adequately anchored to prevent flotation or movement and shall be designed to automatically provide for the entry and exit of floodwater for the purpose of equalizing hydrostatic forces on the walls. Designs for meeting this requirement must be certified by a registered professional engineer or architect, or a licensed surveyor, to meet or exceed the following minimum criteria:
 - i. A minimum of two openings having a net total area of not less than one (1) square inch for every square foot of enclosed space.
 - ii. The bottom of all openings shall be no higher than one (1) foot above grade.
 - iii. Openings may be equipped with screens, louvers, etc. or other coverings or devices provided that they permit the automatic entry and exit of flood waters.
- h. If a variance is obtained according to Section 7.11 of this bylaw, all manufactured homes, and any improvements thereto, shall be:
1. Placed on a permanent foundation.
 2. Elevated so that the lowest floor of the manufactured home is at least to one foot above the base flood elevation.
 3. Anchored to resist flotation, collapse, or lateral movement.
- i. Historic structures undergoing repair or rehabilitation that would constitute a substantial improvement as defined in this bylaw, must comply with all bylaw requirements that do

not preclude a structure or district's continued historic designation. Documentation that a specific bylaw requirement will cause removal of the structure, or district that the structure lies within, from the National Register of Historic Places or the State Inventory of Historic places must be obtained from the Secretary of the Interior or the State Historic Preservation Officer. Any exemption from bylaw requirements will be the minimum necessary to preserve the historic character and design of the structure and/or district.

- j. Water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
- k. Sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
- l. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- m. Streets finished elevation shall be no more than one (1) foot below the base flood elevation.
- n. Subdivisions, Manufactured Home Parks, and Planned Unit Developments must be accessible by dry land access outside the special flood hazard area. All subdivision proposals and development proposals containing at least 50 lots or at least 5 acres, whichever is the lesser, in FEMA Identified SFHA's where base flood elevation data are not available, shall be supported by hydrologic and hydraulic engineering analyses that determine base flood elevations and floodway information. The analyses shall be prepared by a licensed professional engineer or a licensed land surveyor in a format required by FEMA for a Conditional Letter of Map Revision and Letter of Map Revision. Submittal requirements and processing fees shall be the responsibility of the applicant. If such a subdivision is proposed in a flood prone area, assure that:
 - 1. Such proposal minimizes flood damage.
 - 2. Is proposed to be constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
 - 3. Adequate drainage is provided to reduce exposure to flood hazards.
 - 4. New parcels created by subdivision require a reasonable development envelope that conforms to all natural hazard and dimensional standards in this bylaw without requiring a variance or waiver.
- o. If fill is used to elevate structures above the base flood elevation, it shall:
 - 1. Extend laterally at least fifteen (15) feet beyond the building line from all points.
 - 2. Consist of soil or small rock materials only - Sanitary Landfills shall not be permitted.
 - 3. Be compacted to provide the necessary permeability and resistance to erosion, scouring, or settling.
 - 4. Be no steeper than one (1) vertical to two (2) horizontal feet unless substantiated

- data justifying steeper slopes are submitted to, and approved by the ZA.
5. Be used to the extent to which it does not adversely affect adjacent properties.
 6. Fill shall be inspected and approved by a professional engineer or licensed land surveyor prior to placement of any structure atop fill.
- p. Storage of all materials that are buoyant, flammable, explosive or in times of flooding, could be injurious to human, animal, or plant life, shall be stored at or above one foot above the base flood elevation or floodproofed to the maximum extent possible, including being firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, or lateral movement.
- q. Existing residential and non-residential buildings, including manufactured homes, to be substantially improved in Zone AO shall have the lowest floor, including basement, elevated above the highest adjacent grade, at least as high as the depth number specified on the community's FIRM, or at least two feet if no depth number is specified.
- r. Anchoring
1. All buildings and structures shall be firmly anchored in accordance with accepted engineering practices to prevent flotation, collapse, or lateral movement.
 2. All air ducts, large pipes, storage tanks, and other similar objects or components located below the base flood elevation shall be securely anchored or affixed to prevent flotation.
- s. Floors, Walls and Ceilings
1. Wood flooring used at or below the base flood elevation shall be installed to accommodate a lateral expansion of the flooring, perpendicular to the flooring grain without causing structural damage to the building.
 2. Plywood used at or below the base flood elevation shall be of a "marine" or "water-resistant" variety.
 3. Walls and ceilings at or below the base flood elevation shall be designed and constructed of materials that are "water-resistant" and will withstand inundation.
 4. Windows, doors, and other components at or below the base flood elevation shall be made of metal or other "water-resistant" material.
- t. Paints and Adhesives
1. Paints and other finishes used at or below the base flood elevation shall be of "marine" or "water-resistant" quality.
 2. Adhesives used at or below the base flood elevation shall be of a "marine" or "water-resistant" variety.
 3. All wooden components (doors, trim, cabinets, etc.) used at or below the base flood elevation shall be finished with a "marine" or "water-resistant" paint or other finishing material.
- u. Electrical Components
- Electrical distribution panels shall be at least three (3) feet above the base flood elevation. Separate electrical circuits shall serve lower levels and shall be dropped from above.

- v. Equipment
Water heaters, furnaces, air conditioning and ventilating units, and other electrical, mechanical or utility equipment or apparatus shall not be located below the base flood elevation.
- w. Fuel Supply Systems
All gas and oil supply systems shall be designed to prevent the infiltration of flood waters into the system and discharges from the system into flood waters. All components located below the base flood elevation shall be securely anchored or affixed to prevent flotation or unmooring. Additional provisions shall be made for the drainage of these systems in the event that flood water infiltration occurs.

7.9.2 Alteration or Relocation of Watercourse

- a. No encroachment, alteration, or improvement of any kind shall be made to any watercourse until all adjacent towns which may be affected by such action have been notified by the town, and until all required permits or approvals have first been obtained from the Vermont Agency of Natural Resources.
- b. No encroachment, alteration, or improvement of any kind shall be made to any watercourse unless it can be shown that the activity will not decrease stream stability or reduce or impede the flood carrying and sediment transport capacity of the watercourse in any way.
- c. In addition, FEMA shall be notified prior to any alteration or relocation of any watercourse.

NOTE: While submission of technical or scientific data is a municipal responsibility, a municipality may pass this responsibility onto the applicant. Whitingham hereby requires applicant to submit all technical and scientific data to FEMA for requesting Map Change. Additionally, applicant is responsible for any and all fees associated with processing Letters of Map Amendment.

- d. Any new construction, development, uses or activities allowed within any Special Flood Hazard Area shall be undertaken in strict compliance with the provisions contained in this bylaw and any other applicable codes, bylaws and regulations.
- e. Any modification, alteration, reconstruction, or improvement of any kind that meets the definition of “Repetitive Loss” shall be undertaken only in full compliance with the provisions of this bylaw.

SECTION 7.10 WAIVERS

The purpose of a dimensional waiver is to allow for the reduction of dimensional requirements that might not meet the standards necessary to grant a variance.

- a. Pursuant to 24 V.S.A. § 4414(8), waivers to dimensional requirements of this bylaw may be granted by the ZBA after considering the Waiver Criteria in Section **7.10(c)** below.

The burden of proof is on the applicant to demonstrate that the waiver requested meets the Waiver Criteria.

- b. A waiver may be granted to any of the dimensional requirements in this bylaw.

NOTE: This does not apply to Base Flood Elevations or elevation requirements, or to boundaries of Special Flood Hazard Areas. Boundaries of Special Flood Hazard Areas can only be changed according to Section 7.6(c) of this bylaw.

- c. Waiver Criteria. The ZBA may grant a waiver(s) to a dimensional requirement(s) after making findings on the following criteria:

1. The waiver is helpful or necessary to allow for reasonable use of the property.
2. The waiver is the minimum reduction in the dimensional requirement that will enable the reasonable use of the property.
3. Any adverse effects of the waiver are mitigated by design, screening, or other remedies.
4. The need for a waiver was not created by past decisions of the applicant.
5. The proposed project will still conform to the Whitingham Town Plan.
6. The proposed project will still conform to the purpose of this bylaw, as stated in Section II of this bylaw, and any underlying zoning district in which the land development is located.
7. The proposed project will not have an undue adverse effect on the following:
 - i. Surrounding properties and property values
 - ii. The character and aesthetics of the neighborhood
 - iii. Traffic patterns and circulation
 - iv. Public health, safety, and utility services
 - v. Stormwater management
 - vi. Water and wastewater capacity
 - vii. Disability accessibility, fire safety, and other requirements of the law
 - viii. Energy conservation and renewable energy structures
 - ix. Changes in channel location over time and the need to intervene with such changes
 - x. Any increase in the BFE within the Floodway
 - xi. Together with all other existing and anticipated development in the municipality, more than a one (1) foot increase in the BFE at any point within the A or AE Area without floodway.

- d. Waiver Application and Review Process

1. The application shall come to the ZBA either from the applicant as an appeal of a decision of the ZA or a referral from the ZA.
2. Requests for waivers are considered by the ZBA. Any request for a waiver will be warned and a public hearing held, subject to procedures set forth in Section 7.4 of this bylaw.

3. The ZBA shall consider the opinion of abutters in deciding whether to grant the waiver.
4. The ZBA shall consider comments from the NFIP Coordinator at ANR in deciding whether to grant the waiver.
5. In granting a decision in favor of the applicant, the ZBA may attach reasonable conditions, including mitigation by design, screening, or other remedy.
6. Any waiver granted under this section shall be limited to the specific property to which it has been granted. A waiver on one property shall not be construed as a general guideline or standard for any other property.
7. Expiration: Waiver approvals shall expire by limitation if work is not completed within twenty-four (24) months after the date of issuance. All work must be completed as shown on any approved plan before the expiration date. One-year extensions of this deadline may be granted by the ZA prior to expiration. Requests for extensions must be made in writing.
8. Appeals: Any request for a Waiver that is denied may be appealed subject to Section 7.4.5 of this bylaw.

SECTION 7.11 VARIANCES

If compliance with any of the requirements of this bylaw would result in an exceptional hardship to a prospective builder, developer or landowner, the ZBA may, upon request, grant relief from the strict application of the requirements. Variances may be granted in writing by the ZBA only in accordance with all the criteria below and in 24 V.S.A. § 4469 and 44 CFR Section 60.6.

- a. No variance shall be granted for any construction, development, use, or activity within any Floodway Area/District that would cause any increase in the BFE.
- b. No variance shall be granted for any construction, development, use, or activity within any A or AE Area/District without floodway that would, together with all other existing and anticipated development in the municipality, increase the BFE more than one (1) foot at any point. In A districts, BFE's are determined using the methodology described in Section 7.6(b) of this bylaw.
- c. 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 these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.
- d. That the unnecessary hardship has not been created by the appellant.
- e. If granted, a variance shall involve only the least modification necessary to provide relief.
- f. In granting any variance, the ZBA shall attach whatever reasonable conditions and safeguards it considers necessary in order to protect the public health, safety, and welfare, and to achieve the objectives of this bylaw.
- g. Whenever a variance is granted, the ZBA shall notify the applicant in writing that:

1. The granting of the variance may result in increased premium rates for flood insurance.
 2. Such variances may increase the risks to life and property.
- h. In reviewing any request for a variance, the Town of Whitingham shall consider, at a minimum, the following:
1. That there is good and sufficient cause.
 2. That failure to grant the variance would result in exceptional hardship to the applicant.
 3. That the granting of the variance will:
 - i. neither result in an unacceptable or prohibited increase in flood heights, additional threats to public safety, or extraordinary public expense,
 - ii. nor create nuisances, cause fraud on, or victimize the public, or conflict with any other applicable state or local bylaws and regulations.
 - i. A complete record of all variance requests and related actions shall be maintained by the Town of Whitingham. In addition, a report of all variances granted during the year for properties within the Special Flood Hazard Area and properties insured by the National Flood Insurance Program, shall be included in the biannual report to the FEMA.

Notwithstanding any of the above, however, all structures shall be designed and constructed so as to have the capability of resisting the one-percent (1%) annual chance flood.

NOTE: In granting a variance for a property within the Special Flood Hazard Area or insured by the National Flood Insurance Program, municipalities are held to the standard provided in 44 CFR 60.6. If a variance is granted erroneously, a municipality remains liable for failing to meet the minimum standards of the National Flood Insurance Program.

SECTION 7.12 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 7.13 PRECEDENCE AND GREATER RESTRICTIONS

The provisions of this ordinance shall not in any way impair or remove the necessity of compliance with any other local, state, or federal laws or regulations. Where this flood hazard regulation imposes a greater restriction, the provisions here shall take precedence. If there is any conflict between the provisions within this ordinance, the more restrictive shall apply.

SECTION 7.14 ENFORCEMENT AND PENALTIES

- a. This bylaw shall be enforced under the town zoning bylaw in accordance with 24 V.S.A. Chapter 117 § 4451, § 4452 and 24 V.S.A. Chapter 59 § 1974a.
- b. Whenever the ZA or other authorized town representative determines that there are reasonable grounds to believe that there has been a violation of any provisions of this bylaw, or of any regulations adopted pursuant thereto, the ZA shall give notice of such alleged violation as hereinafter provided. Such notice shall:
 1. Be in writing.
 2. Include a statement of the reasons for its issuance.
 3. State that the alleged offender has an opportunity to cure the violation within thirty days of receipt.
 4. State that failure to cure the violation may result in fines and/or loss of flood insurance.
 5. State that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the thirty days within the next succeeding 12 months.
 6. Be served upon the property owner or his agent as the case may require; provided, however, that such notice or order shall be deemed to have been properly served upon such owner or agent when a copy thereof has been served with such notice by any other method authorized or required by the laws of this State.
 7. Contain an outline of remedial actions which, if taken, will affect compliance with the provisions of this bylaw.
- c. Copies of the notice of violation will be:
 1. Mailed to the Vermont NFIP Coordinator and, within 30 days be
 2. Filed in the land use permit files; and,
 3. Delivered to the town clerk for recording in the land records.
- d. After thirty days, if the violation has not been remedied, in accordance with 24 V.S.A. Chapter 59 § 1974a, and Chapter 117 § 4451 and § 4452; any person who is found to have violated this bylaw shall be fined by the court not more than \$200.00 for each offense. No action may be brought under this section unless such notice as required has been given as described above in this part. In default of payment of the fine, the violator shall pay double the amount of the fine. Each day that a violation is continued shall constitute a separate offense.

Within any FEMA Identified Special Flood Hazard Area, if any appeals have been resolved, but the violation remains, the ZA shall submit a declaration to the Administrator of the National Flood Insurance Program requesting a denial of flood insurance to the violator. 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 bylaw, (c) a clear statement that the Zoning Administrator 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.