

TOWN OF DERBY

ZONING BYLAW

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ADOPTED – FEBRUARY 1, 1971

TOTAL REVISION – JULY 19, 2004

AMENDED – MARCH 24, 2008

AMENDED – JUNE 15, 2009

AMENDED – OCTOBER 3, 2011

AMENDED – FEBRUARY 20, 2012

AMENDED – APRIL 2, 2012

AMENDED – APRIL 16, 2012

AMENDED – MAY 14, 2012

AMENDED – JULY 23, 2012

AMENDED – MARCH 17, 2014

AMENDED – APRIL 28, 2014

AMENDED – DECEMBER 8, 2014

AMENDED – MARCH 30, 2015

AMENDED – SEPTEMBER 14, 2015

AMENDED – APRIL 25, 2016

AMENDED – JUNE 20, 2016

AMENDED – NOVEMBER 7, 2016

AMENDED – AUGUST 10, 2020

AMENDED – NOVEMBER 30, 2020

EFFECTIVE – DECEMBER 22, 2020

BYLAW AMENDMENTS

Dated Amended – November 30, 2020

Effective Date – December 22, 2020

Sections affected:

- Article 4 General Provisions regulations – All sections
- Changed definition of Campground
- Changed properties on Caswell Ave, Maple St, and Phelps St near eth I-91 Border Crossing from Commercial (COM) to Village Residential Two Derby Line (VR2DL)

Dated Amended – August 10, 2020

Effective Date – September 1, 2020

Sections affected:

- Article 2 Establishment of Districts and District regulations – All sections
- Article 3 Nonconformities– All sections
- §801.6 Regulation of Child Care – Complete rewrite
- §1102 Word Definitions – Complete rewrite

Dated Amended – November 7, 2016

Effective Date – November 29, 2016

Sections affected:

- Modified definition for Village Inn

Dated Amended – June 20, 2016

Effective Date – July 12, 2016

Sections affected:

- Added definition for Function Hall to Article 11
- Added regulation for Function Hall to Article 4
- Added Function Hall as a permitted use to the COM,R-1, R-2, RR, and SD zoning districts
- Deleted Private School as a conditional use in the COM/IND zoning district

Dated Amended – April 25, 2016

Effective Date – May 16, 2016

Sections affected:

- Complete rewrite of Article 1 & Article 9

Dated Amended – September 14, 2015

Effective Date – October 5, 2015

Sections affected:

- §206.3 “COM” Commercial – Warehouse added as a permitted use and Contractor’s Yard and Gravel Pit added as conditional uses in the Commercial zoning district
-

Derby Zoning Bylaw – As amended November 30, 2020

Dated Amended – March 30, 2015

Effective Date – April 20, 2015

Sections affected:

- §402 Signs – Replaced §402.8(G)(13) to allow directional signs on corner lots in the Commercial zoning district

Dated Amended – December 8, 2014

Effective Date – December 29, 2014

Sections affected:

- §404 Yard Sales – changed the number of yard sales permitted in any one calendar year from 14 day to 6 days

Dated Amended – April 28, 2014

Effective Date – May 19, 2014

Sections affected:

- Deleted Auto Service Station/Mini Mart as a conditional use in §206.1A VCDL zoning district
- Added a prohibition of drive thru windows to §206.1A VCDL zoning district

Dated Amended – March 17, 2014

Effective Date – April 7, 2014

Sections affected:

- Added Office as a permitted use on both street level and above street level to §206.1A VCDL zoning district
- Added Private School as a conditional use to §206.2 COM/IND zoning district

Dated Amended – July 23, 2012

Effective Date – August 14, 2012

Sections affected:

- Change the side yard setback in §206.1B “VC/DC” from 20 ft to 10 ft.
- Added §408 Adult Orientated Business
- Added definitions to §1102 related to Adult Orientated Businesses
- Added Adult Orientated Business as a conditional use in the §206.1 IND & §206.2 COM/IND zoning districts

Dated Amended – May 14, 2012

Effective Date – June 5, 2012

Sections affected:

- Zoning District Boundary – Changed RT005044C6T from R2 to COM
 - Combined Apartment House and Apartment Building into one use Multi-Family Dwelling
 - Deleted definitions of Apartment House and Apartment Building
 - Amended definition of Multi-Family Dwelling
-

Derby Zoning Bylaw – As amended November 30, 2020

Dated Amended – April 16, 2012

Effective Date – May 7, 2012

Sections affected:

- §206.2 – Added Petroleum/Propane Bulk Storage as a Conditional Use

Dated Amended – April 2, 2012

Effective Date – April 23, 2012

Sections affected:

- Zoning District Boundary – Changed MSTDL027A6L & MSTDL029A6L from VR1/DL to VR2/DL

Dated Amended – February 20, 2012

Effective Date – March 12, 2012

Sections affected:

- Article 3: Nonconformities – Total rewrite of this section

Dated Amended – October 3, 2011

Effective Date – October 24, 2011

Sections affected:

- §402.3(A)(3) – Minor change
- §402.3(B) – Minor change clarifying site plan review required
- §401.4 – Amended to be in compliance with State Statutes
- Zoning District boundary - TRD18013A7T & TRD18013A7T1 from COM to RR and TRD18015A7T, TRD18017A7T, TRD18019A7T & TRD18021A7T from R2 to RR

Date Amended – June 15, 2009

Effective Date – July 6, 2009

Sections affected:

- Zoning District Boundary – Changed TRD22055E7T1 from RR to R-2
- §302.5 – Nonconforming structures - revised

Date Amended – March 25, 2008

Effective Date – April 24, 2008

Sections affected:

- Zoning District Boundary – Changed TRD27016F3T from R-1 to IND

Date Amended – July 19, 2004

Effective Date – August 18, 2004

Sections affected:

- All sections – Total revision of bylaw

**Town of Derby Zoning Bylaw
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ARTICLE 1: ENACTMENT AND INTENT

§ 101 Introduction

Zoning is the division of all land in the community into various appropriate districts. Within these districts the use of the land, the height and size of buildings, and the other aspects of development are regulated. The locations and standards of these districts are based on the desires of the community laid out in the Derby Municipal Plan.

The purpose of zoning is to protect existing development from nearby detrimental development. Residential areas will remain safe places to live and play. Industrial areas will not be hampered by complaints from nearby residences, and those areas that are a mix of residential and commercial development will be regulated so that these uses are compatible.

Derby first adopted the Zoning Bylaw in 1971 and it has periodically been updated since that date. This updated version is a revision of the previous bylaw that will improve its organization, bring it into compliance with current State law and with the new Town Plan, and clarify parts of the bylaw that have been sources of uncertainty.

The Derby Zoning Bylaw has been established to conform to, and be in harmony with, the Vermont Municipal and Regional Planning and Development Act. Any conflicts that are identified between the two documents will defer to VSA Title 24 Chapter 117 as the prevailing authority.

§ 102 Enactment

In accordance with the Vermont Planning and Development Act, VSA 24 Chapter 117, there are hereby established zoning regulations for the Town of Derby which are set forth in the text and map that constitutes these regulations. These regulations shall be known and cited as the “Town of Derby Zoning Bylaws”.

§ 103 Intent

It is the intent of these zoning bylaws to provide for orderly community growth, to protect the public health, safety and general welfare, to preserve the character and appearance of the Town of Derby, to protect scenic, historic, environmental and natural resources of the Town of Derby, and to further the purposes established in the Town of Derby Municipal Development Plan and in VSA Title 24 §4302.

§ 104 Application of Bylaw

The application of this bylaw is subject to VSA Title 24 Chapter 117. Except as hereinafter provided, no “land development”, as defined below, shall commence unless in conformity with this bylaw as herein specified for the district in which such land or structure is located. Any use not permitted by this bylaw shall be deemed prohibited. “Land development” means the division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining, excavation or landfill, and any change in the use of any building or other structure, or land or extension of any use of land.

ARTICLE 2: ESTABLISHMENT OF DISTRICTS AND DISTRICT REGULATIONS

§ 201 Zoning Map and Districts

The zoning map officially entitled “Town of Derby Zoning Map” is hereby adopted as part of this Bylaw. The Town of Derby Zoning Map shows the division of the Town into the following districts:

“IND”	Industrial
“COM/IND”	Commercial/Industrial
“COM”	Commercial
“R-HD”	Residential High Density
“R-MD”	Residential Medium Density
“R-1”	Residential One Acre
“R-2”	Residential Two Acre
“RR”	Rural Residential
“SD”	Shoreland District
“SL”	Special Lands

The Town of Derby Zoning Map shows the division of the Village of Derby Line into the following districts:

“VC/DL”	Village Commercial Derby Line
“VR-1/DL”	Village Residential-One Derby Line
“VR-2/DL”	Village Residential-Two Derby Line

The Town of Derby Zoning Map shows the division of the Village of Derby Center into the following districts:

“VC/DC”	Village Commercial Derby Center
“VR/DC”	Village Residential Derby Center
“VR-MF/DC”	Village Residential Multi-Family Derby Center

In addition to underlying zoning districts the Town of Derby Zoning Map shows the division of the Town of Derby into the following overlay district:

“SPA”	Source Protection Area
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§ 202 Copies of the Zoning Map

Regardless of the existence of other copies of the Zoning Map, which from time to time may be made or published, the official Zoning Map shall be located in the office of the Zoning Administrator and shall be the final authority as to the current zoning status of the land and water areas, buildings, and other structures in the Town.

§ 203 Interpretation of District Boundaries

203.1 District boundaries along the lines of roads, streams, and transportation rights of way shall be deemed to follow the centerlines. The abandonment of roads shall not affect the location of district boundaries.

203.2 All district boundaries that are formed by natural bodies of water shall be deemed to follow the high water mark.

203.3 If uncertainty exists with respect to the location of any district boundary on the official Zoning Map, the Planning Commission shall determine the location of such boundary.

203.4 The location of the boundary of the Special Flood Hazard Area shall be determined by the Administrative Officer. If the applicant disagrees with the determination made by the Administrative Officer, a Letter of Map Amendment from FEMA shall constitute proof.

§ 204 Classification of Lots: Source of Water and Sewer Service

Lot classifications are dependent on the type of wastewater system and potable water supply used on the lot. Dimensional requirements for lots may vary within a zoning district depending on lot classification. The classification is as follows:

<u>Lot Classification</u>	<u>Provision for Water and Sewage Disposal</u>
Class 1	Off-site Water AND off-site Sewer
Class 2	Either on-site Water OR on-site Sewer
Class 3	On-site Water AND on-site Sewer

§ 205 Uses

205.1 Uses designated in §206 - 208 and its tables as “permitted uses” are those that may be commenced, enlarged or altered, in such district provided that all applicable provisions of this Zoning Bylaw are met.

205.2 Uses designated in §206 - 208 and its tables as “conditional uses” are those that may be commenced, enlarged or altered, in such district provided that all applicable provision of this Zoning Bylaw are met and provided that conditional use approval is granted by the Development Review Board after public notice and hearing.

§ 206 Derby District Regulations

The following subsections describe the object of each district and delineate the permitted and conditional uses in that district as well as other specific district standards.

206.1 “IND” Industrial

Objective:

Land classified as “IND” is land designated for the location of manufacturing enterprises. Good highway accessibility and water and sewer services are major considerations. A variety of manufacturing and other high intensity uses are permitted.

<u>Permitted Uses</u>	<u>Conditional Uses</u>
Accessory Use or Structure	Adult Oriented Business
Contractor’s Yard	Asphalt/Concrete Plant
Essential Services	Bulk Storage of Explosives
Home Occupation	Heavy Manufacturing
Light Manufacturing	Junk/Salvage Yard
Manufacturing	Log Yard
Motor Vehicle Repair	Parking Facility
Motor Vehicle Sales and Repair	Petroleum/Propane Bulk Storage
Subdivision of Land	Recycling Transfer Station
Warehouse	Research and Testing Lab
Warehouse/Trucking Terminal	Slaughter House

Class	Lot Area and Dimensions			Minimum Setback in Feet			Maximum Building height ft
	area sq ft	width ft	length ft	From building to lot line			
				front	side	rear	
1&2	20,000	100	100	25	10	10	75
3	40,000	100	100	25	10	10	75
	abutting a residential district			25	30	30	75

206.2 “COM/IND” Commercial/Industrial

Objective:

Land classified as commercial/industrial is land designated for the location of complementary manufacturing and commercial enterprises. Good highway accessibility is a major consideration. This district will provide a choice in types of appropriate commercial and industrial development with a good potential for employment growth.

<u>Permitted Uses</u>	<u>Conditional Uses</u>
Accessory Use or Structure	Adult Oriented Business
Bank	Auto Service Station/Mini Mart
Business Complex	Light Manufacturing
Camper Sales, Service & Repairs	Manufacturing
Clinic	Petroleum/Propane Bulk Storage
Contractor’s Yard	Printing/Publishing
Essential Services	Research & Testing Lab
Home Occupation	Taxi Service Facilities
Hospital	Veterinary Hospital
Hotel/Motel	
Manufactured Home Sales Lot	
Motor Vehicle Repair	
Motor Vehicle Sales and Repair	
Office	
Parking Facility	
Restaurant	
Retail Store	
Subdivision of Land	
Warehouse	
Warehouse/Trucking Terminal	
Wholesale Business	

Lot Area and Dimensions	Minimum Setback in ft			Maximum			
	Minimum lot size		length ft	From building to lot line			Building height ft
Class	area sq ft	width ft		front	side	rear	
1&2	20,000	100	100	25	10	10	75
3	40,000	100	100	25	10	10	75
	abutting a residential district			25	30	30	75

206.3 “COM” Commercial

Objective:

The Commercial district shall provide locations for major shopping facilities, offices, banking facilities, major government operations and other satellite commercial activities. The area shall provide safe road access, parking, municipal services, adequate lighting, security, good design and other required items for convenience and safety.

<u>Permitted Uses</u>				<u>Conditional Uses</u>			
Accessory Use or Structure				Animal Grooming/Boarding			
Adult Respite Care Facility				Auto Service Station/Mini Mart			
Bank				Contractor’s Yard			
Business Complex				Cottage Industry			
Camper Sales, Service & Repairs				Funeral Home			
Car Wash				Light Manufacturing			
Clinic				Manufactured Home Sales Lot			
Club, Membership				Nightclub/Bar			
Dwelling, Multi-Family				Printing/Publishing			
Essential Services				Recreation, Indoor			
Family Child Care Facility				Recreation, Outdoor			
Function Hall				Residential Business or Service			
Home Occupation				Taxi Service Facilities			
Hospital				Veterinary Hospital			
Hotel/Motel				Wholesale Business			
Motor Vehicle Repair							
Motor Vehicle Sales & Repair							
Office							
Parking Facility							
Personal Service							
Residential Care Home							
Restaurant							
Retail Store							
Subdivision of Land							
Warehouse							
	Lot Area and Dimensions			Minimum Setback in ft			Maximum Building height ft
	Minimum lot size			From building to lot line			
Class	area sq ft	width ft	length ft	front	side	rear	
1&2	20,000	100	100	25	10	10	75
3	40,000	100	100	25	10	10	75
	abutting a residential district			25	30	30	75

206.4 “R-HD” Residential High Density

Objective:

Land classified as residential high density is land designated for the most intense residential uses including semi-detached one family dwellings and multi-family dwellings. Dwelling unit densities shall not exceed twenty per acre.

<u>Permitted Uses</u>	<u>Conditional Uses</u>
Accessory Use or Structure	Church
Dwelling, Multi-Family	Essential Services
Dwelling, One Family	Manufactured Home Sales Lot ¹
Dwelling, Two Family	Mobile Home Park
Home Occupation	Parking Facility
Lodging House	Residential Business or Service
Residential Care Home	
Senior Housing ²	
Subdivision of Land	

Class	Lot Area and Dimensions			Minimum Setback in ft			Maximum Building height ft
	area sq ft	width ft	length ft	From building to lot line			
				front	side	rear	
1	10,000	100	100	30	20	25	35
2&3	20,000	150	100	30	20	25	35
			accessory structures	30	10	10	35

¹must be located on the property of or adjacent to a mobile home park

²dwelling unit densities do not apply to Senior Housing

206.5 “R-MD” Residential Medium Density

Objective:

Land classified as residential medium density is land designated for moderately intense residential uses within the Town associated with proximity to village areas and commercial growth centers. Dwelling unit densities shall not exceed ten per acre.

<u>Permitted Uses</u>	<u>Conditional Uses</u>
Accessory Use or Structure	Church
Dwelling, One Family	Dwelling, Multi-Family
Dwelling, Two Family	Essential Services
Home Occupation	Family Child Care Facility
Residential Care Home	Lodging House
Senior Housing ¹	Office
Subdivision of Land	Private School
	Residential Business or Service

Class	Lot Area and Dimensions			Minimum Setback in ft			Maximum Building height ft
	area sq ft	width ft	length ft	From building to lot line			
All	20,000	150	150	front	side	rear	35
			accessory structures	30	10	10	35

¹dwelling unit densities do not apply to Senior Housing

206.6 “R-1” Residential One Acre

Objective:

Land classified as residential one acre is land designated for predominantly residential uses in rural settings which are served by an all season road system. Since public water and sewer services usually will not be available, the lots should be of sufficient size and soil quality to provide for onsite provision of water and sewage disposal.

<u>Permitted Uses</u>	<u>Conditional Uses</u>
Accessory Use or Structure	Church
Agriculture	Clinic
Dwelling, One Family	Cottage Industry
Dwelling, Two Family	Dwelling, Multi-Family
Forestry	Essential Services
Home Occupation	Function Hall
Residential Care Home	Office
Subdivision of Land	Private School
	Public Facility
	Recreation, Indoor
	Recreation, Outdoor
	Residential Business or Service
	Restaurant
	Senior Housing ¹

Class	Lot Area and Dimensions			Minimum Setback in ft			Maximum Building height ft
	area acres	width ft	length ft	front	side	rear	
All	1 acre	150	150	30	25	25	35
			accessory structures	30	10	10	35

¹dwelling unit densities do not apply to Senior Housing

206.7 “R-2” Residential Two Acre

Objective:

Land classified as residential two acre is land designated for predominantly residential, seasonal dwelling, agricultural and forestry uses in areas of low current density and town service and road provision but have a high potential for future residential development. Since public water and sewer services are not available, the lots should be of sufficient size and soil quality to provide for onsite provision of water and sewage disposal.

<u>Permitted Uses</u>	<u>Conditional Uses</u>
Accessory Use or Structure	Campground
Agriculture	Church
Dwelling, One Family	Club, Membership
Dwelling, Two Family	Cottage Industry
Forestry	Essential Services
Home Occupation	Function Hall
Residential Care Home	Private School
Subdivision of Land	Public Facility
Veterinary Hospital	Recreation, Indoor
	Recreation, Outdoor
	Residential Business or Service
	Residential Treatment Facility
	Restaurant
	Senior Housing ¹

Class	Lot Area and Dimensions			Minimum Setback in ft			
	Maximum Building area acres	Minimum lot size width ft	Minimum lot size length ft	From building to lot line			height ft
				front	side	rear	
All	2 acres	200	200	30	25	25	35
			accessory structures	30	10	10	35

¹dwelling unit densities do not apply to Senior Housing

206.8 “RR” Rural Residential

Objective:

Land classified as rural residential is land designated for predominately agricultural, forestry and the least intense residential and seasonal uses. Since public water and sewer services are not available, lots should be of sufficient size and soil quality to provide for onsite provision of water and sewage disposal. The district shall provide for major areas of agricultural and forestry uses.

Permitted Uses

Conditional Uses

Accessory Use or Structure
 Agriculture
 Dwelling, One Family
 Dwelling, Two Family
 Forestry
 Home Occupation
 Residential Care Home
 Subdivision of Land
 Veterinary Hospital

Animal Grooming/Boarding
 Campground
 Church
 Club, Membership
 Contractor’s Yard
 Cottage Industry
 Essential Services
 Function Hall
 Log Yard
 Private School
 Public Facility
 Recreation, Indoor
 Recreation, Outdoor
 Residential Business or Service
 Residential Treatment Facility
 Restaurant
 Senior Housing¹

Class	Lot Area and Dimensions			Minimum Setback in ft			Maximum Building height ft
	area acres	width ft	length ft	From building to lot line			
All	5 acres	200	200	front	side	rear	35
				accessory structures	30	10	

¹dwelling unit densities do not apply to Senior Housing

206.9 “SD” Shoreland District

Objective:

Land classified as the shoreland district is land so designated to provide for the protection of public waters, control of water pollution, preservation of shore cover and natural beauty, and for the maintenance of safe and healthful conditions which will provide for multiple uses of waters in a manner that provides for the best interests of the citizens of the state.

A State Shoreland Permit may be required for development within 250 feet of the shoreline of Lake Memphremagog, Lake Salem, Little Salem, Derby Pond, and Brownington Pond.

<u>Permitted Uses</u>	<u>Conditional Uses</u>
Accessory Use or Structure	Essential Services
Boathouse	Function Hall
Dwelling, One Family	Marina
Dwelling, Two Family	Public Facility
Home Occupation	Recreation, Outdoor
Residential Care Home	Residential Business or Service
Subdivision of Land	Restaurant

Class	Lot Area and Dimensions			Minimum Setback in ft			Maximum Building height ft
	area sq ft	width ft	length ft	From building to lot line			
				front*	side	rear	
All	20,000	100	100	25	25	25	35
	Accessory structures			25	10	10	35

*Where applicable the yard abutting the shoreline is considered the Front Yard

206.10 “SL” Special Lands

Objective:

Lands classified as special lands are lands designated for the least intensity of use and development as it is generally mountainous, extensive wetland, has poor access or has shallow soils unsuited for on-site disposal of sewage.

<u>Permitted Uses</u>	<u>Conditional Uses</u>
Accessory Use or Structure	Campground
Agriculture	Essential Services
Dwelling, One Family	Function Hall
Dwelling, Two Family	Recreation, Outdoor
Forestry	Residential Business or Service
Home Occupation	
Residential Care Home	
Subdivision of Land	

Class	Lot Area and Dimensions			Minimum Setback in ft			Maximum Building height ft
	area acres	width ft	length ft	From building to lot line			
				front	side	rear	
All	10 acres	200	200	50	25	25	35

§ 207 Village of Derby Line District Regulations

The following subsections describe the object of each district and delineate the permitted and conditional uses in that district as well as other specific district standards.

In recognition of the Village of Derby Line’s unique qualities as a place of increased village urban density, a center of village scale commercial activity, and assemblage of historic architecture and streetscape the following zoning districts and regulations are established to further the goals of historic preservation, appropriate development, and economic redevelopment of the Village of Derby Line.

207.1 “VC/DL” VILLAGE COMMERCIAL DERBY LINE

Objective:

The purpose of this district is the preservation of village scale commercial activities, to encourage the location of dense forms of housing in close proximity to services and employment, and to provide a center of village community life.

Special Provisions:

Because of the unique nature of the development of this zone minimum yard dimensions shall not be applied. The zone is divided in the vertical plane into street level and above street level uses.

Uses Street Level:*

<u>Permitted Uses**</u>	<u>Conditional Uses</u>
Accessory Use or Structure	Any permitted use exceeding
Bank	5000 square feet
Clinic	Essential Services
Home Occupation	Funeral Home
Office	Nightclub/Bar
Parking Facility	Printing/Publishing
Personal Service	Public Facility
Residential Care Home	Residential Business or Service
Restaurant	
Retail Store	
Subdivision of Land	

* Commercial establishments are prohibited from having drive thru windows in the VC/DL zoning district

** All permitted uses shall be 5000 square feet or less in area

Uses Above Street Level:

<u>Permitted Uses</u>	<u>Conditional Uses</u>
Dwelling Multi-Family	Residential Business or Service
Home Occupation	
Office	
Residential Care Home	

Lot Area and Dimensions			Minimum Setback in ft				Maximum
Minimum lot size			From building to lot line				Building
Class	area sq ft	width ft	length ft	front	side	rear	height ft
1&2	12,500	100	100	0	0	0	35
3	20,000	100	100	0	0	0	35

207.2 “VR-1/DL” VILLAGE RESIDENTIAL-ONE DERBY LINE

Objective:

The purpose of this district is to preserve one and two family uses on class one lots, and to preserve the historic residential village streetscape and density.

<u>Permitted Uses</u>	<u>Conditional Uses</u>
Accessory Use or Structure	Church
Dwelling, One Family	Clinic
Dwelling, Two Family	Community Cultural Center
Home Occupation	Dwelling, Multi-Family
Residential Care Home	Essential Services
Subdivision of Land	Office
	Parking Facility
	Public Facility
	Residential Business or Service
	Senior Housing
	Village Inn

Class	Lot Area and Dimensions			Minimum Setback in ft			Maximum Building height ft
	area sq ft	width ft	length ft	From building to lot line			
	Minimum lot size			front	side	rear	
1&2	12,500	100	100	30	20	25	35
3	20,000	100	100	30	20	25	35
	accessory structures		30	10	10	35	

207.3 “VR-2/DL” VILLAGE RESIDENTIAL-TWO DERBY LINE

Objective:

The purpose of this district is to address the problems associated with historically pre-existing small residential village lots with the goal of preserving the village streetscape while protecting the rights of property owners to engage in residential uses.

Special Provisions:

The maximum footprint coverage of lots in this zone by all structures shall not exceed 33.3% of the total lot area.

<u>Permitted Uses</u>	<u>Conditional Uses</u>
Accessory Use or Structure	Church
Dwelling, One Family	Dwelling, Multi-Family
Dwelling, Two Family	Essential Services
Home Occupation	Parking Facility
Residential Care Home	Public Facility
Subdivision of Land	Residential Business or Service
	Senior Housing

Class	Lot Area and Dimensions			Minimum Setback in ft			Maximum Building height ft
	area sq ft	width ft	length ft	From building to lot line			
	Minimum lot size			front	side	rear	
1&2	12,500	100	100	10	10	10	35
3	20,000	100	100	10	10	10	35

§ 208 Village of Derby Center District Regulations

The following subsections describe the object of each district and delineate the permitted and conditional uses in that district as well as other specific district standards.

In recognition of the Village of Derby Center's unique qualities as a place of increased village urban density and assemblage of historic architecture and streetscape the following zoning districts and regulations are established to further the goals of historic preservation, appropriate development, and economic redevelopment of the Village of Derby Center.

208.1 “VC/DC” VILLAGE COMMERCIAL DERBY CENTER

The purpose of this district is the preservation of village scale commercial activities, restrict larger scale commercial and industrial activities, and to provide a center of village community life.

<u>Permitted Uses*</u>	<u>Conditional Uses</u>
Accessory Use or Structure	Animal Grooming/Boarding
Bank	Any Permitted Use Exceeding
Clinic	10,000 square feet
Dwelling, One Family	Auto Service Station/Mini Mart
Dwelling, Two Family	Car Wash
Home Occupation	Community Cultural Center
Office	Dwelling, Multi-Family
Parking Facility	Essential Services
Personal Service	Family Child Care Facility
Residential Care Home	Funeral Home
Restaurant	Hotel/Motel
Retail Store	Motor Vehicle Repair
Subdivision of Land	Motor Vehicle Sales and Repair
	Nightclub/Bar
	Printing/Publishing
	Public Facility
	Residential Business or Service
	Veterinary Hospital

* All permitted uses shall be 10,000 square feet or less in area

Class	Lot Area and Dimensions			Minimum Setback in ft			Maximum Building height ft
	area sq ft	width ft	length ft	front	side	rear	
1&2	15,000	100	100	30	10	20	35
3	20,000	100	100	30	10	20	35

208.2 “VR/DC” VILLAGE RESIDENTIAL/ DERBY CENTER

Objective:

The purpose of this district is to preserve one and two family uses on class one lots, and to preserve the historic residential village streetscape and density.

<u>Permitted Uses</u>	<u>Conditional Uses</u>
Accessory Use or Structure	Church
Dwelling, One Family	Community Cultural Center
Dwelling, Two Family	Dwelling, Multi-Family
Home Occupation	Essential Services
Residential Care Home	Parking Facility
Subdivision of Land	Public Facility
	Residential Business or Service
	Senior Housing
	Village Inn

Class	Lot Area and Dimensions			Minimum Setback in ft			Maximum Building height ft
	area sq ft	width ft	length ft	From building to lot line			
	Minimum lot size			front	side	rear	
1&2	12,500	100	100	30	20	25	35
3	20,000	100	100	30	20	25	35
	residential accessory structures			30	10	10	35

208.3 “VR-MF/DC” VILLAGE RESIDENTIAL-MULTI-FAMILY DERBY CENTER

Objective:

The purpose of this district is to provide areas designated for multi-family residential uses in locations that can support increased densities.

Special Provisions:

All site plans for multi-family housing shall include 500 square feet of common open space per housing unit

<u>Permitted Uses</u>	<u>Conditional Uses</u>
Accessory Use or Structure	Church
Dwelling, One Family	Dwelling, Multi-Family
Dwelling, Two Family	Essential Services
Home Occupation	Parking Facility
Residential Care Home	Public Facility
Senior Housing	Residential Business or Service
Subdivision of Land	

Class	Lot Area and Dimensions			Minimum Setback in ft			Maximum Building height ft
	area sq ft	width ft	length ft	From building to lot line			
All	12,500	100	100	front 30	side 20	rear 20	35
			Accessory structures	30	10	10	35

§ 209 Conditional Uses

209.1 Conditional uses designated in §206 - §208 and its tables as “conditional uses” are those that may be commenced, enlarged or altered, in such district provided that a conditional use permit has been approved by the Development Review Board after public notice and hearing. The Development Review Board may impose conditions as provided for in the Bylaw to assure that the proposed conditional use shall not result in an undue adverse affect on any of the following:

- A. The capacity of existing or planned community facilities;
- B. The character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the municipal plan;
- C. Traffic on roads and highways in the vicinity;
- D. Bylaws and ordinances then in effect; or
- E. The utilization of renewable energy resources.

209.2 In making application for a conditional use permit applicants shall submit upon application:

- A. A plan for the proposed development of the site showing the locations of all buildings, parking areas, traffic access and circulation drives, open spaces, landscaping, and any other pertinent information that the board may deem necessary to determine if the proposed use meets the requirement of the Bylaw. Such a plan may be hand drawn by the applicant to the satisfaction of the Development Review Board, but shall show all required features on a scale and level of accuracy that is deemed reasonable by the Development Review Board for purposes of deliberation;
- B. An application form deemed complete and accurate by the Administrative Officer;
- C. Fees required for the application and public hearing;
- D. A narrative describing the purposes of the application, the nature of the conditional use, a list of the names and addresses of all abutters and any other information deemed relevant by the Development Review Board and the Administrative Officer.
- E. Addressed stamped envelopes for all abutters.

209.3 In permitting a conditional use the Development Review Board may impose, in addition to the requirements and standards specified by this Bylaw, other reasonable conditions found necessary to protect the best interests of the surrounding property, the neighborhood, or the town as a whole. These conditions may include the following:

- A. Increasing the required lot size or yard dimensions by up to twenty-five percent in order to protect adjacent properties;
- B. Limiting the coverage or height of buildings because of reduction of light and air to adjacent property;
- C. Controlling the location and number of vehicular access points to the property;

- D. Requiring suitable landscaping where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.

209.4 Any enlargement or alteration of a conditional use requires a public hearing before the Development Review Board for an amendment to the conditional use permit.

§ 210 Changes in Use

210.1 Changes in use to a permitted use are subject to site plan review by the Development Review Board as provided in §211 of this Bylaw, except in the following circumstances where the Administrative Officer may issue an administrative permit:

- A. Changes in use to a single-family or two-family dwelling; or
- B. Changes in commercial tenancy where the parking requirement in §402.7(D) will be the same or less than the current use.

210.2 Changes in use from a permitted use to a conditional use or from one conditional use to another requires conditional use approval and site plan approval by the Development Review Board.

§ 211 Development Review Board Site Plan Review and Approval

No zoning permits shall be issued by the Administrative Officer, with the exception of exempted one and two family dwellings and uses and agricultural uses and structures as provided under VSA Title 24 Chapter 117 and this Bylaw, until the Development Review Board grants site plan approval following public notice and public hearing.

211.1 The Development Review Board shall conform to the requirements of VSA Title 24 §4416 when acting upon any application requiring site plan review. In considering its action the Development Review Board shall consider and impose appropriate conditions and safeguards with respect to:

- A. Adequacy of traffic access;
- B. Circulation and parking;
- C. Landscaping, screening and any adopted greenspace plan;
- D. The utilization of renewable energy resources;
- E. Exterior Lighting;
- F. The character of the neighborhood including historic architectural context and the intensity of the proposed use;
- G. The implementation and furtherance of the Town Plan;
- H. The capacity of existing or planned community facilities and possible impact on the implementation of any adopted capital budget program;
- I. Possible impacts on watersheds, drainage, potable water supplies and environmentally sensitive areas within and adjacent to the proposed development;
- J. Any other factor relating directly to the development proposal.

211.2 The Development Review Board, in considering the disposition of a submitted site plan proposal, may:

- A. Approve the proposal as submitted and direct the Administrative Officer to issue the required permit;
- B. Place special conditions on the applicant that must be met to the satisfaction of the Administrative Officer before the required permit is issued;
- C. Require from the applicant such design changes, additional information and or environmental study as to warrant a recess of the current hearing to be reconvened at the next Development Review Board meeting date;
- D. Deny the proposal as submitted.

211.3 Submission of Site Development Plan Map and Supporting Data. The applicant shall submit at least 8 (eight) sets of site plan maps and supporting data to the Development Review Board which shall include the following information presented in drawn forms and accompanied by written text to the satisfaction of the Development Review Board:

- A. An application form deemed complete and accurate by the Administrative Officer;
- B. Fees required for the application and public hearing;
- C. A site plan of the property showing existing features including contours if required by the Development Review Board, structures and their setbacks from property lines, existing lighting, large trees, streets, utility easements, rights of way, land use, deed restrictions, proposed structures including elevation drawings and their setbacks to the property lines, proposed lighting plan, proposed land use areas, proposed driveways and traffic circulation, proposed parking and loading spaces, proposed pedestrian walks, and proposed landscaping and greenstrip plans including site grading, landscape design and screening.
- D. A narrative of the relevant characteristics of the proposal which shall include if applicable: Hours of operation; estimated customer and employee counts; details of the proposed use or structure; a list of the names and addresses of all abutting property owners; estimates of delivery and service traffic; and any other information requested by the Development Review Board and the Administrative Officer for the proper deliberation of the application.
- E. Addressed stamped envelopes for all abutters.
- F. Whenever a proposed site plan involves access to a State highway, the application for site plan approval shall include a letter of intent from the Agency of Transportation confirming that the Agency has reviewed the proposed site plan and is prepared to issue an access permit under VSA Title 19 §1111, and setting out any conditions that the Agency proposed to attach to the §1111 permit.

§ 212 Site Plan Design Standards

The purpose and intent of site plan design standards is to ensure continuity between properties requiring site plan review in regard to greenspace, landscaping, lighting and architectural context appropriate for the Town of Derby. The goals are to provide

pedestrian friendly access, lighting that enhances site design while ensuring safety, mitigate the effects of summer sun and winter winds through appropriate walkway and parking lot shade and screening, provide greenspace for runoff control and storage for parking lot and walkway snow removal and to enhance the livability of more intensely developed properties. The Development Review Board has discretionary powers in the implementation of the following subsections and may allow a deferral or phased execution of special conditions imposed under this Section to assure integration of its requirements with adjacent properties, to further Town Plan goals, or to ensure the public health, safety and welfare; in no case shall such a delay exceed three years from the effective date of a granted zoning permit. The Development Review Board may modify the requirements of this Section in those circumstances where literal enforcement may be contrary to the furtherance of the Town Plan or good planning practice. Submitted site plans or those portions thereof that meet all the criteria of the following subsections shall be deemed approvable by the Development Review Board.

212.1 Landscape and Greenspace Requirements. Specific landscaping and screening requirements shall be determined by the Development Review Board during site plan review or during conditional use review. The following are minimum landscaping requirements:

- A. For every twenty-five linear feet of street frontage commercial and multi-family landscape plans shall include a minimum of one deciduous tree of a minimum trunk diameter of two and one half to three inches or one coniferous tree of five to six feet in height, four deciduous shrubs two to three gallon pots and two evergreen shrubs two to three gallon pots. The appropriate choice of deciduous or coniferous tree is at the discretion of the Development Review Board.
- B. For commercial projects in excess of 40,000 square feet, for every twenty five linear feet of street frontage landscape plans shall include a minimum of two deciduous trees of two and a half to three inches of trunk diameter or two coniferous trees of five to six feet in height, eight deciduous shrubs two to three gallon pots and four evergreen shrubs two to three gallon pots. The appropriate choice of deciduous or coniferous trees is at the discretion of the Development Review Board.
- C. For commercial and multi-family site plans front, side and rear yard greenstrips shall be a minimum of ten feet in width and shall only be used for landscaping, permitted access drives and permitted road signs. Curbing is highly recommended; however additional landscaping of a scale that would prevent the passage of vehicles through such required greenspace may be substituted at the discretion of the Development Review Board.
- D. Where any non-residential land use in a residential district or where a non-residential land use abuts a residential district, a landscaped greenstrip at least fifteen feet in width shall be maintained as a landscaped area. The Development Review Board may require additional landscape screening.
- E. Landscape areas for planned unit developments shall be determined by the Development Review Board.

212.2 Lighting Design Requirements. Site plans submitted for review shall include exterior lighting design and specifications. Lighting designs shall strike a balance

between the interests of onsite security and safety and off site glare, neighborhood character and traffic safety. Site lighting shall be unobtrusive and shielded to prevent glare and direct lighting downward. Heights for pole mounted lighting shall be scaled appropriately to building height and in no case shall exceed fifty feet in height.

212.3 Pedestrian Walkway Design. Site plans submitted for review shall make appropriate provision for pedestrian access from all public rights of way to and between all public buildings and spaces within the proposed project. Such pedestrian access shall be so designed as to maximize the safety of pedestrians from motor vehicle traffic within the site. Wherever possible, as determined by the Development Review Board, pedestrian walkways shall be integrated with the public walkways and pedestrian walkways associated with adjacent properties. Such pedestrian walkways shall not be less than three feet in width and meet Agency of Transportation design standards. The Development Review Board may require walkways be landscaped to provide shade, screening and site enhancement.

212.4 Access Design. All access drives entering from a paved road or exiting onto a paved road shall have a 25 ft minimum paved apron.

212.5 Building Façade and Design. Site plans submitted for review shall include building elevations. Whenever possible, as determined by the Development Review Board, façade design shall be consistent with the architectural context of:

- A. The historical architecture of the Town of Derby,
- B. The historical architecture of northern New England generally and northern Vermont specifically, or
- C. The immediate neighborhood where a specific architectural continuity can be cited.

ARTICLE 3: NONCONFORMITIES

In conformance with Title 24 VSA §4412(7), the following provisions shall apply to all nonconformities existing on the effective date of this bylaw.

§ 301 Nonconforming Uses

A nonconforming use is a use of land that does not conform to the present bylaws but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including uses improperly authorized as a result of error by the administrative officer. Sections 206 - 208 of this bylaw identifies the uses that are currently permitted in each zoning district, as well as those uses that are authorized upon the granting of a conditional use permit.

301.1 A nonconforming use may:

- A. Continue indefinitely or
- B. Be converted to or restored to a conforming use or
- C. Be reestablished if it has ceased to exist or been discontinued for a period of less than six (6) months for any reason or
- D. Be changed to another nonconforming use provided that it is of the same or a of more conforming nature (the Development Review Board shall make the determination using the Conditional Use criteria in making their decision) or
- E. Increase the number of dwelling units (nonconforming multi-family dwellings only) with conditional use approval and providing all the following criteria are met:
 - 1) The increase in units shall not modify the external dimensions of the structure;
 - 2) The increase in units shall not increase the livable square footage of the structure;
 - 3) The increase in units shall not increase the total number of bedrooms within the structure.

301.2 A nonconforming use shall not be:

- A. Moved, enlarged or extended or
- B. Reestablished if it has ceased to exist or been discontinued for a period of six (6) months or more for any reason or
- C. Reestablished if it has been replaced by a conforming use.

301.3 Intent to reestablish a nonconforming use shall not confer the right to do so.

§ 302 Nonconforming Structures

A nonconforming structure is a structure or part of a structure that does not conform to the present bylaws but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including structures improperly authorized as a result of error by the administrative officer.

302.1 A nonconforming structure may be:

- A. Continued indefinitely or
- B. Enlarged, altered, or extended provided any enlargement, alteration, or extension is in conformance with all applicable sections of the current bylaw or
- C. Reestablished within the same footprint if damaged or destroyed by fire, explosion, accident, natural disaster, public enemy, or other accidental means outside the control of the owner, provided a permit application for the restoration or reconstruction is submitted to the administrative officer within six (6) months of the date the nonconforming structure was damaged or destroyed or
- D. Increased in height, provided any increase is in compliance with the maximum building height for the district in which it is located or
- E. With the approval of the Development Review Board, enlarged, altered, or extended provided any enlargement, alteration, or extension does not bring the building any closer to the property line causing the nonconformity. The Development Review Board shall use the Conditional Use criteria in making their decision.

302.2 A nonconforming structure shall not be:

- A. Enlarged, altered, or extended if the enlargement, alteration, or extension is any closer to the property line causing the nonconformity or
- B. Reestablished if, in the opinion of the administrative officer, it has been damaged, destroyed or deteriorated into an unusable condition for a period of six (6) months or more for any reason or
- C. Reestablished if, in the opinion of the administrative officer, its existence has been discontinued for a period of six (6) months or more for any reason or
- D. Reestablished if, in the opinion of the administrative officer, it has been replaced by a conforming structure.

302.3 Nonconforming structures may be maintained. Nothing in this section shall be deemed to prevent normal maintenance and repair of a nonconforming structure provided that such action does not increase the degree of nonconformity.

ARTICLE 4: GENERAL PROVISIONS

§ 401 Required Regulations

In accordance with VSA Title 24 §4412(2), the following shall apply:

401.1 Existing small lots. Any lot in individual and separate and non-affiliated ownership from surrounding properties in existence on the effective date of this zoning regulation, including an interim zoning regulation, may be developed for the purposes permitted in the district in which it is located, even though not conforming to minimum lot size requirements, except lots not served by and able to connect to municipal sewer and water service if such lot is less than one-eighth acre in area or if such lot has a width or depth dimension of less than forty feet.

- A. If such lot subsequently comes under common ownership with one or more contiguous lots, the lot shall be deemed merged with the contiguous lot for purposes of this Section. However, such a lot shall not be deemed merged and may be separately conveyed, if:
- 1) the lots are conveyed in their preexisting, compliant non-conforming configuration; and
 - 2) on the effective date of any zoning regulations, each lot had been developed with a water supply and wastewater disposal system; and
 - 3) at the time of the transfer, each water supply and wastewater system is functioning in an acceptable manner; and
 - 4) the deeds of conveyance create appropriate easements on both lots for the replacement of one or more wastewater systems in case a wastewater system fails, which means the system functions in a manner:
 - a) that allows wastewater to be exposed to the open air, pool on the surface of the ground, discharge directly to surface water, or back up into a building or structure unless the approved design of the system specifically requires the system to function in such a manner;
 - b) so that a potable water supply is contaminated or rendered not potable;
 - c) that presents a threat to public health; or
 - d) that presents a serious threat to the environment.
- B. If, subsequent to separate conveyance, as authorized under 401.1 A, a wastewater system fails, the owner shall be required to obtain from the secretary of natural resources a wastewater permit as required under the subdivision regulation or a certification that the wastewater system has been modified or replaced, with the result that it no longer constitutes a failed system.

401.2 Required frontage on, or access to, public roads or public waters. No land development may be permitted on lots which do not either have frontage on a public road or public waters or, with the approval of the Development Review Board, access to such a road or waters by a permanent easement or right-of-way at least twenty feet in width.

401.3 Protection of home occupation. No bylaw may infringe upon the right of any resident to use a minor portion of a dwelling for an occupation which is customary in residential areas and that does not have an undue adverse effect upon the character of the residential area in which the dwelling is located. Any application meeting the

requirements of §402.3(A) of this Bylaw shall be issued an administrative permit by the Administrative Officer for that purpose.

401.4 Equal treatment of housing.

- A. Except as provided in VSA Title 24 §4414(1)(E) and (F), no zoning regulation shall have the effect of excluding mobile homes, modular housing, or other forms of prefabricated housing from the Town of Derby, except on the same terms and conditions as conventional housing is excluded.
- B. No zoning regulation shall have the effect of excluding from the Town of Derby housing to meet the needs of the population as determined in VSA Title 24 §4382(c).
- C. No provision of this Bylaw shall be construed to prevent the establishment of mobile home parks pursuant to VSA Title 10 chapter 153.
- D. One accessory dwelling unit is allowed to be located within or appurtenant to an owner-occupied single-family dwelling provided it is located outside the Special Flood Hazard Area, as described in Article 6 of this bylaw.
 - 1) An accessory dwelling unit means a distinct unit 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:
 - a) The property has sufficient wastewater capacity; and
 - b) The unit does not exceed 30 percent of the total habitable floor area of the single-family dwelling or 900 square feet, whichever is greater; and

§ 402 Special Regulations

402.1 -Auto Service Station/Mini Mart

In all districts where a permitted or conditional use, auto service stations shall comply with the following:

- A. Lot size shall be at least 20,000 square feet or as required by district regulations, whichever is greater;
- B. Lot frontage shall be at least 150 feet, or as required by district regulations, whichever is greater;
- C. Lot depth shall be at least 125 feet, or as required by district regulations, whichever is greater;
- D. Pumps, lubricating and other service devices shall be located at least thirty feet from the front lot line, side lot lines and rear lot lines;
- E. All fuel and oil shall be stored at least thirty-five feet from any property line;
- F. All automobile parts and dismantled vehicles are to be stored within a building, and no service or repair work requiring the removal of parts is to be performed outside the building;
- G. Signs shall conform to state regulations and to §402.8 of this Bylaw;
- H. There shall be only two access driveways from the street, the maximum width of each access driveway shall be forty feet.

402.2 Fences and Walls

No zoning permit shall be required to erect, enlarge or alter a fence or wall six feet in height or less with the exception of fences four feet in height or more erected within the front setback along public rights of way. A fence or wall in excess of six feet in height proposed in the industrial, commercial or commercial/industrial zones may be approved by the Development Review Board in a site plan review proceeding for the purposes of security or the public health, safety and welfare. Fences or walls in excess of six feet proposed for all zones other than industrial, commercial or commercial/industrial are a conditional use subject to public notice, public hearing and approval by the Development Review Board. However the following shall apply:

- A. Fences and walls six feet in height or less shall not be required to meet side and rear setback requirements for the zoning districts where located.;
- B. This regulation does not apply to fences existing or erected on property lines designed for agricultural use;
- C. Fences four feet in height or higher erected within a front setback along a public right of way shall be a conditional use and must receive a conditional use permit from the Development Review Board in accordance with the applicable regulations under §209.

402.3 Commercial Activities Conducted from Residences

For the purposes of regulating and restricting the encroachment of large scale commercial uses into predominantly residential neighborhoods, preserving the home occupation rights of home owners as protected under VSA Title 24 §4412(4), preserve the residential character of established neighborhoods and mitigate and control impacts of residential commercial uses on neighboring property owners and residents, the following classifications and use criteria are established in this subsection: Home Occupation, Residential Business or Service, and Cottage Industry.

- A. Home Occupations
 - 1) In all districts where one and two family dwellings are a permitted use, a home occupation shall comply with the following criteria:
 - 2) The business or service shall be incidental to the use of the building as a residence. It shall not affect the character of the principal building as a dwelling or the character of the neighborhood.
 - 3) The home occupation shall be conducted entirely within a minor portion of the dwelling or accessory structure, not to exceed 25% of the livable floor space of the dwelling. Family Child Care Homes shall be explicitly exempt from this criterion. Exterior alteration of the dwelling to indicate its use as a home occupation is prohibited.
 - 4) Open storage of materials of any kind related to the home occupation is prohibited.
 - 5) Nuisances such as excessive noise, smoke, dust, odors, etc, shall not be produced.
 - 6) No traffic or vehicle parking shall be generated greater than would be expected in the neighborhood.

- 7) The owner of a home occupation business operation shall reside in the dwelling that is the subject of the home occupation permit.
- 8) No more than one employee who does not reside in the dwelling shall be employed by a home occupation. The owner of the home occupation shall provide onsite parking for that employee.

If an application meets these criteria the Administrative Officer shall issue the required permit. In the event that an application does not meet these criteria the Administrative Officer shall refer the application for conditional use review before the Development Review Board, under §402.3(B) and §402.3(C) below, upon payment of fees for a public hearing. A sign to advertise the home occupation may be allowed as provided in §402.8 of the Bylaw.

B. Residential Business or Service

In all districts a residential business or service shall require site plan review and shall comply with the following criteria:

- 1) The residential business or service shall be incidental to the use of the building as a residence. It shall not affect the character of the principal building as a dwelling or the character of the neighborhood.
- 2) The residential business or service may be conducted from a portion of a dwelling not to exceed 50% of the livable floor space, or from an accessory structure; in no circumstance shall more than 25% of a residential lot be devoted to a residential business or service including; the footprints of the portions of all structures used for the residential business or service, any permitted open storage areas, and any required parking areas. Exterior alteration of the accessory structure or dwelling to indicate its use as a business or service is prohibited. Bed and breakfast operations are exempt from this criterion.
- 3) Upon site plan approval by the Development Review Board, open storage of materials or inventory may be allowed if properly screened from view of neighbors and the public roadway.
- 4) Nuisances such as excessive noise, smoke, dust, odors, etc, shall not be produced.
- 5) Additional traffic generated by the residential business or service shall not place excessive increased demand on local roads and shall not have a negative impact on the residential character of the neighborhood.
- 6) The owner of a residential business or service shall reside in the dwelling that is the subject of the residential business or service conditional use permit.
- 7) No more than three employees who do not reside in the dwelling shall be employed by a residential business or service. The owner of the residential business or service shall provide onsite parking for all employees.
- 8) The owner of a residential business or service shall provide adequate onsite parking for clientele as determined by the Development Review Board.

A sign to advertise the residential business or service may be allowed as provided in §402.8 of the Bylaw.

C. Cottage Industry

The term cottage industry is here used to describe home businesses that involve the manufacture of goods or the provision of services using: chemical processes; high heat; equipment or technique that produces high levels of sound or vibration; or produces emission of dust, smoke or odors. Examples of a cottage industry include but are not limited to black smithing, silk screen printing, firing of ceramics or pottery, welding, and commercial scale woodworking. In all districts a cottage industry shall require site plan review and shall comply with the following criteria:

- 1) The cottage industry shall be incidental to the use of the building as a residence. It shall not affect the character of the principal building as a dwelling or the character of the neighborhood.
- 2) The cottage industry may use a minor portion of the dwelling not to exceed 20% of the livable floor space for office purposes, the manufacture of goods or the provision of services is to be conducted entirely within an accessory structure; in no circumstance shall more than 25% of a lot be devoted to a cottage industry including; the footprints of the portions of the dwelling and accessory structures used for the cottage industry, all areas used for open storage, and any required parking areas. Exterior alteration of the dwelling or the accessory structure to indicate its use as a cottage industry is prohibited.
- 3) Upon site plan approval by the Development Review Board, open storage of materials or inventory may be allowed if properly screened from view of neighbors and the public roadway.
- 4) Neighboring properties and residents shall be protected from nuisances such as excessive noise, smoke, dust, heat, vibration, odors etc, by means deemed adequate by the Development Review Board.
- 5) Additional traffic generated by the cottage industry shall not place excessive increased demand on local roads and shall not have a negative impact on the neighborhood.
- 6) The owner of the cottage industry shall reside in the dwelling that is the subject of the cottage industry conditional use permit.
- 7) No more than three employees who do not reside in the dwelling shall be employed by a cottage industry. The owner of the cottage industry shall provide onsite parking for all employees.
- 8) The owner of a cottage industry shall provide adequate onsite parking for clientele as determined by the Development Review Board.

A sign to advertise the cottage industry may be allowed as provided in §402.8 of the Bylaw.

402.4 Junkyards

A. Term Definitions

- 1) Junkyard means any place of outdoor storage or deposit, whether in connection with a business or not, which is maintained, operated or used for storing, keeping, processing, buying or selling junk or junk motor vehicles or a scrap metal processing facility.
- 2) Junk means old or scrap copper, brass, iron, steel, and other old or scrap nonferrous material, including but not limited to rope, rags, batteries, glass,

rubber debris, waste, trash, appliances, or any dismantled, discarded, wrecked, scrapped or ruined motor vehicles or parts thereof.

- 3) Junk motor vehicle means a discarded, dismantled, wrecked, scrapped or ruined motor vehicle or parts thereof; for purposes of enforcing this provision any motor vehicle without current motor vehicle tags or a full set of properly inflated tires is considered a junk motor vehicle.

B. Requirement for Establishment, Maintenance and Operation of Junkyard

A person shall not operate, establish, allow the establishment of, maintain, or operate a junkyard on any property unless that person:

- 1) Holds a Certificate of Approval for the location of the junkyard. Application for such a certificate of approval shall be made in writing to the Board of Selectmen. Such application shall include a certificate of compliance issued by the Development Review Board certifying that the proposed junkyard complies with this Zoning Bylaw. The Board of Selectmen shall not issue any Certificate of Approval without first holding a public hearing as required by VSA Title 24 §2252. Notice of such hearing shall be mailed to the applicant and shall be published not less than seven days prior to such public hearing. This public hearing shall be held not less than two or more than four weeks after receipt of the application. When considering an application for a Certificate of Approval the Board of Selectmen shall consider any and all applicable requirements set forth in VSA T.24 Subchapter 10.
- 2) Holds a license to operate a junkyard business. Application for a license to establish, maintain or operate a junkyard shall be made in writing to the State Transportation Board or its duly delegated representative in accordance with VSA Title 24 Subchapter 10 §2261.

C. Penalties and Injunctions

In addition to the penalties provided for in §905 of this Bylaw and the penalty provisions of VSA Title 24 Subchapter 10 §2282, the Board of Selectmen may seek an injunction against the establishment, operation or maintenance of a junkyard which is or will be in violation of this Bylaw or Vermont state statute.

402.5 Wind Turbines and Electrical Generation

A. On Grid Systems

Upon notification of the Public Service Board's consideration of an application for a Certificate of Public Good under VSA Title 30 §248 for the erection of an electrical generation wind turbine the Town of Derby Planning Commission may undertake an examination of the proposal and submit a recommendation to the Board of Selectmen on the issue of intervention as an interested party. Such report shall include, but not necessarily be limited to, consideration of the affect of such proposals on the Town Plan, the orderly development of the Town of Derby, any existing, proposed or future viewshed preservation overlay districts and the protection of irreplaceable or environmentally sensitive natural areas.

B. Off Grid Systems

Wind turbines for off-grid applications are a conditional accessory use and shall be subject to a conditional use proceeding before the Development Review Board

and meet conditional use criteria as established in §209 of this Bylaw. In addition such proposals shall meet these minimum requirements:

- 1) Applicants shall submit such tower plans and specifications as are required for the Development Review Board to determine that such towers meet sound engineering design for safe operation;
- 2) Towers shall be setback a minimum of one foot from all property lines for every foot of vertical height;
- 3) Guy cables and any other supplementary supporting structures shall meet the minimum setback requirements for accessory structures in the zoning district in which the tower is located;
- 4) Noise levels produced by wind turbines and associated blades under normal operating conditions shall not exceed 50 dbl as measured at all property lines.

Where such off-grid wind turbine applications are accessory to a commercial or industrial use the Development Review Board may refer the application for site plan review before the Development Review Board as provided under §211 of this Bylaw.

402.6 Service Areas

In any district all areas designated, used or intended to be used as service areas for any building or land use, other than one and two family dwelling units, shall be screened from view with either a wall, a solid fence or a fence and evergreens to a height of at least six feet above grade level, on all sides where the adjacent land is in residential use.

402.7 Parking, Access, Loading & Circulation Requirements

A. Parking & Circulation

These parking and circulation requirements are recommendations only and are subject to review and change by the Development Review Board during site plan review, conditional use, or appeal hearings. The principle intent in regulating the design of parking areas is to ensure safe and effective traffic flow and the integrity of access to a public roadway. They shall be used by the Zoning Administrator to determine compliance in conjunction with permits issued under §210 decisions that site plan review is not required, and §903, Certificates of Occupancy. Parking and circulation shall be provided in accordance with the following provisions:

- 1) Upon submission of a parking plan for approval by the Development Review Board, the Trustees of the Village of Derby Line may allocate public parking spaces to applicants to satisfy the requirements of this Section. Under no circumstance shall the numbers of public parking spaces allocated to applicants exceed the number of spaces specified in the approved parking plan. Applicants who require such allocation to meet the requirements of this Section shall submit documentation of such allocation in submitted materials. Upon approval of the Development Review Board private off street parking may be utilized to fulfill parking requirements when located within 300 feet of the proposed use. The applicant must demonstrate to the Development Review Board that any such arrangement with a private property owner does not reduce spaces for other current uses below the minimums called for in this

Section and that such arrangement shall run with the use permit for as long as is required to meet minimum parking requirements as directed by this Section or Finding of Fact conditions that may be imposed by the Development Review Board. It is the intent of this Bylaw that onsite parking is provided where ever possible.

- 2) Required off street parking areas shall be so designed, maintained, and regulated as to provide safe and effective circulation and to ensure that no circulation incidental to parking shall be on any public street, walk, or alley, and so that any vehicle may be parked or moved without moving another vehicle.
 - 3) All off street parking areas for three or more vehicles shall be maintained to ensure dust free operations. All signage, pavement markings, striping, or other means of regulating parking and circulation shall be maintained to ensure visibility.
 - 4) No change in use, tenancy, or occupancy of a parcel of land or building, including construction of a new building or an addition to a building, which requires additional parking or loading spaces, shall be allowed until such additional parking or loading is approved and executed.
 - 5) Calculation of the number of spaces shall be in accordance with the following:
 - a) If the number of off street parking places results in a fraction, each fraction of one-half or more shall constitute a full parking space.
 - b) In churches and other places of public assembly in which patrons or spectators occupy benches, pews, or other similar seating facilities, each 24 inches of such seating shall be counted as one seat for the purpose of this provision.
 - c) Except in business complexes or malls or where joint parking arrangements have been approved, if a structure contains two or more uses, each use shall be calculated separately in determining the total off street parking spaces required.
 - 6) Handicap parking and access shall be provided consistent with state and federal regulations.
 - 7) Joint parking between different types of land uses on a single site may be allowed by approval from the Development Review Board if the following conditions are met:
 - a) Because of the hours of operation of the respective uses, their sizes and modes of operation, there will be available to each during its primary hours of operation an amount of parking sufficient to meet the needs of such use.
 - b) The joint use of the parking facilities shall be protected by a recorded instrument to be furnished to the Zoning Administrator prior to the issuance of a Certificate of Occupancy.
- B. Parking, Access, Loading and Circulation General Design Requirements

These parking and circulation design requirements are recommendations only and are subject to review and change by The Development Review Board during site plan review, conditional use, or appeal hearings. They shall be used by the Zoning Administrator to determine compliance in conjunction with permits issued under §210 decisions that site plan review is not required, and §903, Certificates

of Occupancy. Parking and circulation areas shall be designed in conformance with the following provisions and tables:

- 1) Parking stalls shall have a minimum dimension of nine feet by eighteen feet. Stall and aisle dimensions for specific parking lot layouts shall conform to minimum design requirements detailed §402.7(C).
 - 2) Business establishments containing drive-up facilities, including restaurants and financial institutions, and auto service stations/mini-marts, shall provide a stacking area for vehicles on the site. All such spaces shall be entirely on the site and shall be in addition to parking spaces required for the principle use. The vehicle stacking area shall not extend beyond the street right of way line and shall be delineated by pavement markings in such a manner that vehicles waiting in line will not interfere with or obstruct the primary driving, parking, or pedestrian facilities on the site.
 - 3) The recommended number of off street parking spaces for a specific use are provided and detailed in §402.7(D).
 - 4) Off street loading for bulk pick-ups and deliveries shall be scaled to the size of delivery vehicles expected to be used and accessible to such vehicles when all off street parking places are occupied may be required for all commercial and industrial uses as determined by the Development Review Board. Guideline dimensions for such spaces are twelve feet in width, fifty-five feet in length, and of sufficient height for safe building clearance. The Development Review Board may require such loading areas have direct access to the street, public alley or private driveway upon determination that such access is required for the safe use of off street parking or loading area. Required off street loading spaces shall not be included in space counts for off street parking requirements.
 - 5) Access shall be designed and maintained in accordance with appropriate professional standards to preserve the integrity of traffic flow, safety of the public roadway, and safe and effective on site circulation. Access shall meet at least the following minimum design requirements:
 - a) All new driveways serving one and two family dwellings which access onto a paved road shall have a 25 ft paved apron.
 - b) All commercial driveways which access onto a paved road shall be required to have a 25 ft paved apron as a condition for site plan approval.
 - c) Driveways shall be located at least fifty feet from a street line intersection for all uses, with the exception of access to arterial roadways where the Planning Commission may require greater separation distances to insure the public safety.
 - d) All driveways and parking areas, with the exception of those serving one and two family dwellings, shall be located a minimum of ten feet from any property line.
 - e) All driveways and parking areas serving one and two family dwellings shall be located a minimum of five feet from any property line.
 - f) The Development Review Board may waive the setback requirements provided above for joint driveways, serving more than one parcel, upon determination that such driveway provides safer, more effective access to and traffic flow on the public roadway.
- C. Parking Stall and Lot Design Criteria

Derby Zoning Bylaw – As amended November 30, 2020

Angle	Curb Length	Stall Length	Aisle*
45	12.7'	18'	13.5'***
60	10.6'	18'	18.5'***
76	9.5'	19'	23'***
90	9'	18'	24'***
parallel	20'	8'	22'

* all dead end parking rows shall provide a turnaround a minimum of thirteen feet in length

** one way aisles only

*** aisles which access one row of 90 degree angle parking stalls may be 22 feet wide

D. Parking Space Counts per Use

Use	Stalls Required	Comments
Any use not specified	As per ZA, DRB finding	
Accessory Dwelling Unit	1	
Accessory Use/Structure	As per ZA, DRB finding	Associated with non-residential use
Adult Orientated Business	1 per 250 sq. ft. gross floor area	
Adult Respite Care Facility	1 per employee on major shift & additional spaces per DRB finding	
Agriculture	0	Not regulated
Animal Grooming & Boarding	As per DRB finding	
Asphalt/Concrete Plant	1 per employee on major shift	Circulation requirements may apply
Auto Service Station/Mini Mart	1 per 250 sq. ft. gross floor area	Drive-up requirements may apply
Bank	1 per employee on major shift & 2 per teller/loan officer	Drive-up requirements may apply
Business Complex	4.5 per 1000 sq ft gross floor area	Loading dock requirements may apply
Camper Sales, Service & Repairs	1 per employee on major shift & 1 per service bay & 1 per 300 sq. ft. gross office/retail space	Display areas for vehicle inventory not included
Campground	As per DRB finding	
Car Wash	2 per service bay	
Church	1 per 4 seats	See §402.7(A)(5)(b)
Clinic	1 per employee on major shift & 4 per examination room	
Club, Membership	1 per employee on major shift & additional spaces per DRB finding	Additional requirements may be special conditioned in findings

Derby Zoning Bylaw – As amended November 30, 2020

Community Cultural Center	As per DRB finding	
Contractor's Yard	1 per employee on major shift	
Cottage Industry	As per DRB finding	
Dwelling, Multi-Family	1.5 per dwelling unit & additional spaces per DRB finding	
Dwelling, One and Two Family	2 per dwelling unit	
Essential Service	0	
Essential Service-Building	1 per employee on major shift & additional spaces per DRB finding	
Family Child Care Facility	1 per employee on major shift & additional spaces per DRB finding	
Function Hall	1 per 3 seats	
Funeral Home	As per DRB finding	
Gravel Pit	0	
Hospital	1 per employee on major shift & additional spaces per DRB finding	
Hotel/Motel	1 per employee on major shift & 1 per guest room	Spaces required for full service dining are in addition to guest room requirement
Junk/Salvage Yard	1 per employee on major shift	Circulation requirements may apply
Light Manufacturing	1 per employee on major shift & 1 per 300 sq. ft. gross office space	Circulation & loading dock requirements may apply
Lodging House	1 per employee on major shift & 1 per guest room	
Manufactured Home Sales Lot	1 per employee on major shift & 1 per 300 sq. ft. gross office space	
Manufacturing, Heavy/Medium	1 per employee on major shift & additional spaces per DRB finding	Circulation & loading dock requirements may apply
Marina	1 per employee on major shift & 1 per berth	
Motor Vehicle Repair Facility	1 per employee on major shift & 1 per service bay & 1 per 300 sq. ft. gross office space	Circulation requirements may apply

Derby Zoning Bylaw – As amended November 30, 2020

Motor Vehicle Sales & Repair	1 per employee on major shift & 1 per service bay & 1 per 300 sq. ft. gross office space	Display areas for vehicle inventory not included
Nightclub/Bar	1 per 100 sq. ft. gross floor area	
Office	1 per 250 sq. ft. gross floor area	
Park	As per DRB finding	
Personal Service	1 per 250 sq. ft. gross floor area	
Printing/Publishing	1 per employee on major shift & 1 per 300 sq. ft. gross office space	Circulation & loading dock requirements may apply
Private School	1 per employee on major shift & 1 per 3 pupils	Circulation requirements may apply
Public Assembly (use)	1 per 4 seats	See §402.7(A)(5)(b)
Public Facility	1 per employee on major shift & additional spaces per DRB finding	
Recreation, Indoor	1 per employee on major shift & 1 per 4 seats & additional per DRB finding	See §402.7(A)(5)(b)
Recreation, Outdoor	As per DRB finding	See §402.7(A)(5)(b)
Recycling Transfer Station	1 per employee on major shift & 2 additional	Circulation & loading dock requirements may apply
Research/Testing Laboratory	1 per employee on major shift & 1 per 300 sq. ft. gross office space	Loading dock requirements may apply
Residential Business or Service	As per DRB finding	
Residential Care Home	1 per employee on major shift & 1 per 3 client beds	
Residential Treatment Facility	1 per employee on major shift & additional spaces per DRB finding	
Restaurant	1 per 3 seats	See §402.7(A)(5)(b), §4.2.7(B)(2), & §402.7(B)(4)
Retail Store	1 per 250 sq. ft. gross floor area	Circulation & loading dock requirements may apply
Senior Housing	As per DRB finding	

Slaughter House	1 per employee on major shift & 1 per 300 sq. ft. gross office space	Circulation & loading dock requirements may apply
Taxi Service Facilities	1 per employee on major shift & 1 per business vehicle	
Veterinary Hospital	1 per employee on major shift & 1 per 250 sq. ft. of gross floor area	
Village Inn	1 per employee on major shift & 1 per guest room & 1 per 3 seats	
Warehouse	1 per employee on major shift	Circulation & loading dock requirements may apply
Warehouse/Trucking Terminal	1 per employee on major shift	Circulation & loading dock requirements may apply
Wholesale Business	1 per employee on major shift & additional spaces per DRB finding	

402.8 Signs

Signs as defined in Article 11 shall comply with the following requirements except the following signage is exempt from permit requirements:

- Signs not exceeding one square foot in area bearing only street numbers, post box numbers, names of occupants or premises not having commercial connotations;
 - Flags and insignia of any government except when displayed in connection with commercial purposes;
 - Legal notices, identification, informational or directional signs erected as required by governmental bodies;
 - Integral decorative or architectural fenestration or other design features of buildings except letters, numbers, moving parts or lights;
 - Signs directing and guiding traffic and parking on private property, but bearing no advertising copy or text.
- A. Signs are exempt from the setback requirements of each district. Signs shall be located so as not to be a visual obstruction to vehicle or pedestrian traffic.
 - B. All signs must be constructed of durable materials and shall be maintained in good repair at all times.
 - C. For purposes of this provision sign area is calculated per display area. In cases where a permitted two sided freestanding sign is to be limited to x number of square feet, x is for each display area (i.e. x=100 square feet per side for two sided road sign, 100 square feet per side is allowed).
 - D. In all districts where applicable, a sign not exceeding eight square feet is permitted which announces the name, address, profession, home occupation,

- residential business or service, or cottage industry of the occupant of the premises on which said sign is located, such sign is considered included in the permit issued for a home occupation, residential business or service, or cottage industry, but shall only be considered compliant when such permit has been issued.
- E. A bulletin board not exceeding twenty four square feet is permitted in connection with any church, school or similar public structure.
 - F. A temporary real estate sign, not exceeding twelve square feet is permitted on the property being sold, leased or developed and shall not require a permit; however such sign shall be removed promptly when it has fulfilled its function.
 - G. A business sign shall be permitted with the issuance of an administrative permit upon submission of a complete application, design plan and required fees, in connection with any legal business or industry, in accordance with the following requirements:
 - 1) Two signs are permitted for any legally establish business, one free standing, and the other attached to the building, except as provided below.
 - 2) A business located on a corner lot shall be allowed one free standing sign and one sign attached to the building on each side of the building that faces a street or highway.
 - 3) The primary purpose of the sign shall be for identification purposes and not for advertising and may state only the owner, trade names, trademarks, products sold, and/or the business or activity conducted on the premises on which the sign is located. Legal businesses permitted to sell motor vehicle fuels may post current unit prices on signs that meet the requirements of this provision.
 - 4) Signs shall not extend above the roof or parapet of the building. The height of a free standing sign shall not exceed 25 feet without approval of a Development Review Board site plan review.
 - 5) Illuminated signs shall be shielded in such a way as to produce no glare, undue distraction, confusion or hazard to the surrounding area or to vehicular traffic. Illumination shall be properly focused upon of from within the sign itself.
 - 6) Signs which are animated, flashing, or with intermittent illumination are prohibited.
 - 7) Signs shall not project over the public right of way or property lines except in commercial or industrial districts. In these districts signs may project over sidewalks to within one foot of the curb providing the signs are at least ten feet above the sidewalk.
 - 8) Sign size shall be in proportion to the land use, lot and building size. Maximum square footage of any freestanding sign approved under an administrative permit shall be 100 square feet, with the building sign not to exceed 10% of the total area of the building façade. Signs that exceed these limits must be approved by the Development Review Board in a site plan review proceeding.
 - 9) In the event that a business occupies two or more contiguous retail units or store fronts, that business shall be allowed one sign on the building up to 10% of the total area of the façade occupied by that business.
 - 10) Sign size for mall and business complexes shall be computed as follows:

- a) malls and business complexes up to four businesses-150 square foot freestanding sign, one building sign per business up to 25 square feet;
 - b) malls and business complexes five or more businesses-150 square foot freestanding sign with an additional 14 square feet per business to a maximum of 250 square feet of total area, one building sign per business up to 25 square feet;
 - c) For complexes with nine or more businesses an additional directory sign may be erected with Development Review Board approval no less than 50 feet from the entrance to the complex.
- 11) Temporary, moveable signs, banners, balloons or other portable advertising devices designed to advertise products for sale are subject to administrative permitting, such permit shall not be issued for a time period to exceed seven consecutive days.
 - 12) Signs that are built into or are an integral part of the edifice of a building are permitted and are not considered as a sign attached to the building.
 - 13) Directional signs are allowed on corner lots in the Commercial (COM) zoning district only to direct traffic to business located along secondary roads and shall comply with the following:
 - a) One sign with a maximum height of 10 ft is allowed.
 - b) A maximum of 4 businesses are allowed on the sign.
 - c) Individual businesses are allowed one sign a maximum of 1 ft high by 4 ft wide stating only the business name/logo, distance from the intersection, and directional arrow.
 - d) The sign shall be located within the required greenstrip.

402.9 Sand – Soil – Gravel Pits

In any district the removal of soil, sand or gravel for sale, except when incidental to the construction of a building on the same premises, shall be permitted only upon approval of a plan for the rehabilitation of the site by the Development Review Board after a legally warned public hearing. In any district, the following provisions shall apply:

- A. Extraction of soil, sand, and gravel shall not occur on lots of less than five acres;
- B. The removal of all material shall be conducted with due regard the contours in the vicinity. The digging or creating of pits or steep slopes shall not be permitted, unless provision is made to refill such pit;
- C. The excavation operation site shall be graded smooth and left in neat condition. Cut slopes and spoil banks shall not be allowed to remain. The operation site shall be fertilized, mulched and reseeded so as to establish a firm cover of grass or other vegetation sufficient to prevent erosion;
- D. All surface drainage affected by extraction operations shall be controlled by the owner to prevent erosion debris and other loose materials from filling any drainage course, street or private property;
- E. No excavation or blasting shall take place within two hundred feet of any street or property line. No blasting shall occur before 7 am or after 6 pm. No excavation shall occur before 7 am or after 8 pm;

- F. No power activated sorting machinery or equipment shall be located within one hundred feet of any street or other property line, and all such machinery shall be equipped with satisfactory dust elimination devices;
- G. The Development Review Board may attach any additional conditions as it may find necessary for the safety and general welfare of the public.

402.10 Temporary Vendors, Farm Stands, Non-profit Fund Raising

- A. A temporary or itinerant vendor shall obtain a zoning permit prior to engaging in the selling or bartering of goods, wares, merchandise or services.
- B. A temporary or itinerant vendor shall be subject to Derby Zoning Bylaw requirements in regard to setbacks, signs, performance standards and may be subject to the parking and traffic access provisions of site plan approval at the discretion of the Administrative Officer.
- C. The provisions of this Section shall not apply to a person who sells or offers for sale goods, wares, merchandise produced or grown or made on his own land and sold on site. This exemption shall not apply to a person who conducts such sales from a permanent structure designed as a place of business for such sales.
- D. Any religious, charitable, educational or service organization desiring to conduct such sales or service shall be exempt from the payment of any fee for such zoning permit.
- E. Any religious, charitable, educational or service for a period not to exceed three consecutive days shall be exempt from obtaining a zoning permit.

§ 403 Miscellaneous Provisions and Interpretations

403.1 Lots

- A. Located in two zoning districts
Where a district boundary line divides a lot of record at the time such line is adopted, the regulations for the less restricted part of such a lot shall extend not more than thirty feet into the more restricted part, provided the lot has frontage on a street in the less restricted district.
- B. Principal Use
No more than one principal use shall be permitted on a lot without Development Review Board site plan review and approval. In consideration of multiple use proposals the Development Review Board shall require that on-site parking and lot size requirements have been met for all proposed uses.
- C. Reduction of Required Area
No lot shall be so reduced in area that the area, yards, lot width, frontage, coverage or other requirements of these regulations shall be smaller than herein prescribed for each district. The provisions of this section shall not apply when part of a lot is taken for public purposes.
- D. Width
The lot width shall be determined by deriving the average of the front lot line as defined as that lot line abutting either a public right of way, a deeded right of way, or the property line crossed by a deeded right of way; and the property line

directly to the rear of the front line. In the event that no rear property line exists, the number used to calculate the average is zero.

E. Length

The lot length shall be determined by deriving the average of the side property lines as defined as those property lines that connect the rear and front property lines. In the event that no rear property line exists, the side property lines are those property lines not defined as the front line by Subsection D. above.

403.2 Structures

A. Multi-Family Dwellings

In addition to required setback yard areas and parking areas, multi-family dwellings shall provide a minimum of 500 square feet of open common space per dwelling unit.

B. Burned and Destroyed Buildings

No owner or occupant of land in any district shall permit fire or other ruins to be left, but within six months shall remove or refill the same to clear ground level or shall repair, rebuild or replace the structure.

C. Docks and Boathouses – Marinas

The required setbacks established for shoreland districts shall not apply to docks, boathouses or marinas. Such structures shall comply with state permit requirements.

D. Marinas

A marina which accommodates boats with toilet facilities shall also make provision for shore based facilities for pumping and disposal of sanitary wastes from the boats.

E. Handicap Accessibility

The setback requirements required by district tables do not apply to handicap accessibility and no permit is required.

F. Height

The height of any building shall be measured from the average finish grade along the building façade. The following regulations shall apply to structure heights:

- 1) Building heights in commercial, commercial/industrial, and industrial districts shall not exceed seventy-five feet. Buildings in excess of thirty-five feet shall be setback from all property lines at least one foot for every foot of vertical height.
- 2) Building heights in all other districts shall not exceed thirty-five feet.
- 3) Chimneys, spires, silos and other agricultural structures, towers, stage houses, lightning rods, or other like superstructure not used for human occupancy may extend above the height limit specified, however all supplemental support structures such as guy cables must meet district setback requirements.

G. Mobile Homes

Mobile homes shall be placed on a level compacted surface or on permanent foundation. In any case the area between the bottom edge of the mobile home and the ground shall be filled in by foundation, skirting or comparable material.

H. Obstruction of Vision

On a corner lot, regardless of district, within the triangular area formed by the intersection of two street property lines and a third line joining them at points twenty-five feet from the line intersection, there shall be no obstruction to vision between the height of three feet and ten feet above the grade of each street.

I. Small Structures Exempted from Permitting

Structures that meet all of the following criteria are exempt from permit requirements, provided they are located outside of the Special Flood Hazard Area, as described in Article 6 of this bylaw:

- 1) Structure shall not be permanently anchored to the ground or have a permanent foundation;
- 2) The structure shall not exceed one hundred (100) square feet in area;
- 3) The structure shall be located behind the front plane of the principal structure on the lot.

J. Swimming Pools

Swimming Pools are considered an accessory structure. In ground swimming pools shall be enclosed by a suitable fence or wall at least four feet in height and are subject to permitting. Above ground pools requiring rigid framing and any associated decking are subject to permit requirements. Inflatable above ground pools are exempt from permitting.

K. Temporary

Temporary permits may be issued by the Administrative Officer for a period not to exceed one year, for nonconforming uses incidental to construction projects provided such permits are conditioned upon the removal of such structures by the expiration date of the permit. Such permits may be renewed upon application for an additional period not to exceed one year.

L. Trailers/Semi-Trailers

The use of Trailers/Semi-Trailers for storage not related to an ongoing construction project on the lot shall comply with the following:

- 1) In all districts the use of Trailers/Semi-Trailers for storage not related to an ongoing construction project on the lot requires a permit and shall be subject to the following conditions:
 - a) The trailer(s) is located behind the rear plane of the principal structure on the lot
 - b) The trailer(s) shall conform to all setback requirements for the district in which they are located.
 - c) Use of such storage trailers are accessory to a principal residential or commercial use.
 - d) The trailer(s) is located outside of the Special Flood Hazard Area, as described in Article 76 of this bylaw.
- 2) In all districts except Industrial, Commercial/Industrial, and Commercial districts the use of Trailers/Semi-Trailers for storage not related to an ongoing construction project on the lot shall require Conditional Use approval from the Development Review Board. In determining compatibility with the neighborhood the Development Review Board may require some or all of the following to lessen the impact on the area:

- a) Removal of wheels, carriages, reflectors, light, license plates, commercial markings, or any other indicia of vehicular use.
- b) Painting to coordinate with the principal structure on the lot.
- c) Reasonably screened from view from any public way or abutting property.
- d) Skirting between the bottom of the trailer and the ground.

403.3 Yards

A. Accessory Structures

Accessory structures and uses must comply with required setbacks.

B. Required Area

Space required under these provisions to satisfy area, yard or other open space requirements in relation to one building shall not be counted as part of required open space for any other buildings.

C. Front Yard Setback

- 1) Required front yard setbacks shall be measured from the edge of any public or private right of way.

D. Lots Located on Any Public or Private Street Frontage

Any yard adjoining a street shall be considered a front yard for purposes of administering these provisions except in the following circumstances:

- 1) Yards abutting the I-91 right of way, which shall be considered either side or rear yards as defined by this Bylaw;
- 2) Where the Development Review Board, in consideration of a variance request, finds,
 - a) the lot has public or private road frontage on more than two property lines,
 - b) one of the public or private roads is clearly secondary to the others,
 - c) such circumstances create a hardship for the applicant as defined by §802 of this Bylaw,
 - d) no other street frontage lot line has been granted side lot line designation.

In the event that such a variance has been granted by the Development Review Board, the designation of the property line in question as a side property line shall be entered into the Town Land Records and within any permit issued as a result.

E. Greenstrip Requirements

All commercial uses shall maintain a ten foot wide greenstrip along all public road frontages which shall not be used for any purpose other than landscaping, permitted access drives and permitted road signs.

§ 404 Yard Sales

Yard sales, which term shall also include garage sales, tag sales or flea markets, are those sales to the general public of new and used items of personal property conducted upon a lot as an accessory use for not more than six days in one calendar year. Sales carried on for more than six days in any one calendar year shall be considered a residential business as defined under §402.3. Such sales are exempt from permitting within the six day time limit.

§ 405 Open Storage

In the case of open storage of materials, inventory for sale or motor vehicles the following shall apply:

405.1 In all districts, the open storage of material or vehicles of any kind in association with a permitted or conditional use may be allowed, provided they are located outside of the Special Flood Hazard Area, as described in Article 6 of this bylaw, and if adequate screening under the provisions of §212.1 is provided;

405.2 Motor vehicle repair facilities, motor vehicle sales/repair facilities and small engine sales/service facilities shall not store dismantled vehicles, equipment or parts thereof outside the facility. All dismantled vehicles, equipment or parts thereof shall be stored within a building and all repair work shall be performed within the building.

§ 406 Time Limit to Commence Use or Construction

Any use or construction authorized by a zoning permit shall be commenced not later than two years from the date all required permits are obtained unless a specific phased construction schedule has been imposed as a special condition by the Development Review Board.

Permits may be renewed by the Administrative Officer upon submission of application and fees for construction that required site plan review for periods not to exceed one year provided that no changes to site plan are proposed.

§ 407 Essential Services

Buildings, plants, towers, substations, and other similar structures, provided that are not regulated under VSA Title 30 §248 and therefore exempt from zoning in accordance with VSA Title 24 §4413, require permitting. The transmission and distributions systems, including poles, wires, mains, drains, sewers, pipes, conduit, cables, hydrants, and similar equipment are exempt from zoning permit requirements.

§ 408 Function Halls

Function Halls must comply with the following:

408.1 Road access must be via a state highway or a class 1, 2, or 3 Town Road.

408.2 The structure or any portion of the lot used in connection with the business shall be set back at least 50 ft from side and rear property lines.

408.3 No residential dwellings are closer than 500 ft to the structure, other than those owned by the applicant or the applicant’s immediate family.

408.4 All other relevant provisions of the Zoning Bylaw are complied with – e.g., site plan review standards.

408.5 Bands and/or music must end by 11:00 p.m.

§ 409 Adult Oriented Business

The intent is to establish reasonable and uniform regulations for Adult Oriented Businesses, which, unless closely regulated, cause adverse secondary impacts on the

community, including increased crime, blighting of neighborhoods, decreased property values, depressed real estate markets, harm to minors, spread of disease and an overall decline in the quality and character of surrounding neighborhoods. These secondary impacts are detailed in at least the following studies of adult oriented businesses:

- Department of Planning And Development Director’s Report, Adult Cabarets in Seattle, March 28, 2006
- The Association of Adult Businesses with Secondary Effects: Legal Doctrine, Social Theory, and Empirical Evidence, by Alan C. Weinstein & Richard McCleary
- Crime-Related Secondary Effect of Sexually-Orientated Businesses: Report to the City Attorney, By Richard McCleary, Ph.D., May 6, 2007
- Effects of Adult Entertainment Businesses on Residential Neighborhoods, Prepared for The office of the City Attorney El Paso, by The Department of Planning, Research & Development, September 26, 1986
- Do “Off-Site” Adult Businesses Have Secondary Effects? Legal Doctrine, Social Theory, and Empirical Evidence, By Richard McCleary & Alan C. Weinstein
- Report To: The American Center for Law and Justice on the Secondary Impacts of Sex Oriented Businesses, by Peter R. Hecht, Ph.D., March 31, 1996
- Presentation made to the Rome GA City Commission on the Crime Rate Effect of Adult Entertainment, by Captain Marshall Smith, March 6, 1995
- Survey of Texas Appraisers, Secondary Effects of Sexually-Oriented Businesses on Market Values, by Connie B. Cooper, FAICP & Eric Damian Kelly, Ph.D., FAICP. Crime-Related Secondary Effects, Secondary Effect of “Off-Site” Sexually-Oriented Businesses, by Richard McCleary, Ph.D., June 2008

These provisions have neither the purpose nor effect of imposing a limitation or restriction on the content of any communicative materials, including adult entertainment materials. Similarly, it is neither the intent nor effect of these provisions to restrict or deny access by adults to adult entertainment materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market.

Adult Oriented Businesses must comply with the following additional criteria:

- 409.1 Setback Requirements. An Adult Oriented Business shall meet the following setback requirements in addition to the parcel boundary setback requirements of the zoning district[s]; and
- A. An Adult Oriented Business shall be located a minimum of 500 feet from the boundary of any residential zoning district. The distance shall be measured in a straight line from the boundary of the residential zoning district to the closest exterior wall of the proposed Adult Oriented Business; and
 - B. An Adult Oriented Business shall be located a minimum of 1,000 feet from any other Adult Oriented Business already in existence. The distance shall be measured in a straight line from the closest exterior wall of the existing Adult Oriented Business to the closest exterior wall of the proposed Adult Oriented Business; and

- C. An Adult Oriented Business shall be located a minimum of 500 feet from any parcel that is the site of any public library; or any public, private, or parochial school or preschool; or any daycare center; or any public park or playground; or any place of worship or any non-commercial establishment operated by a bona fide religious organization. The distance shall be measured in a straight line from the closest property line of any listed use, parcel or zoning area, and to the closest exterior wall of the proposed Adult Oriented Business.
- 409.2 Screening. All building openings, entries and windows of Adult Oriented Business Establishments shall be located, covered or screened in such a manner as to prevent a view into the interior from any public or semi-public area, including public sidewalks, streets, arcades, hallways, or passageways of any material which has as its primary theme matter depicting, illustrating, or describing, Specified Anatomical Areas or Specified Sexual Activities.
- 409.3 Signs. No sign visible from the exterior of an Adult Oriented Business shall include any image, depiction or linguistic reference to Nudity, Specified Anatomical Areas, or Specified Sexual Activities.
- 409.4 Application Requirements. In addition to the information otherwise required by the Town of Derby Zoning Bylaw, applicants shall include the following supplemental information:
- A. The names and addresses of any Adult Oriented Business establishments within 1,000 feet of the exterior walls of applicant's proposed Adult Oriented Business. The distance shall be measured in a straight line from the property line of the existing Adult Oriented Business to the closest exterior wall of the proposed Adult Oriented Business.
 - B. The names and addresses of the owner of any parcel that is the site of any public library; or any public, private, or parochial school or preschool; or any daycare center; or any public park or playground; or any place of worship or any non-commercial establishment operated by a bona fide religious organization within 500 feet of the exterior wall of applicant's proposed Adult Oriented Business. The distance shall be measured in a straight line from the closest property line of any listed use, parcel or zoning area, and to the closest exterior wall of the proposed Adult Oriented Business.
- 409.5 Waivers. The setback requirements of §408.1 may be reduced upon approval of the Development Review Board only if the applicant can demonstrate that the regulation is unnecessarily stringent because it fails to provide any reasonable avenue for expressive speech. The setback requirements may be reduced a maximum of 20% below the original requirement.

A waiver request shall be made at the time of application for a conditional use permit. In granting such waiver, the Development Review Board may require additional site mitigation through design and screening requirements as a condition of approval. The request for waiver shall state the reasons why strict compliance with the zoning bylaw setback requirements would result in an excessive burden on communication, and shall propose avenues for lessening that burden through the permitting process.

ARTICLE 5: OVERLAY DISTRICT REGULATIONS

§ 501 Source Protection Area

To promote the health, safety and welfare of the community by protecting important water resources of the Town of Derby, the Source Protection Area (SPA) is created to protect the public water supplies within the delineated overlay district. To that end the following overlay district regulations shall apply.

501.1 Scope of Authority

The SPA District is an overlay district and shall be superimposed on the underlying districts established by this Zoning Bylaw. All regulations of the Town of Derby Zoning Bylaw applicable to such underlying districts shall remain in effect, except where the SPA District imposes additional regulations, such regulations shall prevail.

501.2 District Delineation

- A. The SPA district herein established to include all lands within the Town of Derby Source Protection Area.
- B. The official zoning map delineates the boundaries of the SPA District. The official zoning map is on file with the Town Clerk of the Town of Derby.
- C. Where there is a dispute as to where a boundary lies, the location of the boundary shall be determined by the Town of Derby Planning Commission as provided for in §203.1.

501.3 Special Regulations

- A. In areas within the SPA District which are not served by municipal sewage systems, the minimum allowable lot size shall be one acre.
- B. Floor drains may only be allowed if they drain into a holding tank or into a municipal sewer or as permitted. On site discharge containing hazardous materials from floor drains shall be prohibited.
- C. No more than twenty percent (20%) of any lot or tract within the SPA district shall be covered with pavement, roofing or other material impervious to water.
- D. All runoff from impervious surfaces within the SPA District shall to the extent possible be recharged on the site by being diverted toward areas covered with vegetation for surface infiltration. Drywells shall be used only where other methods are infeasible, and shall be preceded by oil, grease and sediment traps to facilitate removal of contamination. All drainage ways, drywells and sediment traps shall be permanently maintained in full working order by the owner.
- E. For any use retaining less than thirty percent (30%) of the total lot area in its natural vegetative state, the application shall be accompanied by evidence demonstrating that such removal of vegetative cover shall not result in decreased recharge of the groundwater deposit, or increased sedimentation of surface waters. The application shall indicate any restoration and erosion control measures proposed for the site.
- F. The use of sodium chloride for ice control shall be minimized, consistent with public highway safety requirements.

- G. Commercial fertilizers, pesticides, herbicides or other leachable materials shall be applied in accordance with standards promulgated by the Vermont Department of Agriculture or its successor agencies, and shall not be used in amounts which result in groundwater contamination levels exceeding Vermont Drinking Water standards.
- H. Aboveground storage tanks for oil, gasoline or other petroleum products shall be placed in a building on a diked, impermeable surface to prevent spills or leaks from reaching groundwater. Floor drains shall be plugged to prevent discharges of leaks.
- I. Indoor storage of salt, deicing materials, pesticides and herbicides must be stored in an enclosed structure with a concrete pad floor.

501.4 Prohibited Uses

Prohibited uses include but are not limited to:

- A. Any use not permitted in the underlying zoning district.
- B. Commercial and industrial uses, not agricultural, which manufacture, use, process, store or dispose of hazardous materials as a principle activity, including but not limited to metal plating, chemical manufacturing, wood preservation, trucking or bus terminals, food processing, photographic processing, motor vehicle servicing or fuel sales, furniture or wood stripping, dry cleaning and auto body repair.
- C. Chemical, medical and bacteriological laboratories or manufacturing facilities.
- D. Car washes, except when serviced by public water and sewer.
- E. Solid waste landfills, dumps, junk and salvage yards.
- F. Wastewater treatment facilities.
- G. Commercial and industrial uses, not agricultural, which involve the onsite disposal of processed wastes from operations.
- H. Disposal of liquid, leachable or hazardous materials, except for residential subsurface waste disposal systems, normal agricultural operations and business or industrial uses which involve only on site disposal of wastes from personal hygiene and food preparation for patrons and employees.
- I. Underground storage and/or transmission of petroleum products.
- J. Outdoor storage of salt, deicing materials, pesticides or herbicides.
- K. Disposal of snow which has been brought in from outside the district.
- L. The use of septic system cleaners which contain toxic chemicals, including but not limited to methylene chloride and 1-1-1 trichlorethane.
- M. The rendering of more than twenty percent (20%) of a lot into impermeable area.

§ 502 Tax Increment Finance District

To promote sustainable industrial and commercial development through property tax reinvestment into capital infrastructure the Tax Increment Finance (TIF) District is created as authorized under VSA T.24 Subchapter 5 §1892. In order to enhance property tax base and therefore revenues for infrastructure investment and development the following regulations shall apply in the TIF District:

502.1 Scope of Authority

The TIF District is an overlay district and shall be superimposed on the underlying districts established by this Zoning Bylaw. All regulations of the Town of Derby Zoning Bylaw applicable to such underlying districts shall remain in effect, except where the TIF District imposes additional regulations, such regulations shall remain in effect.

502.2 District Delineation

- A. The TIF District herein established to include all lands within the Town of Derby Tax Increment Finance District.
- B. The official zoning map delineates the boundaries of the TIF District. The official zoning map is on file with the Town Clerk of the Town of Derby.
- C. Where there is a dispute as to where a boundary lies, the location of the boundary shall be determined by the Town of Derby Planning Commission as provided for in §203.1.

502.3 Prohibited Uses

- A. Any use not permitted or conditional in the underlying zone.
- B. One and Two family dwellings, multi-family dwellings and mobile home parks.
- C. All quasi-public uses with property tax exempt status.

502.4 Public Uses

Public uses are permitted in the TIF District only where such uses:

- A. Are exempt from local zoning by state or federal law.
- B. Provide services directly within the district.
- C. Are required for the public health, safety and welfare.
- D. Where such uses are subject to property tax or subject to intergovernmental agreements where such tax losses are remunerated to the satisfaction of the Selectboard.

§ 503 Design Control District

The Villages of Derby Line and Derby Center may elect to activate historic design control districts within their respective village limits. Upon activation of such design control districts the Administrative Officer shall not issue a zoning permit for any construction or use within a design control district unless and until the proper design approvals have been obtained by the applicant. In those applications within a design control district that require Zoning Board of Adjustment and/or Planning Commission review and approval, no final approvals shall be issued unless and until the proper design approvals have been obtained by the applicant. The Administrative Officer shall cause any approved design control regulations to be appended to the end of this Article.

503.1 Creation of Design Control Districts

- A. The village seeking the creation of a design control district shall submit a report to the Town of Derby Planning Commission detailing the proposed district's design problems, the proposed design criteria and regulations that proposed construction and renovation shall comply to, a map delineating the proposed district

boundaries, and a formal request for the creation of a design control district signed by a majority of the respective Board of Trustees.

- B. The Town of Derby Planning Commission shall submit the request along with its recommendations, submitted proposed boundary map both original and any map amended by the Planning Commission, proposed district design criteria and regulations to the Selectboard of the Town of Derby for review and approval.

503.2 Appointment of Design Control Commissioners

The respective Board of Village Trustees shall interview and nominate candidates for membership on design control commissions for approval by the Selectboard to serve terms consistent with Town ordinances and state law.

503.3 Scope of Authority

A design control district is an overlay district and shall be superimposed on the underlying districts established by this Zoning Bylaw. All regulations of the Town of Derby Zoning Bylaw applicable to such underlying districts shall remain in effect, except where design control district regulations impose additional regulations, such regulations shall prevail.

503.4 503.4 District Delineation

- A. Design control district boundaries shall be established in accordance with §503.1.
- B. The official zoning map shall delineate the boundaries of design control districts. The official zoning map is on file with the Town Clerk of the Town of Derby.
- C. Where there is a dispute as to where a boundary lies, the location of the boundary shall be determined by the Town of Derby Planning Commission as provided for in §203.1.

503.5 Enforcement

Design approval shall be a zoning permit special condition. Unapproved deviation from such design approval shall be a zoning violation and render any issued zoning permit null and void. Enforcement action shall be pursued by the Administrative Officer as provided under §110 and §905 of this Bylaw and §4444 and §4445 of the Act.

ARTICLE 6: FLOOD HAZARD AREA REGULATIONS

§ 601 Intent

The intent of these regulations is to protect the public health, safety, and welfare; protect the property and property rights of downstream individuals and communities; to stabilize natural watercourses and seasonal flood areas; and protect environmentally sensitive areas.

§ 602 Application

These regulations shall apply for development in all areas in the Town of Derby identified as areas of special flood hazard on the National Flood Insurance Program maps which are hereby adopted by reference and declared to be part of these regulations.

§ 603 Conditional Use Permit Required

603.1 All development including fill, excavation, grading, erection or placement of structures, substantial improvement of existing structures and storage of equipment and materials prescribed by the Town of Derby Zoning Bylaw are permitted within an area of special flood hazard only upon the granting of a conditional use permit by the Zoning Board of Adjustment

603.2 Prior to issuance of a permit for the construction of new buildings, the substantial improvement of existing buildings, or for development in the floodway, a copy of the application shall be submitted to the Vermont Department of Environmental Conservation in accordance with VSA T.24 4409. A permit may be issued only following receipt of comments from the Department of Environmental Conservation or the expiration of thirty days from the date the application mailed to the Department of Environmental Conservation was postmarked. It is the responsibility of the applicant to establish the posting date of the submitted application.

603.3 Adjacent communities and the Vermont Department of Environmental Conservation shall be notified at least fifteen days prior to the issuance of any permit for the alteration or relocation of any watercourse and copies of such notification shall be submitted to the Administrator of the Federal Insurance Administration.

603.4 Proposed development shall be reviewed to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law.

603.5 The requirements of this Section are in addition to requirements established for conditional use applications and proceedings as established under §208.4.

§ 604 Base Flood Elevations and Floodway Limits

604.1 Where available (i.e. zones A1-A30, AE, and AH) the base flood elevations and floodway limits provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps shall be used to administer the provisions of these regulations.

604.2 In areas where base flood elevations and floodway limits have not been provided by the National Flood Insurance Program (i.e. zone A) base flood elevation and floodway information available from State or Federal agencies or other sources shall be obtained and reasonably utilized by the Zoning Board of Adjustment to administer the provisions of these regulations.

§ 605 Conditional Use Review Procedures

605.1 Upon reviewing an application for a conditional use permit under these regulations, the Zoning Board of Adjustment shall, prior to rendering a decision thereon obtain from the applicant:

- A. The elevation (in relation to mean sea level) of the lowest floor, including basement, of new buildings or buildings to be substantially improved;
- B. Where flood proofing is proposed, the elevation (in relation to mean sea level) to which the building will be flood proofed;
- C. Plans drawn to scale showing the existing and proposed land contours, buildings, structures, streams, roads and other pertinent physical features;
- D. Base flood elevation data for subdivisions and other proposed development which contain at least fifty lots or five acres (whichever is smaller);
- E. Application materials deemed adequate by the Administrative Officer to meet the provisions of §208.4 for the consideration of conditional use applications;
- F. Such other information deemed necessary by the Zoning Board of Adjustment for determination of the suitability of the site for the proposed development.

The Zoning Board of Adjustment shall obtain from the Vermont Department of Environmental Conservation or other State or Federal agencies any available base flood elevation data.

605.2 In reviewing each application the Zoning Board of Adjustment shall consider:

- A. The evaluation of the Vermont Department of Environmental Conservation;
- B. The availability of alternate locations not subject to flooding for the proposed use;
- C. The susceptibility of the proposed improvement to flood damages;
- D. The safety of access to the property in times of flood of ordinary emergency vehicles;
- E. The potential for damage to property caused by erosion;
- F. The danger that materials may be swept onto other lands and cause damage to others;
- G. Such other factors as are relevant to the intent and purposes of this Bylaw.

605.3 The Zoning Board of Adjustment may grant a conditional use permit provided:

- A. All necessary permits are obtained from those government agencies from which approval is required by Federal and State law;
- B. The development standards of §606 are met or exceeded.

§ 606 Development Standards

606.1 Floodway Areas:

- A. Development within the floodway is prohibited unless a registered professional engineer certifies that the proposed development will not result in an increase in flood levels during the occurrence of a base flood;
- B. Junkyards and storage areas or facilities for floatable materials, chemicals, explosives, flammable liquids or other hazardous or toxic materials, are prohibited within the floodway.

606.2 Fringe Areas:

- A. All development shall be designed:
 - 1) To minimize flood damage to the proposed development and to public facilities and utilities, and;
 - 2) To provide adequate drainage to reduce exposure to flood hazards;
- B. Structures shall be:
 - 1) Designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure during the occurrence of a base flood;
 - 2) Be constructed of materials resistant to flood damage;
 - 3) Be constructed by methods and practices that minimize flood damage, and;
 - 4) Be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed or located so as to prevent water from entering or accumulating within components during conditions of flooding.
- C. The flood carrying capacity within any altered or relocated portion of a watercourse shall be maintained.
- D. New and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into systems and discharges from the systems into flood waters.
- E. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- F. New and replacement manufactured homes shall be elevated on properly compacted fill such that the top of the fill (the pad) under the entire manufactured home is at least one foot above base flood elevation.
- G. The lowest floor, including basement, of all new buildings shall be at least one foot above base flood elevation.
- H. Existing buildings to be substantially improved for residential purposes shall be modified or elevated to meet the requirements of 606.2 (G).
- I. Existing Buildings to be substantially improved for nonresidential purposes shall either:
 - 1) Meet the requirements of 606.2(G), or;
 - 2) Be designed to be watertight below the base flood elevation with walls substantially impermeable and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A permit for a building proposed to be flood proofed shall not be issued until a registered professional engineer or architect has reviewed the structural design, specifications and plans, and has certified that the design and

proposed methods of construction are in accord with accepted standards of practice for meeting the provisions of this subsection.

- J. All new construction and substantial improvements with fully enclosed area below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on the exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
 - 1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
 - 2) The bottom of all openings shall be no higher than one foot above grade;
 - 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.
- K. Areas to be used for junkyards or for storage of floatable, hazardous or toxic materials shall be filled and graded to at least one foot above the base flood elevation.

§ 607 Duties and Responsibilities of the Administrative Officer

607.1 The Administrative Officer shall maintain a record of all permits issued for development in areas of special flood hazard.

607.2 The Administrative Officer shall maintain records of the elevation (in relation to mean sea level) of the lowest floor including basement and the height of flood proofing of all new or substantially improved buildings.

607.3 The Administrative Officer shall maintain records of all engineering and flood proofing certifications and all required State and Federal approvals and permits as required under these provisions.

607.4 The Administrative Officer shall maintain a record of all variance actions, including any Findings of Fact or other quasi-judicial rulings as a log distinct from Zoning Board of Adjustment minutes and findings.

§ 608 Variances to the Development Standards

Variances to the development standards shall be granted by the Zoning Board of Adjustment under the provisions of VSA T.24 4468 and applications shall meet submission requirements established under §802 of the Zoning Bylaw. In addition variances to flood hazard design standards must meet criteria established by VSA T.24 4412(h), 44 CFR, §60.6 of the National Flood Insurance Program regulations and Section 608.1 of this Bylaw.

608.1 Variances shall be granted by the Zoning Board of Adjustment only when all of the following criteria have been satisfied:

- A. All requirements established under §802 of this Bylaw have been met;
- B. The following criteria established under VSA T.24 4412(h) have been met:

- 1) The Zoning Board of Adjustment finds the repair, relocation, or enlargement of the compliant non-conforming structure is required for the continued economically feasible operation of a nonresidential enterprise;
 - 2) The Zoning Board of Adjustment finds that the repair, relocation, or enlargement of the compliant non-conforming structure will not increase flood levels in the regulated floodway, threaten the health, safety, and welfare of the public or other property owners;
 - 3) The permit so granted states that the repaired, relocated, or enlarged compliant non-conforming structure is located in a regulated flood hazard area, is non-conforming to the Bylaw pertaining thereto, and will be maintained at the risk of the owner;
 - 4) A copy of such permit granted by the Zoning Board of Adjustment shall be affixed to the copy of the deed of the concerned property on file in the Town Clerk's Office.
- C. That it has been found that the structure or other development is protected by methods that minimize flood damages during the occurrence of a base flood and create no additional threats to public safety.

§ 609 Warning of Disclaimer of Liability

These regulations do not imply that land outside the areas of special flood hazard 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 the Town of Derby or any official or employee thereof for any flood damages that result from reliance on this Bylaw or any administrative decision lawfully made there under.

ARTICLE 7: SUBDIVISION, PRD, PUD AND MOBILE HOME PARK REGULATIONS

No subdivision of land, changes to the boundaries of parcels or the unification of separate parcels under unified ownership shall be permitted without a zoning permit for that purpose. Proposals for projects classified under VSA Title 24 4407 as planned residential developments or planned unit developments or proposals for new or expansions to existing mobile home parks shall be reviewed and permitted under the provisions of this Article.

§ 701 Subdivisions-Administrative Permits

All applications shall be submitted for plat approval by the Planning Commission as provided in this Article except where the Administrative Officer has determined that the application meets one of the following criteria:

- A. Lot unification where the unified parcel conforms to all Bylaw provisions.
- B. Boundary shifts, line redraws, and backlot transfers that 1) reduce non-conformities concerning minimum lot sizes, widths and setback requirements and 2) create no new non-conformities.

Upon determination that an application meets the above criteria, the Administrative Officer may issue the required plat approval provided that the applicant has submitted a complete application, fee and certified survey of the parcel or parcels in question.

§ 702 Plat Approval Procedures

702.1 Applications for subdivision plat approval shall be warned for a public hearing for conceptual approval before the Planning Commission by the Administrative Officer upon receipt of a complete application on forms provided by the Administrative Officer, fees for the processing of the application and public hearing, and seven copies of a preliminary survey of the proposed subdivision.

702.2 The Planning Commission, upon conceptual review may:

- A. Approve the plat as submitted and direct the Administrative Officer to issue the required subdivision permit.
- B. Place special conditions on the applicant that must be met to the satisfaction of the Administrative Officer before the required permit is issued.
- C. Require from the applicant such design changes, additional information and or environmental study as to warrant subsequent conceptual review or final plat approval.

702.3 Before conceptual or final approval of any proposed plat the Planning Commission shall first be satisfied that:

- A. All proposed lots meet the minimum requirements for area and dimension of the zoning district.
- B. That all proposed lots have access to a public roadway or are served by a right of way of a satisfactory nature so that no land locked lots are created.

- C. That the approval of the plat proposal shall not create any non-conformity with the Zoning Bylaw.

In the evaluation of conceptual or final approval of any proposed plat the Planning Commission may also consider:

- A. The possible impact of greater use intensity on the environment, agricultural or silvicultural uses.
- B. The character of the neighborhood.
- C. Adequacy of road access and traffic circulation within the proposed subdivision.
- D. The capacity of existing or planned community infrastructure or facilities.
- E. Any other issue or factor that the Planning Commission deems relevant to the proper consideration of the application.

§ 703 Right of Way Design Standards and Association Agreements

703.1 Rights of way serving three or fewer lots shall be a minimum of thirty feet wide, in the event that a fourth lot is to be added to an existing thirty foot right of way, the applicant shall submit evidence that deed instruments have been executed to bring the required width in compliance with the standard for rights of way serving four or more lots.

703.2 Rights of way serving four or more lots shall be a minimum of fifty feet wide and shall terminate in a cul-de-sac of sufficient diameter or other design for the safe turn around of emergency vehicles.

703.3 Road designs for rights of way serving four or more lots created under this Article shall meet design standards for town roads as specified and approved by the Town of Derby Road Commissioner.

703.4 Where plat applications call for the creation of homeowner associations or covenants for the maintenance of private roads or rights of way, the Planning Commission may require that copies of all deeds executed subsequent to the plat approval specifying such agreements be submitted to the Administrative Officer as a condition for the subdivision permit. Further the Planning Commission may require that such agreements include; the maintenance of roads and turn arounds in sufficiently good condition for the safe access of emergency vehicles, snow clearance, maintenance of sight distances for safe access from the proposed subdivision to the public road and any other provision deemed necessary for the public safety.

§ 704 Planned Residential Developments

The purpose of planned residential developments (PRD) is to enable and encourage flexibility of design and development in such a manner as to promote the most appropriate use of land, economic provision of streets and utilities, and preserve the natural and scenic qualities of open lands by encouraging cluster residential development.

704.1 Procedure for submission and review of PRD proposals shall be that of any other subdivision proposal moving through Planning Commission public hearings for conceptual and final approval. The applicant shall submit a scaled site plan showing

the location, height and spacing of buildings, open spaces and their landscaping, streets, driveways and off-street parking spaces and all other physical features, accompanied by a statement setting forth the nature of all proposed modifications, changes or supplementations of existing zoning regulations.

- 704.2 The permitted number of dwelling units may include a density increase of up to twenty-five percent above what would be allowed under the Bylaw for the zoning district, or fifty percent in the case of an affordable housing development as defined by the Vermont Department of Housing, provided that the Planning Commission determines that site conditions can support such an increase in density, and that the character of the neighborhood and planned or existing community facilities will not be adversely affected by the density increase. No applicant under the PRD provisions of this Bylaw shall be required to apply for or accept a density increase.
- 704.3 The dwelling units permitted may, at the discretion of the Planning Commission, be of varied types including one-family, two-family, multi-family semi-detached or multi-family construction.
- 704.4 If the application of this procedure results in lands available for park, recreation, open space, community septic tanks and leach fields or other municipal purposes, the Planning Commission as a condition of approval may establish such conditions on the ownership, use and maintenance of such lands as is deemed necessary to assure the preservation of such lands for their intended purposes.
- 704.5 Any modification of the Zoning Bylaw approved under this § 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.

§ 705 Planned Unit Developments

The purpose of planned unit developments (PUD)s is to enable and encourage flexibility in design and development that combines complementary uses which will result in; a choice in the types of environments and living units available to the public and quality in land uses so that development will be a permanent and long term asset to the town, create open space and recreation areas where dwelling units are part of the development, encourage a pattern of development which preserves trees, outstanding natural topography and prevents soil erosion, and causes an efficient use of land resulting in smaller networks of utilities and streets. The ultimate goal of permitting PUD development is to avoid strip type commercial development and to provide a more desirable environment than would be possible through the strict application of other sections of these regulations. These regulations for PUDs shall not be construed as an exemption of permitted or conditional use requirements for the zoning district that the proposed PUD is located in.

- 705.1 Procedure for submission and review of PUD proposals shall be that of any other subdivision proposal moving through Planning Commission public hearings for conceptual and final approval. The applicant shall submit a scaled site plan showing the locations, heights and spacing of all existing and planned buildings and structures, parking areas, contours and all other physical features, roads, site work

and landscaping, and all utilities shall also be shown and described. In addition the site plans shall show adjacent building outlines and other outstanding features within 200 feet. The Planning Commission may require the submission of typical elevations and floor plans of all buildings.

705.2 The Planning Commission may allow greater densities or intensity of residential uses within some section or sections of the development than others. The Planning Commission may require that this greater density be offset by lesser densities in other sections of the PUD.

705.3 In a PUD dwelling units may be multi-family, the permitted number of dwelling units may include a density increase of fifty percent above what would be allowed under the Bylaw for the zoning district in the case of an affordable housing development provided that the Planning Commission determines that site conditions can support such an increase in density, and that the character of the neighborhood and planned or existing community facilities will not be adversely affected by the density increase. In a PUD in a residential district, commercial, educational, and public facilities may be allowed which are designed to serve the PUD and the area around the PUD.

705.4 Lot size, width, front yard and side yard setback requirements may be altered; however, these alterations shall be evaluated by the Planning Commission on their individual merit.

705.5 A PUD shall comply with the following standards:

- A. The minimum lot area for a PUD shall be five acres or the minimum lot area for the zoning district, whichever is greater.
- B. Off lot water and sewer may be required if over six residential units are proposed.
- C. At least twenty-five percent of the PUD should be in open space and or common usage, the Planning Commission as a condition of approval may establish such conditions on the ownership, use and maintenance of such areas as is deemed necessary to assure the preservation of such areas for their intended uses. This may be waived by the Planning Commission for commercial and industrial PUDs provided adequate screening and landscaping are proposed.
- D. Any and all of the conditions required for conditional uses as set forth in §208 of the Bylaw may be required by the Planning Commission for a PUD.

§ 706 Supplemental Rules and Regulations for PRD and PUD

The Planning Commission may prescribe, from time to time, rules and regulations to supplement the standards and conditions set forth in this Zoning Bylaw for PRDs and PUDs, provided the rules and regulations are not inconsistent with the Town Plan. The Planning Commission shall hold a public hearing after public notice as required by Section 4447 of the Act prior to the establishment of any supplemental rules and regulations for PRDs and PUDs.

§ 707 Mobile Home Parks

All new and proposed expansions of mobile home parks shall be submitted for site plan approval by the Planning Commission. Submitted materials shall include a measured site

plan including all proposed mobile home lots, access driveways, mobile home pads, lot parking areas, utility provision, common spaces and any other characteristic deemed necessary for the review and approval of the proposal.

707.1 Mobile Home Park Design Standards

The following regulations shall apply to mobile home parks:

- A. A mobile home park shall have an area of not less than five acres.
- B. Mobile home parks shall provide for individual mobile home spaces, access driveways, parking and recreational open spaces.
- C. Each mobile home space shall be a minimum of sixty feet wide, at least 8,000 square feet in area, and shall front on an access driveway.
- D. All access driveways within a mobile home park shall have a right of way of at least fifty feet in width and have a paved surface at least twenty-five feet in width. Gravel paving shall be at least twelve inches of compacted depth.
- E. Two paved parking spaces at least ten feet wide and twenty-two feet long shall be provided for each mobile home lot. Gravel paving shall be at least twelve inches of compacted depth.
- F. Mobile home parks shall provide at least twenty-five percent of the total land area for recreation and other open space purposes.
- G. A level compacted surface shall be provided for each mobile home.
- H. Each mobile home space shall have a hook up for water supply which is adequate, safe and potable. The water supply source must be approved by the State Department of Health and meet all state and local regulations.
- I. Each mobile home space shall have a hook-up for sewage disposal. The method of sewage disposal must be compliant with State Department of Health and local regulations; however it shall not be located on the home space unless that space is at least one acre in size.
- J. A strip of land at least twenty-five feet in width shall be maintained as a landscaped area abutting the mobile home park on all property lines except where the park boundary is adjacent to residential uses where the landscaped area must be at least fifty feet in width.
- K. Provision for the disposal of house hold garbage and rubbish shall be made.
- L. An electrical source supplying at least 100 amps, 220 volts shall be provided for each mobile home space. The installation shall comply with all state laws and regulations. Such electrical outlets shall be weatherproof.

707.2 Placement of Mobile Home Units in Approved Parks. The purpose of these regulations is to protect the public health, safety and welfare by limiting mobile home park densities and assuring access by emergency services by mandating the safe spacing of mobile home units. Mobile home placements shall conform to the following provisions:

- A. Mobile home units located in mobile home parks shall be placed only in spaces approved by the Planning Commission.
- B. Mobile home units, associated accessory structures and additions shall be placed a minimum of twenty feet from access drives.

- C. Mobile home units, associated accessory structures and additions shall be placed a minimum of fifteen feet from the approved space line, no unit shall be placed closer than thirty feet to any other unit.
- D. Mobile home units, associated accessory structures and additions shall not exceed 33.3% footprint coverage of an approved mobile home space.

§ 708 Compliant Non-conforming Mobile Home Parks

The current locations of mobile home units, associated accessory structures and additions in compliant non-conforming mobile home parks or compliant non-conforming placements of those units or structures may continue indefinitely in their original footprints. Those units, associated structures and additions may be replaced in their original or smaller footprints within six months of removal or destruction. Placements greater than the original footprints may be permitted only in conformity to the following regulations:

- 708.1 The placement must be on a conforming mobile home space as defined under §707.1 (C) and shall conform to design criteria established under §707.1 (E), (G), (H), (I), (K) and (L), it is the responsibility of the park management to file both an original and an amended mobile home park site plan documenting the conforming nature of the revised space and that the creation of that space does not increase the non-conformity of adjacent spaces.
- 708.2 The unit, accessory structure or addition shall be permitted only in conformity with §707.2 and its subsections.
- 708.3 The Administrative Officer may issue a zoning permit under this Section only upon determination that the proposed placement conforms to §707.1 and §707.2 above. Applications for the replacement of compliant non-conforming mobile home units, accessory structures or additions under §708 will be considered by the Zoning Board of Adjustment under the criteria established by §301.

ARTICLE 8: LIMITATIONS AND VARIANCES

§ 801 Limitations

801.1 In accordance with T.24 §4409 of the Act, the following uses are permitted in any zoning district unless the Bylaw makes specific provision for the location of such uses. These uses shall conform to applicable provisions of this Bylaw regulating size, bulk, height, yards, courts, setbacks, density of buildings and structures, landscaping, screening requirements, off-street parking and loading facilities:

- A. Public utility power generating plants and transmission lines;
- B. State or community owned and operated institutions and facilities;
- C. Public and private schools and other educational institutions certified by the Vermont Department of Education;
- D. Churches as defined in §1102 of this Bylaw;
- E. Public and private hospitals;
- F. Regional solid waste management facilities certified under VSA T.10 Chapter 159;
- G. Hazardous waste management facilities for which a notice of intent to construct has been received under VSA T.10 §6606a.

801.2 If any Bylaw or amendment thereof, is enacted with respect to any land, use or development subject to regulation under state statutes, the more restrictive applicable regulation shall apply.

801.3 Referral to State Departments

No zoning permit for the development of land of the following types or located within the following designated areas may be issued by the Administrative Officer prior to the expiration of a period of thirty days following the submission of a report to the state agency or its successor agency designated in each case, describing the proposed use, the location requested and an evaluation of the effect of such proposed use on the Town Plan and the regional plan, if any:

- A. Forests, parks and recreation department. Any use in or within 1000 feet of any state owned or leased property. This provision does not apply within any incorporated village;
- B. Department of environmental conservation. Any of the following uses or activities affecting ground or surface water resources;
 - 1) Any area designated as a flood plain or wetland;
 - 2) The damming of streams so as to form an impounded area of five acres or more for reservoir or recreational purposes;
 - 3) The drilling of wells deeper than 50 feet or with a potential yield greater than 25,000 gallons per day, except this shall not apply to a well drilled by the owner of a farm or residence for his own use, or the use of the farm;
- C. Fish and wildlife department. Game lands and stream bank areas owned or leased by the state;
- D. Vermont agency of transportation. Airports;

- E. Forests, parks and recreation department. The following recreational areas;
 - 1) Ski areas with lifts or other equipment other than tows, with a total capacity of more than 500 persons per hour;
 - 2) Camps with accommodations for more than 50 persons;
 - 3) Marinas with accommodations for 20 or more boats with lengths in excess of 20 feet;
 - 4) Public beaches, or lands within 1000 feet thereof;
 - 5) Natural areas as defined in VSA T.10 §2010;
- F. Highway department. Any use within 500 feet of the intersection of any entrance or exit ramp providing access to any limited access highway.

801.4 A state licensed or registered residential care home or group home, serving not more than six persons who are developmentally disabled or physically handicapped, shall be considered by right to constitute a permitted single-family residential use of property, except that no such home shall be so considered if it locates within 1,000 feet of another such home.

801.5 Unless a zoning regulation specifically provides to the contrary, limitations on permissible heights of structures shall not apply to antenna structures, to windmills with blades less than 20 feet in diameter or to rooftop solar collectors less than 10 feet high which are mounted on complying structures.

801.6 Regulation of Child Care

- A. A Family Child Care Home shall be regulated as a Home Occupation. Such operation shall conform to the requirements for a home occupation as provided for under §402.3(A) of this Bylaw with the exception of footprint limitations;
- B. A Family Child Care Facility shall be regulated as a commercial use. Such operations shall be subject to full site plan review and/or conditional use proceedings as may be required by the provisions of this Bylaw.

801.7 The Town of Derby 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 VSA chapter 124 only to the extent that those changes are silviculturally sound, as determined by the department of forests, parks and recreation, and protect specific natural, conservation, esthetic, or wildlife features in properly designated zoning districts. Such changes also must be compatible with 32 VSA §3755.

§ 802 APPEAL-VARIANCES

802.1 In accordance with §4468 of the Act, a variance from the provisions of a zoning regulation may be requested for a structure. Such a request may be applied for directly to the Zoning Board of Adjustment or as an appeal of the action of the Administrative Officer. Appeals and variance requests may only be heard by the Zoning Board of Adjustment after legal public notice in an open hearing. On appeal under §4464 or §4471 of the Act the Zoning Board of Adjustment may grant variances and render a decision in favor of the appellant, if all of the following facts

are found and the finding is specified in its decision in regard to a structure that is not primarily a renewable energy resource structure:

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

802.2 On an appeal under §4464 or §4471 of the Act wherein a variance from the provisions of a zoning regulation is requested for a structure that is primarily a renewable energy resource structure, the Zoning Board of Adjustment may grant such variances, and render such decision in favor of the appellant if all the following facts are found and the finding is specified in its decision:

- A. It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with regulations;
- B. That the hardship was not created by the appellant;
- C. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and
- D. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and the Town Plan.

802.3 In rendering a decision in favor of an appellant under this Section, The Zoning Board of Adjustment may attach such conditions to such variances as it may consider necessary and appropriate under the circumstances to implement the purposes of the Act and the Town Plan.

802.4 In determining whether an appeal or variance shall be granted, the Zoning Board of Adjustment shall be required to give consideration to any factual evidence

presented by any person who would be classified as an “interested person” by §4464 of the Act. Upon filing an appeal or requesting a variance appellants and applicants shall submit:

- A. A plan for the proposed development of the site showing the locations of all buildings, parking areas, traffic access and circulation drives, open spaces, landscaping, and any other pertinent information concerning both the site and abutting property that the Board may deem necessary for proper deliberation of the appeal or variance request;
- B. An application form deemed complete and accurate by the Administrative Officer;
- C. Fees required for the application and public hearing;
- D. A narrative describing the purposes of the appeal or variance request, documentation of the applicability of the request or appeal of criteria A-E defined in §802.1 or criteria A-D defined in §802.2, a list of names and addresses of all abutters and any other information deemed relevant by the Zoning Board of Adjustment.

No less than seven days before a public hearing for an appeal or variance request, the applicant shall submit evidence that a good faith effort has been made to notify all abutters of the site subject to the appeal or variance request of the date, time, place and purpose of the public hearing. Such evidence shall take the form of a sworn certificate of service, signed statements by the abutters or United States Postal Service return receipt cards. The Zoning Board of Adjustment may accept returned certified mail envelopes as evidence that a reasonable effort to contact an abutter has been made.

802.5 The Administrative Officer shall cause Findings of Fact and Minority Opinions issued by the Zoning Board of Adjustment and its constituent members to be appended to this Bylaw. Appellants, applicants and interested persons may cite these documents in submission materials and any oral testimony made before the Zoning Board of Adjustment. Past Findings of Fact shall not be considered binding upon the Zoning Board of Adjustment; however the Zoning Board of Adjustment should consider its past interpretation of the Bylaw in deliberation and shall include in resulting Findings of Fact any conclusions derived thereof.

ARTICLE 9: ADMINISTRATION AND ENFORCEMENT

§ 901 Administrative Officer (Zoning Administrator)

The Selectboard shall appoint an Administrative Officer from nominations submitted by the Planning Commission for a term of three (3) years in accordance with VSA Title 24 §4448. The compensation of the administrative officer shall be fixed under VSA Title 24 §932 & §933 and the officer shall be subject to the personnel rules of the municipality adopted under VSA Title 24 §1121 & §1122. The Selectboard may remove an Administrative Officer for cause at any time after consultation with the Planning Commission.

An acting Administrative Officer may be appointed by the Selectboard, from nominations submitted by the Planning Commission, who shall have the same duties and responsibilities of the Administrative Officer in the Administrative Officer's absence. In the event an acting Administrative Officer is appointed, the Selectboard shall establish clear policies regarding the authority of the Administrative Officer relative to the authority of the acting Administrative Officer.

The Administrative Officer shall administer the bylaw literally and shall not have the power to permit any land development that is not in conformance with the bylaw.

The administrative officer should provide an applicant with the forms required to obtain any municipal permit or other municipal authorization required under VSA Title 24 Chapter 117, or under other laws or ordinances that relate to the regulation by municipalities of land development. If other municipal permits or authorizations are required, the administrative officer should coordinate the unified effort on behalf of the municipality in administering its development review programs.

In addition, the Administrative Officer should inform any person applying for municipal permits or authorizations that they should contact a regional permit specialist employed by the Agency of Natural Resources in order to assure timely action on any related state permits. The applicant retains the obligation to identify, apply for, and obtain relevant state permits.

§ 902 Establishment of the Planning Commission

902.1 Appointment

- A. Members of the Planning Commission shall be appointed and any vacancy filled by the Selectboard as permitted under VSA Title 24 §4323. The term of each member shall be for four years, and these terms shall be so staggered so that no more than two members shall be reappointed or replaced during any future calendar year. The Selectboard shall appoint five members as permitted under VSA Title 24 §4322. All members may be compensated and reimbursed for any necessary and reasonable expenses. All members of the Planning Commission shall be residents of the Town of Derby and may include as many as two members of the Zoning Board of Adjustment.
- B. The Planning Commission shall elect a chairperson and a clerk, and at its organizational meeting, shall adopt by majority vote of those members present and voting such other rules as it deems necessary and appropriate for the performance of its functions. The Planning Commission shall keep a record of its

resolutions and transactions, which shall be maintained as a public record of the Town of Derby.

- C. Any member of the Planning Commission may be removed at any time by a unanimous vote of the Selectboard; any appointment to fill a vacancy shall be for the unexpired term as required by VSA Title 24 §4323.

902.2 The Duties and Powers of the Planning Commission

- A. Prepare a plan and amendments thereof for consideration by the Selectboard and to review any amendments thereof initiated by others as set forth in VSA Title 24 Chapter 117.
- B. Prepare and present to the Selectboard proposed bylaws and make recommendations to the Selectboard on proposed amendments to such bylaws as set forth in VSA Title 24 Chapter 117.
- C. Administer bylaws adopted under VSA Title 24 Chapter 117.
- D. Review of Right-of-way or easements for land development without frontage.
- E. Undertake capacity studies and make recommendations on matters of land development, urban renewal, transportation, economic and social development, urban beautification and design improvements, historic and scenic preservation, the conservation of energy and the development of renewable energy resources, and wetland preservation.
- F. Prepare and present a recommended capital budget and program for a period of five years, as set forth in VSA Title 24 §4440, for action by the Selectboard as set forth in VSA Title 24 §4443.
- G. Hold public meetings.
- H. Conduct site plan review of all applications as required by this bylaw and VSA Title 24.
- I. Require from other departments and agencies of the Town of Derby such available information as relates to the work of the Planning Commission.
- J. In the performance of its functions, enter upon land to make examinations and surveys.
- K. Participate in a regional planning program.
- L. Interview applicants for the position of Zoning Administrator and nominate such an officer to the Selectboard for appointment.
- M. Undertake comprehensive planning, including related preliminary planning and engineering studies.
- N. Seek such funding as may be available from local, state, federal, and private sources as may be deemed necessary for fulfilling obligations imposed by this Section.
- O. Perform such other acts or functions as the Planning Commission may deem necessary or appropriate to fulfill the duties and obligations imposed by, and the intent and purposes of VSA Title 24 Chapter 117.

§ 903 Establishment of the Zoning Board of Adjustment

903.1 Appointment

- A. Members of the Zoning Board of Adjustment shall be appointed and any vacancy filled by the Selectboard. The term of each member shall be for four years, and these terms shall be so staggered so that no more than two members shall be reappointed or replaced during any future calendar year. The Selectboard shall appoint five members as permitted under VSA Title 24 §4460. All members may be compensated and reimbursed for any necessary and reasonable expenses. All members of the Zoning Board of Adjustment shall be residents of the Town of Derby and may include as many as two members of the Planning Commission.
- B. The Zoning Board of Adjustment shall elect a chairperson and a secretary, and at its organizational meeting, shall adopt by majority vote of those members present and voting such other rules as it deems necessary and appropriate for the performance of its functions. The Zoning Board of Adjustment shall keep a record of its resolutions and transactions, which shall be maintained as a public record of the Town of Derby.
- C. Meetings of the Zoning Board of Adjustment shall be held at the call of the chairman and at such times as the board may determine as permitted under VSA Title 24 §4461. For the conduct of any hearing and the taking of any action, a quorum shall not be less than a majority of the members of the board, and any action thereof shall be taken by the concurrence of a majority of the board.
- D. Any member may be removed for cause by the legislative body upon written charges and after public hearing; any appointment to fill a vacancy shall be for the unexpired term as required by VSA Title 24 §4460.

903.2 The Duties and Powers of the Zoning Board of Adjustment

- A. Conduct the review of proposed Conditional Uses as authorized in VSA Title 24 §4414(3).
- B. Conduct the review of requests for variances pursuant to VSA Title 24 §4469.
- C. Conduct the review of appeals from a decision of the Zoning Administrator pursuant to VSA Title 24 §4465.

§ 904 Zoning Permits

904.1 No land development may be commenced within the area affected by this bylaw without a permit issued by the administrative officer. No permit may be issued by the administrative officer except in conformance with the bylaws. When an application for a municipal land use permit seeks approval of a structure, the administrative officer shall provide the applicant with a copy of the applicable building energy standards under VSA Title 30 §51 (residential building energy standards) and §53 (commercial building energy standards). However, the administrative officer need not provide a copy of the standards if the structure is a sign or a fence or the application certifies that the structure will not be heated or cooled. In addition, the administrative officer may provide a copy of the Vermont Residential Building Energy Code Book published by the Department of Public Service in lieu of the full text of the residential building energy standards.

904.2 Applications for zoning permits shall be made to the Administrative Officer on forms provided by that officer for that purpose.

- 904.3 Prior to the issuance of any zoning permit the Administrative Officer shall first establish that the subject of the application is in conformity with these regulations. The Administrative Officer may request from an applicant any information deemed necessary for this purpose. No such permit shall be issued unless an application, fee, plot plan and any approvals by the Planning Commission or the Zoning Board of Adjustment required by this Bylaw have been properly obtained and are submitted in connection with the application. If the zoning permit is approved, all activities authorized by its issuance shall be commenced not later than two years after all required permits are obtained or the zoning permit shall become null and void and reapplication to complete any activities shall be required, except in those applications for planned unit or planned residential development wherein the Planning Commission has waived the time limit and imposed a phased building schedule as a special condition.
- 904.4 In the issuance of zoning permits, the Administrative Officer shall comply with all the provisions of VSA Title 24 Chapter 117.
- 904.5 Fees for zoning permits shall be prescribed by the Board of Selectmen.
- 904.6 No zoning permit issued pursuant to VSA Title 24 §4449 shall take effect until the time for appeal in VSA Title 24 §4465 has passed, or in the event that a notice of appeal is properly filed, such permit shall not take effect until final adjudication of said appeal.
- 904.7 If the administrative officer fails to act with regard to a complete application for a permit within 30 days, whether by issuing a decision or by making a referral to the appropriate municipal panel, a permit shall be deemed issued on the 31st day.

§ 905 Certificates of Occupancy

- 905.1 With the exception of single-family dwellings, two-family dwellings, residential accessory structures or uses, and exempt agricultural structures, a Certificate of Occupancy is required for:
- A. The occupancy and use a building or structure following construction;
 - B. The change in use of an existing building or part thereof;
 - C. The change in use of land to any other use; or
 - D. The change in tenancy of a building or part thereof, with the exception of multi-family dwellings.
- 905.2 A temporary Certificate of Occupancy may be issued for a time period not to exceed one year. Temporary Certificates of Occupancy shall not be renewed. In the event that conditions required for the issuance of a final Certificate of Occupancy have not been satisfied the continued use, tenancy, or occupation shall be prohibited and shall constitute a zoning violation actionable under the provisions of this Bylaw.
- 905.3 Applications for a Certificate of Occupancy shall be made to the Administrative Officer on forms provided by that officer for that purpose.

905.4 Prior to the issuance of a Certificate of Occupancy, the Administrative Officer shall first establish that the proposed use of the structure or land conforms to the requirements of the zoning permit and the Bylaw.

905.5 A Certificate of Occupancy shall remain valid continuously only for the specific use or occupancy as described by the Certificate of Occupancy upon issuance.

905.6 If the Administrative Officer determines that the use or occupancy is not in conformity with the Bylaw, the Administrative Officer shall refuse to issue a Certificate of Occupancy, stating the reasons in writing to the applicant. Such refusal may be appealed to the Zoning Board of Adjustment.

905.7 Every application for a Certificate of Occupancy shall be accompanied by the required fee.

§ 906 Exempt Agricultural and Silvicultural Structures and Uses

906.1 Pursuant to VSA Title 24 §4413(d), required agricultural practices, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets or 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.

- A. 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.
- B. 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.
- C. 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.

§ 907 Penalties

Any violation of these regulations after the effective date thereof shall be punished as provided by VSA Title 24 §4451 and §4454.

§ 908 Public Notice

Notice requirements for all development review applications before an appropriate municipal panel shall be in accordance with VSA Title 24, §4464.

ARTICLE 10: AMENDMENTS, INTERPRETATION AND EFFECTIVE DATE

§ 1001 Amendments

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

§ 1002 Interpretation

In their 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.

§ 1003 Effective Date

This regulation shall take effect in accordance with the voting and other procedures contained in §4404 of the Act.

§ 1004 Severability

If any provision of this Bylaw or its application to any person or circumstances is invalid, the remainder of the Bylaw or its application of the provision to other persons or circumstances shall not be affected.

§ 1005 Repeal

The existing Bylaw related to zoning regulations together with all changes and amendments thereto are repealed as of the effective date of this Bylaw.

ARTICLE 11: WORD AND TERM DEFINITIONS

With the exception of those words and terms specifically defined below, this Bylaw is in plain language and the definition of words and terms is that described in Webster’s Unabridged Dictionary 2004 edition.

§ 1101 Word Definitions

For purposes of these regulations the terms of certain words used herein shall be interpreted as follows:

The word person shall include a firm, association, organization, partnership, trust, company, or corporation as well as an individual.

The present tense shall include the future tense.

The singular number shall include the plural number and the plural number shall include the singular number.

The word shall is mandatory.

The word may is permissive.

The words used or occupied include the words intended, designed, arranged to be used or arranged to be occupied.

The word lot includes the words plot or parcel.

§ 1102 Term Definitions

Abutter: Owner of any property directly adjacent to or directly across the public or private right of way from a parcel or lot.

Accessory Dwelling Unit: An efficiency or one-bedroom apartment that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation. An Accessory Dwelling Unit must be located within or appurtenant to an owner-occupied single-family dwelling and must have sufficient wastewater capacity, must not exceed 30 percent of the total habitable floor area of the single-family dwelling, and must comply with applicable setback, coverage, and parking requirements.

Accessory Structure: A structure detached from a principal building located on the same lot and customarily incidental and subordinate to the principal building or use.

Accessory Use: A use of land or of a building or portion thereof customarily incidental and subordinate to the principal use of land or building and located on the same lot with the principal use.

Acre: 43,560 square feet.

Adult Arcade: Any place to which the public is permitted or invited wherein coin-operated, slug-operated, or any form of consideration, electronically, electrically, or mechanically controlled still or motion-picture machines, projectors, video or laser disc players, or other image-producing devices are maintained to show images to five or fewer persons per machine at any one time, and where the images so displayed are distinguished or characterized by the depicting or describing of Specified Anatomical Areas or Specified Sexual Activities.

Adult Bookstore, Adult Novelty Store or Adult Video Store: Includes any of the following:

- a. A commercial establishment which has as a substantial or significant portion of its stock in trade in the sale or rental for any form of consideration books, magazines, periodicals or other printed material, or photographs, films, motion pictures, video cassettes, laser or digital video discs, or video reproductions, slides, or other visual representations which are characterized by the depiction or description of Specified Anatomical Areas or Specified Sexual Activities or instruments, devices or paraphernalia which are designed for use in connection with Specified Sexual Activities; or
- b. A commercial establishment with at least 33% of its store area, or 33% of its display or sales area, utilized in the storing and offering for sale or rental for any form of consideration, books, magazines, periodicals or other printed material, or photographs, films, motion pictures, video cassettes, laser or digital video discs, or video reproductions, slides, or other visual representations which are characterized by the depiction or description of Specified Anatomical Areas or Specified Sexual Activities or instruments, devices or paraphernalia which are designed for use in connection with Specified Sexual Activities.

Adult Cabaret: A commercial establishment which regularly offers or features:

- a. Persons who appear in a state of Nudity or Semi-nudity; or
- b. Live performances which are characterized by the exposure of Specified Anatomical Areas or by Specified Sexual Activities.

Adult Motion Picture Theater: A commercial establishment where, for any form of consideration, films, motion pictures, video cassettes, laser or digital video discs, slides, or similar photographic reproductions are regularly shown which are characterized by the depiction or description of Specified Anatomical Areas or Specified Sexual Activities.

Adult Oriented Business: An Adult Arcade, Adult Bookstore, Adult Novelty Store, Adult Video Store, Adult Cabaret, or Adult Motion Picture Theater.

Adult Respite Care Facility: A facility providing daycare type services on an outpatient basis to adults with physical, mental or psychological diseases, defects or deficits.

Agriculture: The production, keeping, or maintenance of plants and animals useful to man, for sale or lease in accordance with State of Vermont Department of Agriculture guidelines and regulations and as defined by applicable VSA provisions.

Animal Grooming/Boarding Facility: An establishment in which domesticated animals are housed, groomed, bred, boarded, trained or sold for commercial purposes.

Antenna Farm: Land used for the erection of devices for the reception and transmission of signals necessary for telecommunications.

Area of Shallow Flooding: Means a designated AO or AH zone on a community Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard: The land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zone A, AO, A1-30 or A99.

Asphalt/Concrete Plant: A facility for the preparation, mixing and distribution of asphalt, cement, concrete and other similar materials.

Auto Service Station/Mini Mart: A structure designed for the retail sale of fuels for motor vehicles and which may include the retail sale of consumer goods and/or facilities used for washing, spraying, dry cleaning or servicing of motor vehicles.

Bank: An establishment chartered by Federal or State banking authorities designed for the walk-in or drive-up provision of services concerned with the custody, loan, exchange or issue of money, the extension of credit and the transmission of funds.

Bar: An establishment for the principle purpose of offering alcoholic beverages for sale to the public by the drink. Such establishment is subject to state and local licensing. Bar is a principal commercial use.

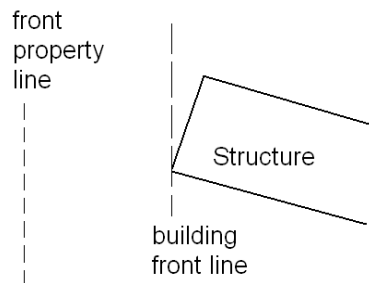
Base Flood (100 Year): A flood having a one percent chance of being equaled or exceeded in any given year.

Basement: Any area of building, whether finished as usable space or not, having floor subgrade (below ground level) on all sides, definition includes cellar or crawl space.

Bed and Breakfast: A residential business or service that is designed for the commercial housing of guests, not to exceed twelve in number, for a period not to exceed seven consecutive nights, with meals provided for guests only, in a home setting, and featuring resident management.

Boathouse: A structure designed for the storage of watercraft.

Building Front Line: For purposes of establishing the front setback of a structure, this line is parallel to the front lot line transecting that point in the building façade which is closest to the front lot line (see figure below). This face includes porches whether enclosed or unenclosed but does not include steps.



Building Height: Vertical distance measured from the average elevation of the proposed finished grade at the facade of the building to the highest point of the roof for flat and mansard roofs, and from the average elevation of the proposed finished grade at the facade of the building to an average height between the eaves and ridge for other types of roofs.

Bulk Storage of Explosives: A structure designed for the safe storage of explosives, explosive devices and detonation devices of an incendiary or explosive nature.

Business Complex: A facility, structure, or lot consisting of two or more businesses. As a business complex, a lot may contain more than one principal building or use.

Camper Sales, Service & Repairs: An enterprise for the display, sale and service of travel trailers, motor homes and pick-up coaches.

Campground: A commercial establishment offering 5 or more temporary or seasonal campsites for the use of tents, camp trailers, and motor homes. Seasonal occupation of the site is not to exceed 180 calendar days.

Car Wash: Any building or premises or portions thereof used for the washing of vehicles for commercial purposes.

Change of Use: Any use that is changed to another permitted or conditional use. Change in use proposals shall be reviewed by the Development Review Board under the provisions of §210 of this Bylaw, except where changes from one family to two family or two family to one family require administrative review and permitting by the Administrative Officer.

Church: A building or group of buildings which are primarily intended for the conducting of religious services and accessory uses associated therewith. For purposes of administering this Bylaw, churches shall include synagogues, temples, tabernacles, religious meeting houses, convents, parish houses and mosques.

Clinic: An establishment where patients are admitted for examination and treatment on an outpatient basis by physicians, dentists, other medical personnel, psychologists, or social workers and where such examination or treatment generally require a stay of less than 24 hours.

Club, Membership: Building or use catering exclusively to club members and their guests for recreational purposes and not operated primarily for profit. Upon site plan approval of the Development Review Board clubs may have dormitory accommodations as an accessory use.

Community Cultural Center: A facility operated by a public or quasi-public organization for village scale programs promoting the arts. Such facilities shall be of a size appropriate for the immediate neighborhood.

Contractors Yard: A facility designed for the open and closed storage of materials/supplies and heavy equipment used by such businesses as contractors, builders, well drillers, or other such businesses.

Cottage Industry: A home business that involves the manufacture of good or the provision of services using: chemical processes; high heat; equipment or technique that produces high levels of sound or vibration; or produces emission of dust, smoke or odors. Examples of a cottage industry include but are not limited to black smithing, silk screen printing, firing of ceramics or pottery, welding, and commercial scale woodworking. Please refer to §402.3(C) for applicable regulations.

Dry-well: A covered pit with an open jointed lining through which water from roofs, basement floor or areaways may seep or leach into the surrounding soil.

Dwelling, One Family: A detached residential dwelling unit designed for and occupied by one family only.

Dwelling, Two Family: A residential building designed for or occupied by two families living independently of each other in individual dwelling units. A two family dwelling is a principal residential use.

Dwelling, Multi-Family: A residential building designed for or occupied by three or more families living independently of each other in individual dwelling units.

Dwelling Unit: One room or rooms connected together constituting a separate, independent housekeeping establishment for owner occupancy, rental, or lease, and physically separated from any other housekeeping establishment.

Essential Services: Services and utilities needed for the health, safety, and general welfare of the community such as underground, surface, or overhead electrical, gas, telephone, steam, water, sewerage and other similar utilities. Buildings, plants, towers,

substations, and other similar structures require permitting. The transmission and distributions systems, including poles, wires, mains, drains, sewers, pipes, conduit, cables, hydrants, and similar equipment are exempt from zoning permit requirements.

Façade: The face or side of a building viewed from a public right of way; the front side of the building. Where a commercial, public or quasi-public building is located on a lot with more than one lot line defined by a public right of way it may have more than one façade.

Family: One or more persons occupying a single dwelling unit, provided that unless all members are legally related to each other no such family shall contain over five persons, but further provided that domestic servants and farm workers employed on the premises may be housed on the premises without being counted as family or families.

Family Child Care Facility: A Center Based Child Care and Preschool Program and facility approved to provide developmentally appropriate care, education, protection, and supervision designed to ensure wholesome growth and educational experiences for children outside of their home for periods of less than twenty-four (24) hours per day as defined by the Vermont Department of Children and Families.

Family Child Care Home: The residence of a Family Child Care Provider used to provide developmentally appropriate care, education, protection, and supervision designed to ensure wholesome growth and educational experiences for children outside their own home for periods of less than twenty-four (24) hours per day as defined by the Vermont Department of Children and Families. A Family Child Care Home is considered to be a home occupation.

Family Child Care Provider: A person who has been approved to operate a registered or licensed Family Child Care Home.

Fence: A structure designed to define the boundary of, or limit access to a lot or portion thereof. Please refer to §402.2 for applicable regulations.

Flood Elevation: A determination by the Federal Flood Insurance Administrator of the water surface elevations of the base flood. Please refer to Article VI of the Town of Derby Zoning Bylaw for specific regulations.

Flood Hazard Area: Land in the flood plain in the Town of Derby subject to one percent or greater chance of flooding in any given year. This includes the “A” zones of the flood insurance rate map. Please refer to Article VI of the Town of Derby Zoning Bylaw for specific regulations.

Flood Hazard Boundary Map (FHBM): An official map of a community, issued by the Flood Insurance Administrator, where the boundaries of the flood and mudslide (i.e. mudflow) related erosion areas, having special hazards, have been designated as Zones A, H, and/or E.

Flood Insurance Rate Map FIRM: An official map of the community, on which the Flood Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study: An examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations.

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

Floodway: The channel of a river or other water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the surface elevation more than one foot. Please refer to Article VI for specific regulations applicable to floodway development standards and regulations.

Forestry: The operation of timber tracts, tree farms, forest nurseries, the gathering of forest products, or related forest services.

Function Hall: A barn, tent or other similar structure (existing or new) used for hosting a party, banquet, wedding reception, or other social event.

Funeral Home: A building used for the preparation of the deceased and the display of the deceased and rituals connected therewith.

Groundwater: All water beneath the surface of the ground.

Hazardous Materials: Any material, or combination of materials, which because of quantity, concentration, or physical, chemical or infectious characteristics are determined to have a harmful effect on water quality, human life or other living organisms.

Heavy Manufacturing: Mechanical or chemical transformation of materials or substances into new products that entails the handling of molten metals, the production of liquid or gaseous waste products that cannot be rendered non-hazardous by onsite treatment and control processes, production of solid waste requiring special handling and/or long term on site storage, the open storage of chemicals or substances that are hazardous in the quantities or concentrations that would be present at the manufacturing location, produce dust, vibration, heat, odors, electrical or magnetic disturbances, or noise levels in excess of 50 dbl detectable beyond the property line.

Home Occupation: A home business 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. Please refer to §402.3(A) for applicable regulations.

Hospital: Includes sanitarium, rest home, nursing home, convalescent home, home for the aged, hospice, and any other place for the inpatient diagnosis, palliative care and treatment of human ailments.

Hotel/Motel: A building providing lodging for persons with or without meals, and intended for the accommodation of transients.

Impervious: Impenetrable by water.

Junk/Salvage Yard: Any facility or site, whether in connection with a business or not, which is maintained, operated or used for storing, keeping, processing, buying or selling junk or junked motor vehicles or scrap metals. Please refer to §402.4 for applicable regulations.

Junk Motor Vehicle: Any motor vehicle in open storage that is discarded, dismantled, wrecked, scrapped, or ruined or parts thereof. Any motor vehicle without current motor vehicle tags may be considered a junk motor vehicle and any motor vehicle without a full set of inflated tires may be considered a junk motor vehicle.

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

Leachable Material: Solids, sludge, fertilizer and pesticides capable of releasing waterborne contaminants to the environment.

Light Manufacturing: Mechanical or chemical transformation of materials or substances that does not entail the handling of molten metals, the use of chemicals or materials that are hazardous in the quantities or concentrations that would be present at the manufacturing location, does not produce liquid or gaseous waste products requiring special treatment or control processes, or produces solid waste requiring special handling or long term storage at the site of the manufacturing use. Light manufacturing shall not produce dust, smoke, noise, vibration, heat, odors or electrical or magnetic disturbances detectable outside of the manufacturing structure or equipment. The assembly of component parts into finished products is considered light manufacturing where the activity does not entail the use of substances or the production of byproducts excluded from this definition.

Loading Space, Truck: Off-street space used for the temporary location of one licensed motor vehicle, which is at least twelve feet wide, 55 feet long and fourteen feet high, not including access driveway, and having direct access to street or alley.

Lodging House: A building in which rooms are rented with or without meals to three or more, but not exceeding, twenty persons. A boarding house, rooming house, or a furnished rooming house shall be deemed a lodging house. Each lodging house shall have no more than one kitchen facility whether shared or not. Lodging houses are intended to provide permanent living situations distinct from transient housing provided by hotel/motel, village inn, or bed and breakfast accommodations.

Lot: Parcel described by either deed provisions for metes and bounds or a lot of record legally filed with the Town Clerk. All applications for proposed changes to lots shall require a subdivision permit and meet the requirements of Article VII of this Bylaw. In no case shall a lot be created by division or combination that does not meet the requirements of this Bylaw nor shall the creation of such lot or lots result in the creation of residual lot or lots that do not meet the requirements of this Bylaw.

Lot Length: Lot length is the average of the side property lines as defined under §403.1(E) of this Bylaw.

Lot Width: Lot width is the average of the front and rear property lines as defined under §403.1(D) of this Bylaw.

Lot of Record: A lot which is part of a subdivision recorded in the office of the Town Clerk, or a lot or parcel described by metes and bounds, the description of which has been so recorded.

Lowest Floor: The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, useable solely for the parking of vehicles, building access, or storage in an area other than a basement area is not considered a buildings lowest floor; provided that such an enclosure is not built so as to render the structure in violation of applicable design requirements.

Log Yard: A lot or location where raw logs and other wood or forest products are processed and/or stored.

Manufactured Home Park: Manufactured Home Park is a plot of ground not less than five acres on which two or more mobile homes occupied for dwelling or sleeping purposes are located. Please refer to §707 for applicable regulations.

Manufactured Home Sales Lot: A facility uses for the display and sale of manufactured homes.

Manufacturing: Mechanical or chemical transformation of materials or substances into new products that does not entail the handling of molten metals, does not produce liquid or gaseous waste products that cannot be rendered non-hazardous by onsite treatment and control processes, or produces solid waste requiring special handling. Where such manufacturing activity entails the use of chemicals or substances that are hazardous in the quantities or concentrations that would be present at the manufacturing location open storage of these materials is prohibited and plans for the control of these materials must be approved by the Development Review Board. Manufacturing activities shall not produce dust, vibration, heat, odors or electrical or magnetic disturbances detectable beyond the property line and noise levels at the property line shall not exceed 50 dbl.

Marina: A facility for the sale, repair and storage of watercraft. Such facility may have boat slips and docks. Please refer to §403.2 for applicable regulations.

Material: Physical substance of any description.

Mean Sea Level: For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or more recent datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

Mobile Home/Manufactured Home: A structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities and meet DOT standards for towed units. For flood plain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on site for more than 180 consecutive days. For insurance purposes the term "manufactured home" does not include park trailers, travel trailers, and other similar vehicles.

Mobile Home Space: Mobile home space is a plot of ground within a mobile home park designated for the placement of one mobile home. Mobile home spaces shall comply with the provisions of §707.

Modular Home: A dwelling designed to be assembled on site from component parts and sections. Such a dwelling is regulated identically to site built dwellings.

Motor Vehicle Repair: Enclosed establishments for the repair, servicing, maintenance, or painting of motor vehicles, trailers, motor homes and boats. No retail sale of fuels or lubricants, except as incidental to the repair facility shall be allowed.

Motor Vehicle Sales and Repair: Establishments for the display, sale and/or repair of new and used motor vehicles, trailers, motor homes, and boats. No retail sale of fuels or lubricants, except as incidental to the repair facility shall be allowed.

Nightclub/Bar: An establishment for the principle purpose of offering alcoholic beverages for sale to the public by the drink and may include music, dancing, or entertainment.

Non-Compliance: A structure or use in non-conformity with and in violation of the Zoning Bylaw.

Non-Conformity: That part of a structure or use that does not meet current Bylaw provisions, regulations or requirements.

Nudity: The showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the areola, or the showing of the covered male genitals in a discernibly turgid state.

Office: A building used primarily for conducting the affairs of a business, profession, service, industry, or government, or like activity; it may include ancillary services for office workers, such as a restaurant, coffee shop, newspaper stand, or child-care facilities.

Parking Facility: A lot or structure whose primary function is the temporary parking of vehicles. Parking facilities may also include single or multi-level parking structures. A parking facility may be operated for the use of adjacent or nearby commercial or residential properties appropriate to their land use zone.

Personal Service: Establishments primarily engaged in providing services involving the care of a person or his or her personal goods or apparel.

Petroleum/Propane Bulk Storage: The bulk storage of petroleum and propane products in structures for subsequent resale to distributors or retail dealers or outlets.

Principal Building or Use: Any building, structure or use, actual or intended, that is not subordinate to any other building, structure or use located on the same lot.

Printing/Publishing: Any commercial enterprise involved in the printing or publishing of books, magazines, newspapers, newsletters, business forms, letterhead, envelopes, or other printed matter.

Private School: Any school operated outside of the public school system that meets the state requirements for primary, secondary or higher education.

Public Facility: (1) Any building or land used exclusively for public purposes by any department or branch of government; (2) buildings or land of an institutional nature and serving a public need, such as libraries, museums, post offices, police, rescue, and fire stations, parks, public schools, and playgrounds.

Public Water and/or Sewer: Water supply and sewage disposal provided by the Villages for municipal operation.

Quasi-Public Use: Any structure, building or use of property by a not for profit, non-governmental agency, organization or corporation.

Recreation, Indoor: Any structure, building, or use designed for the provision of indoor athletic facilities or other indoor leisure or entertainment activities and any accessory uses or structures that may be required.

Recreation, Outdoor: Any structure, building, or use designed for the provision of outdoor athletic facilities or other outdoor leisure or entertainment activities and any accessory uses or structures that may be required.

Recycling Transfer Station: A facility designed for the collection, sorting, storage and transfer of recyclable materials.

Renovation: Any exterior structural change, rearrangement, change of location, or addition to a structure, building or sign, other than repairs to building equipment and general maintenance. Any interior alteration of a new conditional use, or expansion of usable footprint of a permitted use. Any activity covered by this definition requires site plan review and permitting.

Research/Testing Lab: A facility for research and or testing of materials, products, substances, chemical or biological agents.

Residential Business or Service: A home business of greater intensity than a home occupation. Please refer to §402.3(B) for applicable regulations.

Residential Care Home: A state licensed or registered residential care home serving not more than eight persons who are developmentally or physically disabled. Such home

shall constitute a residential use of land where such home is not located within 1000 feet of another such home.

Residential District: All zoning districts with the exception of industrial, commercial/industrial, commercial and village commercial zones.

Residential Treatment Facility: A facility for the inpatient treatment of individuals who have social, mental, physical or substance abuse disorders.

Residential Use: Buildings or structures designed for the permanent housing of households and individuals and accessory uses and structures associated with such buildings or structures. This use is distinct from transient housing such as motels, inns and hostels.

Restaurant: A facility for the preparation, service, and sale of ready to eat foods and beverages to the public.

Retail Store: An establishment for the sale or rental of retail goods to the public. This classification applies to all such enterprises not specifically defined under other terms (i.e. motor vehicle sales and service).

Semi-nude: The showing of the female breast below a horizontal line across the top of the areola at its highest point or the showing of the male or female buttocks. This definition shall include the entire lower portion of the human female breast, but shall not include any portion of the cleavage of the human female breast, exhibited by a dress, blouse, skirt, leotard, bathing suit, or other wearing apparel provided the areola is not exposed in whole or in part.

Setbacks: The required distance between a building, structure or use and the lot line. Setback is often synonymous with required yard.

Service Area: Area designated and designed for the loading, off-loading (including loading docks), receiving or discharging merchandise and materials; area designated for the placement of trash receptacles.

Sign: An accessory structure designed to inform or attract the attention of members of the public not on the premises which the sign is located; for purposes of regulation the following signage is exempt from permit requirements:

- a) Signs not exceeding one square foot in area bearing only street numbers, post box numbers, names of occupants or premises not having commercial connotations;
- b) Flags and insignia of any government except when displayed in connection with commercial purposes;
- c) Legal notices, identification, informational or directional signs erected as required by governmental bodies;
- d) Integral decorative or architectural fenestration or other design features of buildings except letters, numbers, moving parts or lights;
- e) Signs directing and guiding traffic and parking on private property, but bearing no advertising copy or text.

Sign size and design regulations are contained in §402.8.

Sand/Soil/Gravel Pit: An excavation site for the extraction of gravel, sand, clay, or other similar material. Please refer to §402.9 for applicable regulations.

Senior Housing: Housing designed for, and occupied by, at least one person 55 years of age or older per dwelling unit, and which has significant facilities and services specifically designed to meet the physical and social needs of older persons as described

in §100.306, “Significant Facilities and Services Specifically Designed for Older Persons,” 24 C.F.R. part 100 (Department of Housing and Urban Development – Housing for Older Persons) or any amendment thereto.

Slaughter House: A facility designed for receiving, slaughter, processing and distribution of animal meats and byproducts.

Smelter: A facility for the primary processing or manufacture of metal products involving the use and production of molten metals in the manufacturing process. Such use is regulated under the heavy manufacturing definition.

Source Protection Area: The surface and sub-surface area surrounding a spring or well supplying a public water system through which contaminants are reasonably likely to move toward and reach such water supplies.

Specified Anatomical Areas: Any of the following:

- a. Less than completely and opaquely covered human genitals, pubic region, buttocks or a female breast below a point immediately above the top of the areola; or
- b. The human male genitals in a discernibly turgid state, even if completely and opaquely covered.

Specified Sexual Activities: Any of the Following:

- a. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breast; or
- b. Sex acts, actual or simulated, including intercourse, oral copulation, masturbation, or sodomy.

Street: A town highway, a state highway, or a way for motor vehicles that is depicted on a site plan approved by the Development Review Board. The word street shall include the entire public right of way.

Street or Road Frontage: Lot lines defined by a public street or road.

Street Line: Right of way line of a street as dedicated by the deed of record. Where the width of the public right of way is not established, the street line shall be considered to be twenty-five feet from the center of the street or road pavement.

Structure: An assembly of materials for occupancy or use that is above grade on any elevation.

Surface Water: All water standing or flowing on the surface of the ground.

Subdivision of Land: The division of a lot, tract, or parcel of land into two or more lots, tracts, parcels, or other divisions of land for sale or development. These divisions must conform to minimum lot size and requirements of the existing zone.

Taxi Service Facilities: A facility designed for the storage, dispatch, maintenance or service of vehicles used for taxi-cab, livery or limousine services.

Telecommunication Tower: A facility designed and used by telecommunications providers for transmitting, receiving, and relaying voice and data signals from various wireless communication devices and equipment.

Temporary or Itinerant Vendor: A person or persons who sell or barter goods, wares, merchandise or services from a temporary place of business. Farm stands as defined by VSA Title 10 are exempt from the classification and permitting. All other such uses require permitting as provided under §402.10.

Trailer/Semi-Trailer: A prefabricated metal container or box, with or without wheels, specifically constructed for the transport by rail, ship or transport truck.

Uses, Permitted: Use specifically allowed in a zoning district, such uses may be subject to site plan review and approval before the Development Review Board as provided under §211.

Uses, Conditional: Use which may be permitted in a zoning district upon approval of a conditional use permit by the Development Review Board after public notice and hearing as required under §209. Such uses may require site plan approval before the Development Review Board as provided under §211.

Vendor: A temporary or itinerate vendor is any person, whether business owner, agent, consignee or employee, who engages in the business of selling and delivering food or merchandise from any vehicle, cart, stand or other assemblage of materials which is not permanently attached to a water supply source and sewage system. Such uses are regulated under §402.10 and are principal or accessory commercial uses.

Veterinary Hospital: A facility designed for the treatment and care of sick or injured animals. Animals may also be kept, boarded, bred, groomed or trained for commercial gain.

Village Inn: An establishment containing rooms for rent consistent with the definition of hotel/motel. The establishment may have a full service dining room open to the general public where alcoholic beverages may be served with meals to guests and patrons, and may include indoor reception and/or banquet venues for private functions by the Village Inn. Any additional entertainment services, pool facilities, game rooms or similar forms of entertainment are to be restricted to overnight guests only.

Warehouse: A building used primarily for the storage of commercial goods and materials.

Warehouse/Trucking Terminal: A facility designed for the receiving, sorting, storage, transfer, or trucking of goods and the parking of trucks utilized in the business.

Waste Water Treatment Facility: A system for the waste disposal with a design flow and capacity in excess of 5000 gallons per day.

Wetland: Lands that are transitional between terrestrial and aquatic environments where the water table is usually at or near the surface, or the land is covered by shallow water. For purposes of this definition, wetlands must meet at least one of the following criteria:

- a) At least periodically, the land supports predominantly hydrophilic vegetation;
- b) The substrate is predominantly un-drained hydric soil; and
- c) The substrate is non-soil and is saturated with water or covered by shallow water at some time during the growing season each year.

Specific wetlands are identified on the wetlands inventory maps prepared by the United States Department of the Interior, Fish and Wildlife Service.

Wholesale Business: An enterprise or place of business primarily engaged in selling merchandise to retailers, industrial, commercial, institutional or professional businesses or other wholesalers; or acting as agents buying merchandise for, or selling to, such companies. These are businesses which cater to the general public for retail sales purposes