

# TOWN OF DERBY ZONING BYLAW

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

AMENDED – MAY 3, 2021

AMENDED – JUNE 28, 2021

AMENDED – JUNE 27, 2022

AMENDED – JUNE 12, 2023

AMENDED – JULY 24, 2023

EFFECTIVE – AUGUST 15, 2023

**BYLAW AMENDMENTS**

Dated Amended – July 24, 2023

Effective Date – August 15, 2023

Sections affected:

- Article 9 Administration and Enforcement – Complete rewrite.
- Article 10 Amendments, Interpretation and Effective Date – Corrected State Statute references.
- Parcel #RT005055B6T changed from Residential Medium Density to Commercial

---

Dated Amended – June 12, 2023

Effective Date – July 5, 2023

Sections affected:

- Article 4 General Provisions – Moved Residential care home or group home, Height Limitations, and Regulation of Child Care end of §401.
- Article 6 Flood Hazard and River Corridor Regulations – Total rewrite Flood Hazard Regulations and added River Corridor Regulations.
- Article 7 Subdivision, PUD and Mobile Home Park Regulations – Total rewrite of PUD and Mobile Home Park Regulations.
- Article 8 Limitations and Variances – Total rewrite.
- Article 11 Word and Term Definitions – Added and changed multiple definitions mainly due to rewrite of Article 6.

---

Dated Amended – June 27, 2022

Effective Date – July 19, 2022

Sections affected:

- Article 7 Subdivision, PRD, PUD and Mobile Home Park Regulations – Total rewrite of the Subdivision Regulations.
- Added definition for Boundary Line Adjustment and amended Subdivision of Land definition.
- Added regulations and definitions regarding Cannabis.
- Added §212.2(A) to the Lighting Design Requirements.
- Zoning Map Change – Change the portions of parcels TRD50001J7T and TRD50001J7T1 that are in the Shoreland (SD) district to Rural Residential (RR).

---

Dated Amended – June 28, 2021

Effective Date – July 20, 2021

Sections affected:

- Article 5 Overlay District Regulations – Minor changes to §501 Source Protection Area and deleted §502 Tax Increment Finance District and §503 Design Control District.
  - Zoning Map Changes – RT005007E5T, RT005011E5T, RT005013E5T, and a portion of TRD03001E5T changed to Village Commercial Derby Center.
-

Derby Zoning Bylaw – As amended July 24, 2023

Dated Amended – May 3, 2021

Effective Date – May 24, 2021

Sections affected:

- §206.2 – Commercial/Industrial District – Added Recycling Transfer Station as a Conditional Use.

---

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
- Zoning map

---

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
-

Derby Zoning Bylaw – As amended July 24, 2023

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

---

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
-

Derby Zoning Bylaw – As amended July 24, 2023

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

---

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
-

Derby Zoning Bylaw – As amended July 24, 2023

Date Amended – July 19, 2004

Effective Date – August 18, 2004

Sections affected:

- All sections – Total revision of bylaw

**Town of Derby Zoning Bylaw  
Table of Contents**

**Contents**

ARTICLE 1: ENACTMENT AND INTENT .....	1
§ 101 Introduction.....	1
§ 102 Enactment .....	1
§ 103 Intent .....	1
§ 104 Application of Bylaw .....	1
ARTICLE 2: ESTABLISHMENT OF DISTRICTS AND DISTRICT REGULATIONS.....	2
§ 201 Zoning Map and Districts .....	2
§ 202 Copies of the Zoning Map .....	3
§ 203 Interpretation of District Boundaries .....	3
§ 204 Classification of Lots: Source of Water and Sewer Service .....	3
§ 205 Uses.....	3
§ 206 Derby District Regulations .....	4
§ 207 Village of Derby Line District Regulations .....	14
§ 208 Village of Derby Center District Regulations.....	18
§ 209 Conditional Uses.....	22
§ 210 Changes in Use .....	23
§ 211 Development Review Board Site Plan Review and Approval.....	23
§ 212 Site Plan Design Standards .....	24
ARTICLE 3: NONCONFORMITIES .....	27
§ 301 Nonconforming Uses .....	27
§ 302 Nonconforming Structures.....	27
ARTICLE 4: GENERAL PROVISIONS .....	29
§ 401 Required Regulations.....	29
§ 402 Special Regulations.....	30
§ 403 Miscellaneous Provisions and Interpretations .....	45
§ 404 Yard Sales .....	48
§ 405 Open Storage.....	48
§ 406 Time Limit to Commence Use or Construction.....	48
§ 407 Essential Services.....	49
§ 408 Function Halls.....	49
§ 409 Adult Oriented Business .....	49
ARTICLE 5: OVERLAY DISTRICT REGULATIONS .....	52
§ 501 Source Protection Area .....	52
ARTICLE 6: FLOOD HAZARD & RIVER CORRIDOR REGULATIONS.....	54
§ 601 Statutory Authorization and Effect .....	54
§ 602 Purpose.....	54
§ 603 Summary Table: Development Review in Hazard Areas .....	54
§ 604 River Corridor Protection .....	55
§ 605 Flood Hazard Area Protection .....	58
§ 606 Other Provisions.....	64
§ 607 Administration .....	64
ARTICLE 7: SUBDIVISION, PUD AND MOBILE HOME PARK REGULATIONS.....	67
§ 701 Subdivision Review .....	67



Derby Zoning Bylaw – As amended July 24, 2023

§ 702	Planned Unit Development (PUD) .....	76
§ 703	Mobile Home Parks .....	83
ARTICLE 8: LIMITATIONS AND VARIANCES .....		86
§ 801	Limitations .....	86
§ 802	APPEAL - VARIANCES .....	88
ARTICLE 9: ADMINISTRATION AND ENFORCEMENT .....		91
§ 901	Administrative Officer (Zoning Administrator) .....	91
§ 902	Establishment of the Planning Commission .....	91
§ 903	Establishment of the Development Review Board .....	92
§ 904	Zoning Permit Administrative Review .....	94
§ 905	Certificates of Occupancy .....	95
§ 906	Penalties .....	96
§ 907	Public Notice.....	96
ARTICLE 10: AMENDMENTS, INTERPRETATION AND EFFECTIVE DATE.....		97
§ 1001	Amendments .....	97
§ 1002	Interpretation.....	97
§ 1003	Effective Date .....	97
§ 1004	Severability .....	97
§ 1005	Repeal .....	97
ARTICLE 11: WORD AND TERM DEFINITIONS.....		98
§ 1101	Word Definitions .....	98
§ 1102	Term Definitions.....	98

## **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
-------	------------------------

**§ 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
Cannabis Cultivation	Asphalt/Concrete Plant
Cannabis Manufacturing	Bulk Storage of Explosives
Cannabis Retail	Heavy Manufacturing
Cannabis Testing Laboratory	Junk/Salvage Yard
Cannabis Wholesale	Log Yard
Contractor’s Yard	Parking Facility
Essential Services	Petroleum/Propane Bulk Storage
Home Occupation	Recycling Transfer Station
Light Manufacturing	Research and Testing Lab
Manufacturing	Slaughter House
Motor Vehicle Repair	
Motor Vehicle Sales and Repair	
Subdivision of Land	
Warehouse	
Warehouse/Trucking Terminal	

Class	Lot Area and Dimensions			Minimum Setback in Feet			Maximum Building height ft
	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

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

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

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	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 <sup>1</sup>
Dwelling, Two Family	Mobile Home Park
Home Occupation	Parking Facility
Lodging House	Residential Business or Service
Residential Care Home	
Senior Housing <sup>2</sup>	
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

<sup>1</sup>must be located on the property of or adjacent to a mobile home park

<sup>2</sup>dwelling 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.

Permitted Uses

Conditional Uses

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 <sup>1</sup>	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	
			accessory structures	30	10	10	35

<sup>1</sup>dwelling 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 <sup>1</sup>

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	1 acre	150	150	30	25	25	35
			accessory structures	30	10	10	35

<sup>1</sup>dwelling 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 <sup>1</sup>

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

<sup>1</sup>dwelling 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 Housing<sup>1</sup>

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 30	side 25	rear 25	35
			accessory structures	30	10	10	35

<sup>1</sup>dwelling 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.

Permitted Uses

Conditional Uses

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

Campground  
 Essential Services  
 Function Hall  
 Recreation, Outdoor  
 Residential Business or Service

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:\*

Permitted Uses\*\*

Conditional Uses

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:

Permitted Uses

Conditional Uses

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			
				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	From building to lot line			
				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			
1&2	12,500	100	100	front 30	side 20	rear 25	35
3	20,000	100	100	front 30	side 20	rear 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			
				front	side	rear	
All	12,500	100	100	30	20	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.

- A. The installation or replacement of all outdoor lighting fixtures shall require a permit except for the following:
  - 1) One- and two-unit residential structures,
  - 2) Active farms, and
  - 3) Holiday lighting.

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, 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

401.5 Residential Care or Group Home. A residential care home or group home to be operated under State licensing or registration, serving not more than eight persons who have a disability as defined in VSA Title 9 §4501, shall be considered by right to constitute a permitted single-family residential use of property. This does not require a municipality to allow a greater number of residential care homes or group homes on a lot than the number of single-family dwellings allowed on the lot.

401.6 Height Limitations. 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 twenty (20) feet in diameter or to rooftop solar collectors less than ten (10) feet high which are mounted on complying structures.

401.7 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.

**§ 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

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

Derby Zoning Bylaw – As amended July 24, 2023

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	
Cannabis Cultivation	1 per employee on major shift & additional spaces per DRB finding	
Cannabis Retail	1 per 200 sq. ft. gross floor area	
Cannabis Manufacturing	1 per employee on major shift & 1 per 300 sq. ft. gross office space	
Cannabis Testing Laboratory	1 per employee on major shift & 1 per 300 sq. ft. gross office space	
Cannabis Wholesale	1 per employee on major shift & additional spaces 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
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	



Derby Zoning Bylaw – As amended July 24, 2023

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
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	

Derby Zoning Bylaw – As amended July 24, 2023

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 to 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 waste 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 §203.3.

#### 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 Agency of Agriculture, Food and Markets 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.

**ARTICLE 6: FLOOD HAZARD & RIVER CORRIDOR REGULATIONS**

**§ 601 Statutory Authorization and Effect**

In accordance with VSA Title 24 Chapter 117, §4424 and §4414, this is a bylaw for areas at high risk of flood damage in the Town of Derby, Vermont. Except as additionally described below, all administrative procedures follow municipal procedures under VSA Title 24 Chapter 117 and 44 CFR §60.3(d).

**§ 602 Purpose**

602.1 To implement the goals, policies, and recommendations in the municipal plan.

602.2 To protect health, safety and welfare of the public, minimize and prevent the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flooding-related inundation and erosion hazards.

602.3 Support equitable wellbeing for the entire community.

602.4 Ensure that development in our community protects floodplain and river corridor functions, and avoids and reduces damage from flooding and erosion.

602.5 Manage all flood hazard areas pursuant to VSA Title 24 §4382 and VSA Title 10 §751, §753.

602.6 Make the Town of Derby, its citizens, and businesses eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds, as may be available.

**§ 603 Summary Table: Development Review in Hazard Areas**

- P** – Permitted (Administrative Permit)
- C** – Conditional Use Review and Permit
- X** – Prohibited
- E** – Exempted
- S** – State Permit Required

#	Activity	River Corridor	Flood Hazard Areas	Floodway
1	New Structures	C	C	X
2	Storage	C	C	X
3	Improvements to Existing Structures	P, C	P, C	C
4	Small Accessory Structures	P, C	P	X
5	At Grade Parking	P	P	C
6	Replacement water supply or septic systems	S, P, C	S, P	S, P, C
7	Fill or grading resulting in no net loss of flood storage	P, C	C	C

		<b>River Corridor</b>	<b>Flood Hazard Areas</b>	<b>Floodway</b>
8	Fill or grading resulting in a loss of flood storage	P, C	X	X
9	Road maintenance	E	E	E
10	Road improvements	C	C	C
11	Bridges and culverts	S, E	S, E	S, C
12	Channel management	S, E	S, E	S, C
13	Recreational vehicles	P	P	P
14	Open space, recreation	E	E	E
15	Forestry and Agriculture	S, E	S, E	S, E

## § 604 River Corridor Protection

### 604.1 Purpose

River corridors provide rivers and stream channels with the space necessary to maintain or reestablish floodplain access and to reduce erosion hazards through natural physical processes. It is the intent of this bylaw to protect public health and safety by avoiding new encroachments into river corridors and minimizing erosion-related damage to existing structures.

A permit is required from the Administrative Officer for all development that is located within the River Corridor except as provided in §604.3(A). Where River Corridors and Flood Hazard Areas overlap, the Flood Hazard Area provisions shall also apply.

### 604.2 River Corridor Boundaries

- A. This article applies to the River Corridors in the Town of Derby, Vermont, as published by the Agency of Natural Resources (ANR) including refinements to that data which are hereby adopted by reference.
- B. On streams with a watershed size greater than half a square mile for which River Corridors are not mapped, the standards shall apply to the area measured as 50 feet from the top of the stream bank or slope.
- C. The information presented on any maps, or contained in any studies adopted by reference, is presumed accurate. If uncertainty exists with respect to the boundaries of the River Corridor, the location of the boundary on the property shall be determined by the Administrative Officer.
- D. If the applicant disagrees with the determination made by the Administrative Officer or with the river corridor as mapped, the applicant has the option to either:
  - 1) Hire a licensed land surveyor or registered professional engineer to stake out the River Corridor boundary as mapped on the property; or,
  - 2) Provide data as needed for ANR to update the river corridor map following the Flood Hazard Area and River Corridor Protection Procedure (“Procedure”); or
  - 3) Request a letter of determination from ANR that the proposed development meets the Performance standard in the Procedure.



604.3 Development Review in River Corridors

A. Exempted Activities

The following activities do not require a permit under this section of the bylaw:

- 1) The removal of a building or other improvement in whole or in part, so long as the ground elevations under and adjacent to the removed structure remain unchanged.
- 2) Any changes to a structure that will not change the footprint of the structure.
- 3) Maintenance of existing sidewalks, roads, parking areas, stormwater drainage, bridges, culverts, and channel stabilization.
- 4) Functionally dependent uses that must be placed in or cross over rivers and streams, that are not located in a flood hazard area, and that have coverage under a Stream Alteration Permit, if required, under VSA Title 10 Chapter 41 and the rules adopted thereunder including the construction, removal, or repair of bridges and culverts, associated transportation and utility networks, dams, and dry hydrants.
- 5) Planting projects which do not include any construction or grading.
- 6) Subdivision of land that does not involve or authorize development.
- 7) Activities exempt from municipal regulation and requiring a permit from ANR under the Vermont Flood Hazard Area and River Corridor Rule (CVR 12-030-024) including:
  - a) State-owned and operated institutions and facilities.
  - b) Forestry operations or silvicultural (forestry) activities conducted in accordance with the Vermont Department of Forests and Parks Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont or other accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation.
  - c) Agricultural activities conducted in accordance with the Vermont Agency of Agriculture, Food and Market's Required Agricultural Practices (RAPs). Prior to the construction of farm structures, the farmer shall notify the Administrative Officer in writing of the proposed activity. The notice shall contain a sketch of the proposed structure including setbacks.
  - d) Public utilities regulated under VSA Title 30 §248.
  - e) Telecommunications facilities regulated under VSA Title 30 §248a.

B. Prohibited Development in the River Corridor

- 1) New structures, fill, and development that do not meet the standards in §604.4 Development Standards.
- 2) Any other development that is not exempt, permitted, or listed as a conditional use which would cause or contribute to fluvial erosion hazards.

C. Permitted by Administrative Review

The following development activities meeting the Development Standards in the River Corridor in §604.4(A) or (B), may be permitted directly by the Administrative Officer:

- 1) Small accessory structures not larger than 500 square feet.
- 2) Improvements to utilities along an existing right of way and serving a building.
- 3) Replacement of on-site septic systems.

- 4) Access and parking.
- 5) An attached deck or patio to an existing structure that is 200 square feet or less and is located no less than 100 feet from the top of bank.
- 6) Unimproved trails on native grades and soils that will be relocated as needed to accommodate channel adjustments and avoid degradation to bank stability and riparian habitat.
- 7) River or floodplain restoration projects that do not involve fill, structures, utilities, or other improvements, and which have written confirmation from the ANR Regional Floodplain Manager that the project is designed to meet or exceed the applicable standards in this bylaw.

D. Conditional Use Review

Conditional use review and approval by the DRB in accordance with VSA Title 24 §4461 is required prior to the issuance of a permit by the Administrative Officer for any activity in the River Corridor that is not exempt, prohibited, or eligible for administrative review.

604.4 Development Standards within the River Corridor

These are the minimum standards for development in the River Corridor. Where more than one district is involved, the most restrictive standard shall take precedence.

- A. In-Fill: Development must be located no closer to the top of bank than the existing primary structures, within a gap that is no more than 300 feet (see Figure 1), or

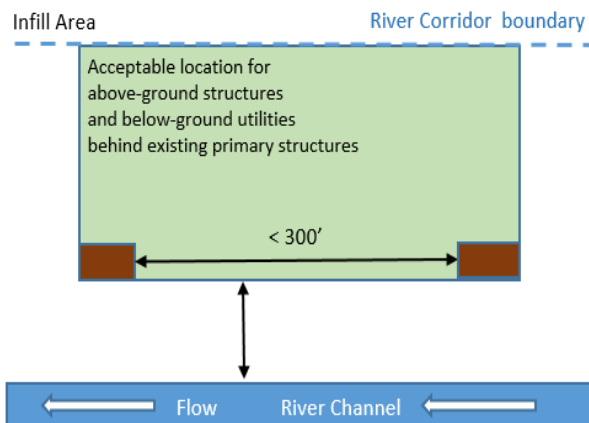


Figure 1: In-fill Development Standard

- B. Down River Shadow:  
An addition to an existing habitable structure, or an accessory structure that is adjacent to an existing structure, shall be located in the shadow area directly behind and further from the channel than the existing structure, or within 50 feet to the downstream side and no closer to the top of bank. Below-ground utilities may also be placed within the same shadow dimensions of an existing below-ground system (see Figure 2). Only primary structures existing before this bylaw may be considered for shadowing other development.

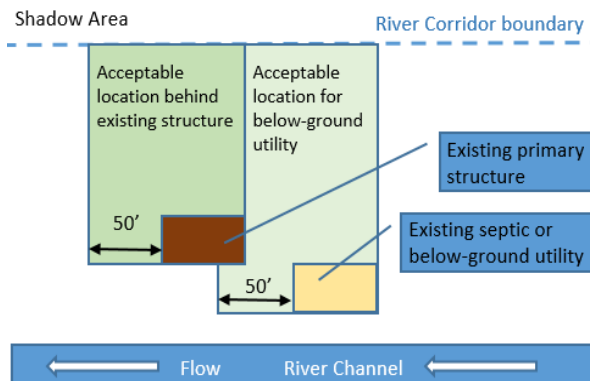


Figure 2: Shadow Area Development

- C. River Corridor Performance Standard: Proposals that do not meet the infill or shadowing criteria in section 604.4 A or B must demonstrate, and the DRB must find, that the proposed development will:
  - 1) not be placed on land with a history of fluvial erosion damage or threatened by fluvial erosion.
  - 2) not cause the river reach to depart from or further depart from the channel width, depth, meander pattern, and slope associated with natural stream processes and equilibrium conditions.
  - 3) not result in a need for bank armoring or stream channelization as a result of the proposed development, that would increase flood elevations and velocities, or alter the sediment regime triggering channel adjustments and erosion in adjacent and downstream locations.
- D. The DRB may request or consider additional information to determine if the proposal meets the River Corridor Performance Standard, including data and analysis from a consultant qualified in the evaluation of river dynamics and erosion hazards; and comments provided by the DEC Regional Floodplain Manager on whether the proposal meets the River Corridor Performance Standard.
- E. New paths or alterations to paths that provide access to the water for the public, and promote the public trust uses of the water, shall not necessitate bank armoring, and must be relocated when the channel adjusts toward the path.

## **§ 605 Flood Hazard Area Protection**

605.1 Purpose - To protect public health and safety by avoiding cumulative increases in flood elevations, velocities, and river instability; the cumulative loss of beneficial floodplain functions; and to minimize flood damage to development and services already located within this hazard zone.

605.2 Lands to Which this Bylaw Applies

### **A. Flood Hazard Areas**

This bylaw shall apply to the Special Flood Hazard Areas (SFHA) as mapped in the Town of Derby, Vermont identified in and on the most current flood insurance studies and maps published by the Department of Homeland Security, Federal Emergency Management Agency (FEMA), National Flood Insurance Program (NFIP), as provided by the Secretary of the Agency of Natural Resources (ANR) pursuant to VSA Title 10 §753, which are hereby adopted by reference and declared to be part of this bylaw.

B. Base Flood Elevations and Floodway Limits

- 1) Where available, base flood elevations (BFE) and floodway limits provided by the NFIP and in the Flood Insurance Study and accompanying maps shall be used to administer and enforce this bylaw.
- 2) The floodway, as adopted by this community, shall consist of the channel of a river or other watercourse and the adjacent land areas that shall be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point.
- 3) In the SFHA where base flood elevations and/or floodway limits have not been provided by the NFIP in the Flood Insurance Study and accompanying maps, it is the applicant's responsibility to develop the necessary data. Where available, the applicant shall use data provided by FEMA, or state or federal agencies to administer this bylaw.
- 4) If the Town acquires data that indicates a change in published base flood elevations, the Town will, within 6 months, submit the technical or scientific data to Vermont ANR and the NFIP Map Specialist.

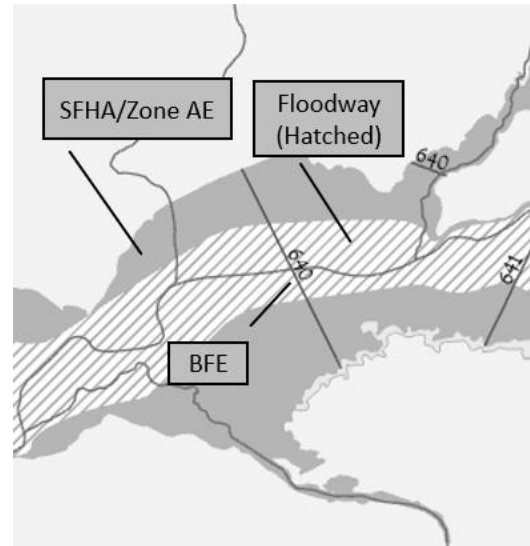


Figure 3 Diagram of Special Flood Hazard Area (SFHA) containing the Floodway (shown in hatched pattern). Also, cross-sections marked with the Base Flood Elevation (BFE) at that location.

605.3 Jurisdictional Determination

- A. The information presented on any maps, or contained in any studies, adopted by reference, is presumed accurate.
- B. If uncertainty exists with respect to the boundaries of the Flood Hazard Area, the location of the boundary shall be determined by the Administrative Officer.

605.4 Development Requirements in the Flood Hazard Areas

A. Permits

Except as provided in §605.4(B) Exempted Activities, a permit is required from the Administrative Officer for all development that is located within the Special Flood Hazard Area. Development that requires conditional use approval or a variance from the Development Review Board (DRB) under this bylaw must have such approvals prior to the issuance of a permit by the Administrative Officer. All permits shall require that a permittee have all other necessary permits from state and federal agencies before work may begin.

B. Exempted Activities

The following activities do not require a permit under this section of this bylaw:

- 1) The removal of a building in whole or in part, so long as the ground elevations under and adjacent to the removed structure remain unchanged.
- 2) Routine maintenance of existing buildings.

- 3) Interior improvements or repairs to existing buildings that cost less than 500 dollars.
  - 4) Maintenance of roads, bridges, or stormwater drainage.
  - 5) Streambank stabilization, and abutment work that do not reduce the cross-sectional flow area of the river or stream channel and have coverage under a Stream Alteration Permit, if required.
  - 6) Planting projects which do not include any construction or grading activities in accordance with VSA Title 24 §4424(c).
  - 7) Subdivision of land that does not involve or authorize development.
  - 8) The following activities are exempt from municipal regulation, but may require a permit under the State’s “Vermont Flood Hazard Area and River Corridor Rule” (Environmental Protection Rule, Chapter 29):
    - a) State-owned and operated institutions and facilities.
    - b) Forestry operations and silvicultural (forestry) activities conducted in accordance with the Vermont Department of Forests and Parks Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont or other accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation.
    - c) Agricultural activities conducted in accordance with the Vermont Agency of Agriculture Food and Market’s Required Agricultural Practices (RAPs). Prior to the construction of farm structures, the farmer shall notify the Administrative Officer in writing of the proposed activity. The notice shall contain a sketch of the proposed structure including setbacks meeting community requirements.
    - d) Public utilities regulated under VSA Title 30 §248.
    - e) Telecommunications facilities regulated under VSA Title 30 §248a.
- C. Administrative Review; Permitted Development

The following development activities in the Special Flood Hazard Area and meeting the Development Standards in §605.5, may receive a permit from the Administrative Officer without review by the DRB:

- 1) Outside of the Floodway:
  - a) Accessory structures not greater than 500 square feet that are only used for vehicle parking, storage, or primarily building access.
  - b) New fill for existing associated transportation and utility networks or to accommodate a replacement on-site septic system, if it can be demonstrated that no other practicable alternative is available.
  - c) Recreational vehicles or travel trailers.
  - d) River and floodplain restoration projects, including dam removal, that restore natural and beneficial floodplain functions and include written confirmation from the ANR Regional Floodplain Manager that the project is designed to meet or exceed the applicable standards in this bylaw.
- 2) Within the entire Special Flood Hazard Area:
  - a) Improvements or repairs from damage to structures that do not expand the existing footprint and do not meet the definition of “substantial improvement” or “substantial damage”.
  - b) Building utilities.

- c) At or below grade development (e.g. parking areas).
  - d) Open fencing or posts.
  - e) Municipal transportation infrastructure improvements designed by the Vermont Agency of Transportation that have written confirmation from the ANR Regional Floodplain Manager that the project is designed to meet or exceed the applicable standards in this bylaw.
- D. Prohibited Development:
- 1) New critical facilities.
  - 2) New residential or non-residential structures in the Floodway.
  - 3) Storage of materials or junk yards.
- E. Conditional Use Review

In accordance with VSA Title 24 §4414, conditional use review and approval by the DRB is required prior to the issuance of a permit by the Administrative Officer for any activity in the Special Flood Hazard Area that is not exempt, prohibited, or eligible for administrative review.

#### 605.5 Development Standards within the Flood Hazard Area

- A. No net loss of flood storage capacity,
- 1) Except as needed to fill an existing basement or mitigate an existing structure.
- B. All development below the DFE, except development that is exempt under §605.4(B), shall be:
- 1) Reasonably safe from flooding.
  - 2) Designed (or modified) and adequately anchored to prevent flotation, collapse, release, or lateral movement of the structure.
  - 3) Constructed with materials resistant to flood damage.
  - 4) Constructed by methods and practices that minimize flood damage.
  - 5) Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
  - 6) Adequately drained to reduce exposure to flood hazards.
- C. Fuel storage tanks and vents must be elevated above the DFE and securely anchored.

Storage tanks may be placed underground if a qualified professional certifies the installation will be anchored and protected from flood forces.

- D. In Zones AE and A1 – A30 where floodway limits have not been determined, development shall not be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated encroachment, will not increase the base flood elevation more than one foot at any point within the community. The demonstration shall be supported by technical data that conforms to standard hydraulic engineering principles and certified by a registered professional engineer.

- E. Recreational vehicles, equipment, boat trailers, portable toilets, construction trailers, and other travel trailers shall:
  - 1) Be currently registered, licensed, and ready for highway use; or
  - 2) Be on site for fewer than 180 consecutive days; or
  - 3) Meet the requirements for structures in §605.5(L).
- F. Water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the system.
- G. Sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
- H. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- I. The flood carrying capacity within any altered or relocated portion of any watercourse shall be maintained, any alteration or relocation shall not result in any decrease of stream equilibrium.
- J. Bridges, culverts, and channel management activities, which by their nature shall be placed in or over the watercourse, shall have a Stream Alteration permit from the Agency of Natural Resources, if required.
- K. Subdivisions and Planned Unit Developments shall be accessible by dry land access.
- L. Structural Standards
  - 1) New or Substantially Improved structures shall have the lowest floor, including basement, elevated to or above the Design Flood Elevation (two feet above base flood elevation). This shall be documented in the proposed and as-built condition with a FEMA Elevation Certificate.
  - 2) New non-residential structures, and non-residential structures to be substantially improved, replaced, or that have incurred substantial damage shall:
    - a) Meet the standards of §605.5(L)(1), above; or,
    - b) Have the lowest floor, including basement, together with attendant utility and sanitary facilities, designed so that to at least two feet above the base flood elevation the structure is dry floodproofed, meaning watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

A permit for dry floodproofing shall not be issued until a registered professional engineer or architect has reviewed the structural design, specifications, and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.
  - 3) New or Substantially Improved structures in Zone AO shall have the lowest floor, including basement, elevated above the highest adjacent grade, at least two feet above the depth number specified on the community's FIRM, or at least three feet if no depth number is specified.
  - 4) Critical facilities to be substantially improved shall have the lowest floor, including basement, elevated or dry-floodproofed at least one foot above the elevation of the 0.2% annual flood height (500-year floodplain), or three feet above base flood elevation, whichever is higher.

- 5) Historic structures being substantially improved shall meet the requirements in this bylaw other than the Lowest Floor Elevation §605.5(L).
- 6) Fully enclosed areas below grade on all sides (including below grade crawlspaces and basements) are prohibited.
- 7) Fully enclosed areas below the lowest floor, that are above grade, below the DFE, and subject to flooding, shall:
  - a) Be solely used for parking of vehicles, storage, or building access, and such a condition shall clearly be stated on any permits; and be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs shall be certified by a registered professional engineer or architect; or,
  - b) meet or exceed the following minimum criteria: A minimum of two openings on two walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above adjacent grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters; and
  - c) A small accessory structure of 500 square feet or less that is only used for vehicle parking, storage, or primarily building access need not be elevated to the base flood elevation if adequate flood openings are provided, the structure is placed on the site so as to offer the minimum resistance to the flow of floodwaters, and the construction meets the criteria in §605.5(B) above.

#### 605.6 Development Standards within the Floodway

- A. Within the Floodway new encroachments are prohibited except for the following, which also shall comply with §605.6(B), below:
  - 1) changes to existing structures where the footprint is proposed to expand horizontally into the floodway less than 500 square feet.
  - 2) new encroachments relating to bridges, culverts, roads, stabilization projects, public utilities, functionally dependent uses, and river or floodplain restoration projects.
  - 3) new encroachments relating to health and safety measures, such as replacement of pre-existing on-site septic and water supply systems, if no other practicable alternative is available.
- B. Within the Floodway all proposed new encroachments are required to provide a hydraulic analysis, performed by a registered professional engineer, in accordance with standard engineering practice, certifying that the proposed development will:
  - 1) Not result in any increase in flood levels during the occurrence of the base flood.
  - 2) Not increase base flood velocities.
  - 3) Not increase any risk to surrounding properties, facilities, or structures from erosion or flooding.

For development that will not result in any change in grade, the hydrologic & hydraulic analyses may be waived, where the applicant will provide pre- and post-development elevations demonstrating that there will be no change in grade, and that the development will be adequately protected from scour.



## **§ 606 Other Provisions**

### 606.1 Precedence of Bylaw

The provisions of this bylaw shall not in any way impair or remove the necessity of compliance with any other local, state, or federal laws or regulations. Where this bylaw imposes a greater restriction the provisions here shall take precedence.

### 606.2 Validity and Severability

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

### 606.3 Warning of Disclaimer of Liability

This bylaw does not imply that land outside of the areas covered by this bylaw will be free from flood or erosion damage. This bylaw shall not create liability on the part of the Town of Derby, or any municipal official or employee thereof, for any flood or erosion damages that result from reliance on this bylaw, or any administrative decision lawfully made hereunder.

## **§ 607 Administration**

### 607.1 Applications – All Applications for development shall include:

- A. A site plan that depicts the proposed development including water, Flood Hazard Areas, and River Corridor boundaries; the shortest horizontal distance from the proposed development to the top of bank of any stream, any existing and proposed drainage, any proposed fill, pre- and post-development grades, and the elevation of the proposed lowest floor as reference to the same vertical datum as the elevation on the current flood insurance Rate Maps.
- B. A copy of the ANR Permit Navigator Results Summary.

### 607.2 Referrals

- A. Any application regarding New Construction, Substantial Improvement, development in a Floodway, development in a River Corridor, or a Variance shall be submitted by the Administrative Officer to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources in accordance with VSA Title 24 §4424. A permit may be issued following receipt of comments from the Agency, or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner.
- B. If the applicant is seeking a permit for the alteration or relocation of a watercourse, copies of the application shall be submitted by the Administrative Officer to the adjacent communities, the River Management Engineer at the Vermont Agency of Natural Resources, and the Army Corps of Engineers.

### 607.3 Variances

Variances may be granted in writing by the DRB only in accordance with all the criteria in VSA Title 24 §4469 after a public hearing noticed in accordance with VSA Title 24 §4464. If the proposed development is located within any Flood Hazard Area, the proposal shall comply with 44 C.F.R. §60.6. Any variance issued in the Flood Hazard Area shall not increase flood heights and shall inform the applicant in writing over the signature of a

community official that the issuance of a variance to construct a structure below the BFE increases risk to life and property and will result in increased flood insurance premiums up to amounts as high as \$25 for \$100 of coverage. Such notification shall be maintained with a record of all variance actions.

#### 607.4 Administrative Responsibilities

- A. The Administrative Officer shall properly file and maintain a record of:
  - 1) All permits and supporting documents;
  - 2) A FEMA Elevation Certificate for any new, replacement or substantially improved buildings (not including accessory buildings) in the Flood Hazard Area;
  - 3) All floodproofing and other certifications required under this regulation; and,
  - 4) All decisions of the Administrative Officer and DRB (including those for Substantial Improvement, Substantial Damage, appeals, variances, and violations) and all supporting findings of fact, conclusions, and conditions.
  - 5) All Certificates of Occupancy, and receipts as required for the determination of Substantial Improvement.
- B. Substantial Improvement and Substantial Damage Determinations
  - 1) In the event of damage of any kind to a structure located within any Flood Hazard Area, the Administrative Officer shall determine if Substantial Damage occurred regardless of any intended repair at that time.
  - 2) In the review of any proposal for the repair or improvement of a structure located within any Flood Hazard Area District, the Administrative Officer shall determine if the proposal indicates Substantial Improvement.
  - 3) Substantial Improvement or Substantial Damage determinations shall be made in accordance with current FEMA and ANR guidance, or by a procedure meeting FEMA standards and established by the Town in accordance with VSA Title 24 §1972.
- C. Certificate of Occupancy
  - 1) A Certificate of Occupancy (CO) is required for any new or Substantially Improved primary structure permitted under this bylaw. It shall be unlawful to use or occupy any structure within the areas affected by this bylaw, until a CO is issued by the Administrative Officer in accordance with VSA Title 24 §4449 stating that the structure conforms to the requirements of this bylaw.
  - 2) A certificate of occupancy is not required for structures that were built in compliance with the bylaws at the time of construction and have not been improved since the adoption of this bylaw.
  - 3) Upon receipt of the application for a certificate of occupancy, the Administrative Officer shall review the permit conditions and inspect the premises to ensure that:
    - a) any required state and federal permits have been received,
    - b) all work has been completed in conformance with the zoning permit and associated approvals, and
    - c) all required as-built documentation has been submitted to the Administrative Officer (e.g. updated FEMA Elevation Certificate, dry floodproofing

certificate, as-built volumetric analysis, or as-built floodway encroachment analysis).

- 4) If a certificate of occupancy cannot be issued, notice will be sent to the owner and copied to the lender.

D. Enforcement

- 1) This bylaw shall be enforced in accordance with VSA Title 24 §1974a, §4451, and §4452. All notices of violation shall be provided to the State NFIP Coordinator.
- 2) No new flood insurance shall be provided for any property which the Federal Insurance Administrator finds has been declared to be in violation of local flood hazard area regulations. If any appeals have been resolved, but the violation remains, the AO shall submit a declaration to the Administrator of the National Flood Insurance Program requesting a denial of flood insurance to the property pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended. New and renewal flood insurance shall be denied to a structure upon a finding by the Federal Insurance Administrator of a valid declaration of a violation.

## **ARTICLE 7: SUBDIVISION, 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 §4417 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 Subdivision Review**

#### 701.1 Applicability

- A. In accordance with the VSA Title 24, §4418, whenever any subdivision of land is required, the subdivider and/or his authorized agent shall apply for and secure approval of such proposed subdivision according to the procedures outlined in this bylaw prior to any of the following activities:
  - 1) Construction, land clearing, or building development.
  - 2) Contract of sale of all or any part of the land or structures involved.
  - 3) Granting of a permit for the erection of a building or structure.
  - 4) Filing of a subdivision plan with the Town Clerk.
- B. The following activities are exempt from subdivision review:
  - 1) Creation of rights-of-way or easements which do not result in the subdivision of land into two or more parcels.
  - 2) The leasing of parcels for agricultural or forestry purposes, provided no new roads are created for uses other than accepted agricultural or forestry practices.
  - 3) Parcels under single ownership which are divided by a state or town road may be sold separately provided the resulting lots on either side of the dividing road may be developed separately and the uses they contain function independently.
  - 4) Creation of a conservation easement on a parcel of land.

#### 701.2 An Overview of the Subdivision Review Process

A subdivision is 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. Boundary line adjustments (i.e. the relocation of lot lines between two (2) or more lots, tracts, or parcels) are also considered subdivisions.

##### A. Classification of Subdivisions

The subdivision review process depends on whether the proposed subdivision is a boundary line adjustment, minor subdivision or major subdivision.

- 1) A boundary line adjustment is the transfer of property by deed to a respective owner or owners of contiguous property for the purpose of adjusting a boundary line and not for the purpose of creating an additional lot or parcel.
- 2) A minor subdivision is a subdivision that results in no more than five (5) lots within a continuous five (5) year period, all of which are for one or two-family residences; and does not require more than eight hundred (800) feet of new roads; and does not require an extension of municipal services.

Derby Zoning Bylaw – As amended July 24, 2023

- 3) A major subdivision is any subdivision that creates six (6) or more lots within a continuous five (5) year period; or creates new lots for commercial, industrial, or commercial recreation uses, or for multi-unit housing; or requires more than eight hundred (800) feet of new roads; or requires an extension of municipal services; or involves a planned unit development (see Article 7).

Action	Who does it, and when
<b>All Subdivisions start with Sketch Plan Review</b>	
1. Sketch Plan is submitted to the Administrative Officer	Subdivider - At any time.
2. Proposed subdivision is classified as a Boundary Line Adjustment, Minor or Major Subdivision	Administrative Officer - Within thirty (30) days of receiving a Sketch Plan shall classify the plan as a Boundary Line Adjustment, Major or Minor Subdivision and explain the review procedures to the applicant
<b>Boundary Line Adjustment Plan Review</b>	
1. Plan submitted to Administrative Officer	Subdivider – Must be done within six (6) months of receiving classification as a Boundary Line Adjustment.
2. Plan Review	Administrative Officer – Upon receiving a complete application in accordance with §701.4 of this bylaw.
3. Plan is approved or disapproved	Administrative Officer - Within thirty (30) days of receiving a complete application.
4. Approved Boundary Line Adjustment Plan gets recorded in the Town Clerk’s Office	Subdivider – Within one hundred eighty (180) days of receiving Final Boundary Line Adjustment Approval.
<b>Minor Subdivisions</b>	
1. Final Subdivision Plan submitted to Administrative Officer	Subdivider – Must be done within six (6) months of receiving classification as a Minor Subdivision.
2. Final Subdivision Plan Review	Development Review Board – Within forty-five (45) days of receipt of the Final Subdivision Plan in a hearing noticed and warned in accordance with VSA Title 24 §4464.
3. Final Subdivision Plan is approved or disapproved	Development Review Board – Within forty-five (45) days of close of the Final Subdivision Plan Review Hearing. Decision is issued in writing in accordance with VSA Title 24 §4464.
4. Approved Final Subdivision Plan gets recorded in the Town Clerk’s Office	Subdivider – Within one hundred eighty (180) days of receiving Final Subdivision Plan Approval.
<b>Major Subdivisions</b>	
1. Preliminary Subdivision Plan is submitted to Administrative Officer	Subdivider – Must be done within six (6) months of receiving classification as a Major Subdivision.
2. Preliminary Subdivision Plan Review	Development Review Board – Within forty-five (45) days of receipt of Preliminary Subdivision Plan in a hearing noticed and warned in accordance with VSA Title 24 §4464.
3. Preliminary Subdivision Plan is approved or disapproved	Development Review Board – Within forty-five (45) days of close of Preliminary Subdivision Plan Review Hearing. Decision is issued in writing in accordance with VSA Title 24 §4464.
4. Final Subdivision Plan is submitted to Administrative Officer	Subdivider – Must be done within one (1) year from receiving Preliminary Subdivision Plan Approval.

5. Final Subdivision Plan Review	Development Review Board – Within forty-five (45) days of receipt of the Final Subdivision Plan in a hearing noticed and warned in accordance with VSA Title 24 §4464.
6. Final Subdivision Plan is approved or disapproved	Development Review Board – Within forty-five (45) days of close of Final Subdivision Review Hearing. Decision is issued in writing, in accordance with VSA Title 24 §4464.
7. Approved Final Subdivision Plan gets recorded in the Town Clerk’s Office	Subdivider – Within one hundred eighty (180) days of receiving Final Subdivision Plan Approval.

701.3 Application Procedures

- A. Fee: All applications for approval of Subdivisions shall be accompanied by the appropriate fee payable to the Town of Derby, Vermont.
- B. Applicant to Attend Development Review Board Meeting: The applicant, or his duly authorized representative, shall attend the meeting of the Development Review Board to discuss the Subdivision Plan.
- C. Public Hearing: A public hearing requiring Development Review Board review shall be held in conformance with VSA Title 24 §4463 and §4464. Decision: The Development Review Board shall, within forty-five (45) days from the close of the public hearing approve, modify and approve, or disapprove a Preliminary and Final Subdivision Plan in writing. If the Development Review Board fails to disapprove the subdivision within the forty-five (45) days specified above, the plan shall be deemed approved.
- D. Filing of Approved Subdivision Plan: A Mylar of all approved Subdivision Plans, including Boundary Line Adjustments, shall be filed with the Town Clerk within one hundred eighty (180) days of approval. Any Subdivision Plan not so filed or recorded within one hundred eighty (180) days of the date upon which such plan is approved or considered approved by reason of the Development Review Board's failure to so act, shall become null and void.
- E. The Administrative Officer may extend the date of filing the Subdivision Plan by an additional ninety (90) days, if final local or State permits or approvals are still pending.

701.4 Boundary Line Adjustment

- A. The adjustment of a boundary between two adjoining parcels may be subject to review and approval by the Administrative Officer, provided that the Administrative Officer finds all of the following to be true:
  - 1) It does not substantially change the nature of any previous subdivision.
  - 2) It does not create any new lots as a result of the adjustment.
  - 3) It will not adversely impact access to any parcel.
  - 4) It will not result in the development on any portion of a parcel that has been designated as open space as the result of a prior municipal permit or approval, or allow for the acreage of any open space parcel to be applied to the maximum density or minimum lot size for another parcel.
  - 5) It will not create any nonconformities.

- B. A boundary line adjustment meeting all of the above requirements shall require a Zoning Permit from the Administrative Officer, along with a plan.
- C. Filing of Approved Boundary Line Adjustment Plan: A Mylar of all approved boundary line adjustment plans shall be filed with the Town Clerk within one hundred eighty (180) days of the date upon which such plan is approved. Failure to so act, the permit shall become null and void.
- D. All Boundary Line Adjustments not meeting the five (5) criteria in §701.4(A) shall be referred to the Development Review Board for review as a Minor or Major Subdivision.

701.5 Preliminary Plan Review (Major Subdivisions Only)

- A. Within six (6) months of being classified as a Major Subdivision, the subdivider shall submit to the Administrative Officer a Preliminary Subdivision Plan. The application shall conform to:
  - 1) The requirements set forth in this bylaw.
  - 2) The layout originally shown in the Sketch Plan.
- B. The subdivider shall submit three (3) copies of the complete Preliminary Subdivision Plan, which shall include:
  - 1) A completed subdivision permit application form.
  - 2) Name and address of the landowner and/or applicant.
  - 3) Names of all abutting property owners.
  - 4) Addressed stamped envelopes for all abutters.
  - 5) Addressed stamped envelopes for all adjoining towns, if any portion of the land involved with the subdivision is within five hundred (500) feet of the boundary of the adjoining town.
  - 6) A location map drawn to scale showing the location of the development parcel in the town.
  - 7) The dimensions of all lot lines and sizes of all lots.
  - 8) A written description of proposed development plans, including the number and size of lots and general timing of construction.
  - 9) A plan at a scale not to exceed 1" per 200', drawn on a contour map showing the project boundaries, adjacent land uses, layout of proposed uses, and significant natural and man-made features, including:
    - a) Wetlands.
    - b) Flood hazard areas.
    - c) Slopes in excess of 25%.
    - d) Surface waters.
    - e) Agricultural soils and open farmland.
    - f) Recreation trails, sidewalks, or other pedestrian amenities.
    - g) Prominent knolls and ridgelines that are at an elevation of one thousand five hundred (1,500) ft or higher.
    - h) The area(s) of the site designated for open space and their size(s).
    - i) The number of dwelling units, if any, that are proposed to be affordable or for senior housing.

Derby Zoning Bylaw – As amended July 24, 2023

- j) All existing and proposed right-of-way lines, widths of roads, and typical road profiles.
- k) Locations of all buildings, walkways, amenities, utilities, bridges, culverts and other man-made improvements.
- 10) A statement of how the proposed subdivision complies with the Town Plan and this bylaw.
- 11) Description of the proposed water supply. If the water source is a community water supply system, evidence of the right to use such system and the adequacy of such system to meet water supply requirements shall be shown. All design criteria shall be in accordance with applicable state and local regulations.
- 12) A description of proposed sewage disposal system. If on-site sewage disposal is proposed, then the subdivider shall submit a registered professional engineer's report prepared in conformance with applicable state and local regulations. If a community sewage disposal system is to be used, the subdivider shall submit evidence of the right to use such system and an engineer's statement of the adequacy of the system to handle the additional sewage.
- 13) Preliminary grading plans showing areas of cut and fill revised contours, at a contour interval not greater than five (5) feet.
- 14) A storm water drainage plan, drawn at a contour interval not greater than five (5) feet, shall indicate the methods of collecting and discharging of drainage, as well as methods for temporary and permanent erosion control.
- 15) Evidence that the traffic generated by the project will not cause the capacity of roadways and intersections in the area to be exceeded. Information to be provided shall include, but not be limited to, current traffic volumes, current excess capacities or deficiencies, trip generation estimates and their impact on capacities, and sight stopping distances for new road intersections with town highways.
- 16) If the project involves access to a Town road, evidence that a Town access/driveway permit application has been filed, including feedback from the Road Foreman. If the project involves access to a State highway, a letter of intent from the Agency of Transportation confirming that the Agency has reviewed the subdivision plan and is prepared to issue an access permit under VSA Title 19 §1111, and setting out any conditions that the Agency proposes to attach to the §1111 permit.
- 17) The DRB may require landscaping for the purposes of screening and improvements of the visual appearance of man-made improvements. If required, landscaping plans shall indicate the size, species, and location of all plants and ground cover.
- 18) All land proposed to be dedicated to open or public uses, or to be reserved for screening and buffer purposes and the methods for assuring and maintaining such dedication or reservation.
- 19) A description of any proposed covenants and or deed restrictions which are intended to cover all, or part of the subdivision.
- 20) A description of the homeowners association or other form or management organization, if such is proposed.



- 21) Any other documents as required by the Development Review Board.
  - C. If the subdivider fails to submit a complete Preliminary Subdivision Plan to the Administrative Officer within the six (6) month period, the subdivider shall be required to resubmit a Sketch Plan for Sketch Plan Review, which shall be subject to the regulations currently in effect.
  - D. Within forty-five (45) days of the Administrative Officer's receipt of the complete Preliminary Subdivision Plan, the Development Review Board will hold a Preliminary Subdivision Plan Review hearing. Such hearing shall be noticed and warned in accordance with VSA Title 24 §4464.
  - E. The Development Review Board shall issue a decision within forty-five (45) days of the closing of the Preliminary Subdivision Plan Review hearing. The decision – whether to approve with or without modifications or to disapprove – shall be issued, in writing, and in accordance with VSA Title 24 §4464.
  - F. Approval of the Preliminary Subdivision Plan shall not constitute approval of the Final Subdivision Plan.
  - G. Approval of the Preliminary Subdivision Plan shall be effective for a period of one (1) year from the date of the written notice of approval.
- 701.6 Final Plan Review (All Subdivisions)
- A. The subdivider shall submit to the Administrative Officer a Final Subdivision Plan within:
    - 1) Six (6) months of the Administrative Officer's classification of the proposed subdivision as a minor subdivision or boundary line adjustment; or
    - 2) One (1) year from the date of the Development Review Board's approval of the Preliminary Subdivision Plan Application for a major subdivision.
  - B. If the subdivider fails to submit a complete Final Subdivision Plan for a minor subdivision or boundary line adjustment within the required six (6) month timeframe, he or she shall be required to resubmit a Sketch Plan, which shall be subject to regulations currently in effect, unless the Development Review Board determines that the lengthy delay has been completely beyond the subdivider's control.
  - C. For an application for a minor subdivision or boundary line adjustment, the subdivider shall submit:
    - 1) Three (3) copies of the Final Subdivision Plan, prepared by a Vermont licensed surveyor. The Development Review Board may request additional copies.
    - 2) Any information requested by the Administrative Officer during Sketch Plan Review.
  - D. If the subdivider fails to submit a complete Final Subdivision Plan for a major subdivision within the required one (1) year timeframe, he or she shall be required to resubmit a Preliminary Subdivision Plan, which shall be subject to regulations currently in effect, unless the Development Review Board determines that the lengthy delay has been completely beyond the subdivider's control.
  - E. For an application for major subdivision, the subdivider shall submit:
    - 1) Three (3) copies of the Final Subdivision Plan, prepared by a Vermont licensed surveyor. The Development Review Board may request additional copies.

- 2) All information, revisions, or additional levels of detail requested by the Development Review Board during the Preliminary Subdivision Plan Review.
  - 3) If the subdivider is granting easements to the Town, a written acknowledgement of the subdivider's responsibility for maintenance of easement areas until such land has been legally accepted by the Town.
- F. Within forty-five (45) days of the Administrative Officer's receipt of the complete Final Subdivision Plan (except for boundary line adjustments approved under §701.4), the Development Review Board will hold a Final Subdivision Plan Review hearing. Such hearing shall be noticed and warned in accordance with VSA Title 24 §4464.
- G. The Development Review Board shall issue a decision within forty-five days of the closing of the Final Subdivision Plan Review hearing. The decision – whether to approve with or without modifications or to disapprove – shall be issued, in writing, and in accordance with VSA Title 24 §4464.
- H. The Development Review Board may require, as a condition of Final Subdivision Plan approval, the following documentation:
- 1) Agreement to convey to the town land to be used for streets, open space, and other purposes.
  - 2) Description of easements and rights-of-way over property to remain in private ownership.
  - 3) Descriptions of easements to drain onto or across other property.

#### 701.7 Layout and Marking of Lots

- A. All lots proposed in a subdivision shall comply with the requirements for lot area, width and length in accordance with §206 of this bylaw.
- B. All land to be used for building purposes on the plat submitted for approval shall be of such character that it can be used for building purposes without danger to health due to environmental hazards.
- C. The lot arrangement shall be such that in constructing or building in compliance with these regulations, there shall be no foreseeable variances needed for reasons of topography or other natural conditions. All lots shall have frontage on or access to public roads or waters as required by §401.2 of this bylaw.
- D. All lot corners shall be monumented.

#### 701.8 Streets

- A. Dead end streets shall:
  - 1) Be designed to serve no more than twenty-five (25) lots.
  - 2) Have a turn-around at the end of the street with a minimum radius of forty-five (45) feet.
- B. All streets serving six (6) or more lots shall be constructed by the developer in minimal compliance with the Town of Derby Road and Bridge Standards. Developers of smaller subdivisions are encouraged to construct access roads in conformance with the layout standards of §701.8(C).
- C. Layout:

- 1) New streets shall be laid out so as to provide for the continuation of existing streets that serve the abutting lands. Where topographic or other conditions make such continuance undesirable or impracticable, this requirement may be modified.
  - 2) Streets shall be logically related to the topography so as to produce usable lots, reasonable grades and safe intersections.
  - 3) Where possible, no curve shall have a center line radius of less than one hundred fifty (150) feet. Changes in grade exceeding one (1) percent shall be designed in such a manner so as to provide a minimum sight distance of one hundred fifty (150) feet.
  - 4) Street grades shall be adequate to provide satisfactory drainage. In no case shall drainage be allowed onto any public right of way. Where possible, the maximum allowable grade shall be ten (10) percent. In no case shall a grade greater than three (3) percent be allowed at or within thirty (30) feet of an intersection.
  - 5) The angle of street intersections shall be as near to ninety (90) degrees as possible. No intersection shall be at an angle of less than sixty (60) degrees.
  - 6) Street jogs with center line offsets of less than one hundred twenty-five (125) feet shall not be allowed.
  - 7) A fifty (50) foot minimum right-of-way shall be required for all public and private streets within a proposed subdivision.
  - 8) Streets shall be identified by name on the preliminary plat. Proposed streets which are in alignment with existing named streets shall bear the same names. In no case shall the names for proposed streets duplicate or resemble the names of existing streets. The Selectboard shall approve all new road names.
- D. Curbs and Sidewalks: Curbs and/or sidewalks may be required on one or both sides of all streets. If they are required, they should be designed in accordance with the Americans with Disabilities Act. This requirement may be modified or waived by the Development Review Board.

#### 701.9 Utilities

- A. Electric, telephone, broadband and cable TV distribution systems shall be installed underground, including services to residences and to street lights, unless waived by the Development Review Board. Utility lines shall be placed as close as possible to the edge of the right-of-way.
- B. Street lights shall be installed according to lighting design requirements in accordance with §212.2 of these bylaws.
- C. Water and sewer systems that will be connected to a municipal system shall be approved by the municipality in charge of the system.
- D. All street signs and posts shall be provided and installed by the Town at the expense of the developer prior to opening the road to the public.
- E. Storm Drainage:
  - 1) The developer shall be required to carry away by pipe or open ditch any spring or surface water that may exist either previous to or as a result of the subdivision. Such drainage facilities shall be located in the street right-of-way where feasible,

or in perpetual unobstructed easements of appropriate width. The applicant should check with the State to determine if a State Stormwater Permit is required.

- 2) Culverts and other drainage facilities shall be compliant with the Town of Derby Road and Bridge Standards. The Development Review Board may consult with the Road Foreman, Derby's All-Hazards Mitigation Plan, or the conditions of the General Permit in requiring additional measures to accommodate potential runoff.

#### 701.10 Site Preservation

- A. Existing features which would add value to the subdivision, such as trees, watercourses and falls, brooks, historic spots and similar irreplaceable assets, shall be preserved, insofar as possible, through harmonious design, except that in accordance with VSA Title 27 §545, deed restrictions, covenants, or similar binding agreements that prohibit or have the effect of prohibiting land development allowed under VSA Title 24 §4412(1)(E) and (2)(A) shall not be valid.
- B. Land shall be subdivided and improved in reasonable conformity with the existing topography in order to minimize grading, cutting and filling, and to retain, insofar as possible, the natural contours, limit storm water runoff, and conserve the natural cover and soil.
- C. The owner of the subdivision may place restrictions on the subdivision greater than those required by these regulations and any other State or local regulations. Such restrictions shall be attached to the plan and shall also, when applicable, be included as covenants in the deeds conveyed with each lot.

#### 701.11 Excavation and Grading

- A. The smallest practical area of land should be exposed at any one time during development and the exposure should be kept to the shortest practical period of time. Land should not be left exposed during the winter months. Where necessary, temporary vegetation and/or mulching and structural measures may be required by the Development Review Board to protect areas exposed during the development. Sediment practices (debris practices, desilting practices, or silt traps) shall be installed and maintained during development to remove sediment from run-off water and from land undergoing development. Where possible, natural drainageways should be utilized and left open to remove excess surface water. The permanent final vegetation and structures should be installed as soon as practical in the subdivision.
- B. All excavating and filling required for construction of improvements shall be as specified herein. The entire area of work shall be brought to the required lines and grades by excavation or filling. Excavation material, if suitable, may be used for the grading of embankments and in filling low areas. A minimum of four (4) inches of top soil shall be provided to cover over all finished slopes. This material shall be spread uniformly over all finished slopes. All streets shall be graded from property line to property line to the approved grade and cross section.
- C. No stumps, wood, roots, or other fibrous materials shall be placed in any embankment. In those locations where the alignment crosses swamp or marsh lands, or other similar soil that is incapable of withstanding expected loads, such

inadequate soil shall be entirely removed and replaced with adequate material. The materials so removed shall not be placed in embankment, but may be used in flattening embankment slopes or for filling low spots outside the road section. The Development Review Board may require the developer to submit evidence of boring and/or other soil investigations to determine the depth, composition and stability of the subgrade within the road section. Any work done in or around wetlands, swamps, or marshes may require a State permit.

- D. Embankments shall be formed of suitable and acceptable excavated materials and brought to the required lines and grades. The materials for embankment shall be placed in successive horizontal layers not exceeding nine (9) inches in depth extending across the entire fill area. They shall be spread by a bulldozer or other acceptable methods, and shall be compacted to 85% of native soil compaction. Successive layers shall not be placed until the layer under construction has been thoroughly compacted. Where embankments are made of rock, the rock shall be so deposited that all voids are filled with earth and in such a way that the compaction specified above may be secured.
- E. Upon completion of filling and excavating, the subgrade shall be formed to the required grade and contour, and the entire surface again compacted as specified above in §701.11(C). High spots shall be removed and low spots filled with acceptable material and the process of leveling and compacting continued until no further depression results.
- F. Side slopes on an embankment and on roadside drainage ditches shall descend one (1) foot vertically for at least each two (2) feet horizontally (2 on 1). Surplus material resulting from excavation of the road shall be used to flatten slopes of embankments so that they ascend one (1) foot vertically for at least two (2) feet horizontally (2 on 1). Side slopes in excavation rock shall ascend six (6) feet vertically for at least each one (1) foot horizontally (1 on 6). Where rock cuts have a face higher than ten (10) feet vertically, a three (3) foot berm shall be provided at each ten (10) foot level above the grade at the edge of the pavement. Side slopes shall not be graded so as to extend beyond the limits of the road right-of-way onto land not part of the subdivision unless a suitable slope easement has been properly established and granted by the affected property owner.

#### 701.12 Waivers

- A. Where the Development Review Board finds that, due to special circumstances of a particular Plat, the provision of certain required improvements is not requisite in the interest of public health, safety, and general welfare, or is inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the proposed subdivision, it may reduce or waive such requirements, subject to appropriate conditions.
- B. In granting waivers and modifications, the Development Review Board shall require such conditions as will, in its judgment, secure substantially the objectives of the requirements so varied or modified.

#### **§ 702 Planned Unit Development (PUD)**

PUDs are broadly defined under state statute. They can incorporate a mix of uses, or they can be exclusively residential. For all intents and purposes, residential clusters and mixed use developments are considered to be PUDs under this bylaw.

702.1 Purpose

- A. PUD, as authorized under 24 V.S.A. §4417 and defined under Article 11, allows flexibility in the application of the town's zoning regulations in order to promote development that better conforms to the Derby Town Plan. Specifically, the purposes of PUD under this bylaw are to:
  - 1) Carry out the purposes of the Derby Town Plan, as set forth in the plan's stated goals, policies and objectives.
  - 2) Allow for a more desirable pattern and density of development than would be possible through the strict application of bylaw standards.
  - 3) Promote the creative design and layout of development and the efficient use of land and infrastructure so that development will be a permanent and long term asset to the Town.
  - 4) Cluster development to avoid the fragmentation of productive forest, farmland and wildlife habitat, and to enhance Derby's rural character as described in the Derby Town Plan.
  - 5) Promote energy-efficient development and long-term access to renewable energy resources.
  - 6) Accommodate new development in a manner that maintains the Town's historic settlement patterns, and protects significant natural, cultural and scenic features, as described in the Derby Town Plan.
  - 7) Allow for compact, village-scale mixed-use development within growth centers designated in the Derby Town Plan.
  - 8) Provide for a diversity of housing types, including affordable housing in appropriate locations.
  - 9) To avoid strip type commercial development and to provide a more desirable environment.
- B. To achieve these objectives, the Development Review Board is hereby empowered to modify zoning district density and dimensional requirements under this bylaw concurrently with conditional use approval (under §209) or final subdivision approval (under §701). Allowed uses under this bylaw may not be modified.

702.2 Applicability

- A. All applications for PUD shall be reviewed by the Development Review Board to determine if PUD meets the objectives outlined in §702.1, as well as development standards in applicable zoning districts, including overlay districts.
  - 1) A proposed PUD that requires a subdivision of land shall be reviewed as a major subdivision using the procedures and standards set forth for a major subdivision as described in §701 of this bylaw, and the standards under this Article. PUD approval will be issued concurrently with final subdivision and plat approval.
  - 2) A proposed PUD that requires no subdivision of land shall be reviewed as a conditional use, using the procedures and standards set forth for conditional uses as described in §209 of this bylaw, and the standards under this article. PUD approval will be issued concurrently with conditional use approval.
- B. Pursuant to the terms of 24 V.S.A. §4417, the Development Review Board may authorize densities and intensities of development that do not correspond with or

are not otherwise expressly permitted by this bylaw for the area in which a PUD is located. In furtherance thereof, the Development Review Board shall have the discretion to modify specific standards set forth in this bylaw when such modification would promote greater conformance with the purpose and intent of these bylaws, as set forth in §103, and the objectives for PUDs under §702.1, including without limitation:

- 1) Lot size, district setback and coverage requirements and maximum building heights.
  - 2) Limits on the density of development allowed on portions of the site to be developed.
  - 3) Setback and screening to ensure compatibility with the character of the area, maintain privacy of adjoining properties, and avoid degradation of the area's scenic quality.
  - 4) Parking, including modification of the number and location of spaces required.
  - 5) The location and physical characteristics of the proposed PUD.
  - 6) The location, design, type, and use of the lots and structures proposed.
  - 7) The amount, location, and proposed use of open space.
- C. All other applicable standards under this bylaw that are not modified by the Development Review Board and other municipal ordinances in effect shall apply.
- D. To encourage integrated master planning, a PUD may incorporate multiple adjoining properties in common ownership, or in separate ownership if a joint PUD application is filed by all participating property owners. One contact person shall be identified on a joint application to coordinate development review proceedings with participating property owners, and to facilitate communication with the Town.
- E. PUD subdivision approval shall not exempt subsequent development from site plan or conditional use review as applicable under these regulations. Site plan or conditional use review, however, may be conducted concurrently with final subdivision and PUD review.

### 702.3 PUD Applications

- A. In addition to the application information normally required for review, the application for a PUD shall also include, as applicable to the proposed development:
- 1) A statement setting forth the nature of all proposed modifications, changes, or supplement to the existing zoning bylaws including, but not limited to, proposed increases in the allowed density of development, and requested changes or waivers to district dimensional standards.
  - 2) Density calculations under §702.4 used to determine the overall density of development within the PUD and requested density bonuses under §702.7.
  - 3) A Preliminary Plan drawn to scale, indicating the locations and types of structures and uses to be included in the PUD, including building footprints or envelopes, use area allocations, building elevations and exterior design specifications.

- 4) The location, extent and intended use of open space, proposed resource conservation management plans or strategies, and conservation easements, deed restrictions, covenants or similar legal protections.
  - 5) For projects that include affordable housing and senior housing as defined under Article 11, associated administration and legal agreements shall ensure their availability to qualified households for a minimum of fifteen (15) years from the date of substantial completion.
  - 6) Proposed measures to mitigate or offset the adverse impacts of concentrated higher density or clustered development on identified natural, cultural and scenic resources and properties within and in the immediate vicinity of the planned development, and community facilities and services serving the development.
- B. Master Plan. A master plan must be submitted for any PUD that incorporates multiple properties under separate ownership or is to be developed in phases. At minimum the master plan shall include site or subdivision plans and narratives that generally depict and describe for each portion or phase of the proposed development:
- 1) The locations and types of existing and planned structures and uses.
  - 2) The locations of existing and planned connecting roads, parking areas, and sidewalks or walking paths.
  - 3) The locations of existing and planned utility corridors and shared or community water, wastewater, waste management and group net-metered renewable energy systems.
  - 4) The location, extent and intended use of designated open space areas.
  - 5) The overall level of intensity of development at build-out, including the projected number of households, residents or occupants, trip generation rates, and the maximum design capacity of buildings and infrastructure, including roads and parking areas.
  - 6) A schedule for the phasing of development in relation to the available capacity of existing and planned infrastructure and facilities intended to serve the proposed development.
  - 7) Evidence of established and proposed ownership patterns and interests in the coordinated, integrated and cohesive development of the proposed project.
- C. Final Plan. If the PUD is being reviewed as a major subdivision or if the developer is proposing a change to the approved Preliminary Plan, a Final Plan will be required. A Final Plan may only deviate from the layout originally shown in the Preliminary Plan, provided that:
- 1) The overall density of the PUD remains unchanged.
  - 2) The PUD does not incorporate any uses not previously identified in the PUD Preliminary Plan.
  - 3) The boundaries of the parcel containing the PUD remain unchanged.
- D. Performance Bond. Development Review Board may require from the applicant, for the benefit of the Town, a performance bond or other acceptable surety in an amount sufficient to cover the full cost of constructing any public improvements that the Development Review Board may require in approving the project, such performance bond to be submitted prior to commencement of the approved plan.



- 1) If the proposed subdivision requires road construction or any public improvement, the Development Review Board may, in accordance with §4464(b)(2),(6) of the Act, require as a condition of Final Subdivision Plan Approval, a performance bond to cover the expenses of such project. Security that the project shall be completed may be required in the form of a:
  - a) Surety bond, issued by a survey company authorized to do business in Vermont, to be filed with the Town of Derby Selectboard in form and amount satisfactory to it; or
  - b) Letter of credit, cash, escrow account, or savings bank book properly endorsed to the Town of Derby in an amount to be determined by the Town of Derby Selectboard; or
  - c) Performance bond from the developer or contractor.
- 2) The performance guarantee shall not be released until the Development Review Board has certified substantial completion of the project in accordance with the conditions of Final Subdivision Plan approval. The performance bond shall run for a term to be fixed by the Development Review Board, but no longer than three (3) years, without the written consent of the subdivider.
- 3) If the project has not been substantially completed in accordance with the conditions of Final Subdivision Plan approval, and within the term of the performance bond, the bond shall be forfeited to the Town of Derby and upon receipt of the proceeds, the Town of Derby shall install or maintain such improvements as are covered by the performance bond.
- 4) The Development Review Board may also require surety covering the maintenance of the project for a period of two (2) years after acceptance by the Town. Surety shall be not less than ten (10) percent of the estimated cost of the project.

#### 702.4 Density Calculations.

Total allowable building lots, or commercial uses within a PUD shall not exceed the number which would be permitted if, in the Development Review Board's judgment, the land were subdivided and developed into lots in conformance with zoning district regulations, unless a density bonus is granted under §702.7 below.

- A. Calculations of the allowed overall density of development shall be based on total parcel acreage, excluding existing and proposed road rights-of-way, and lot size requirements for the zoning district(s) in which the development is located. This calculation of the site's overall "yield" shall be used to determine the number and type of building lots or units that may be clustered at higher densities on those portions of the site or parcel that are most physically suited for development, in conformance with this bylaw. For this purpose, accessory dwelling units, as described in §401.4(D), shall not be included in density calculations.
- B. For PUD on two or more adjoining parcels, the allowed overall density shall be calculated as the sum of the allowed density for each parcel; however building lots or units may be transferred from one parcel to developable areas on another parcel.
- C. For a PUD within two or more zoning districts, the allowed overall density of development shall be the sum of the allowed density calculated for each area of the PUD within a particular zoning district, using the density and dimensional standards for that district. Density (building lots or units) may then be transferred

from those portions of the site or parcel(s) within the lower density zoning district(s) to developable portions of the site or parcel(s) within the higher density zoning district(s).

#### 702.5 General Standards

- A. Town Plan. The PUD must conform to and be consistent with applicable goals, policies and objectives of the Derby Town Plan.
- B. Layout and Design. In approving a proposal for a PUD, the Development Review Board must find that the proposal meets the following standards, with respect to both its internal design and its relationship to its surroundings. The PUD shall provide for unified, logical and functionally integrated site development that:
  - 1) Incorporates and preserves existing site features in site or subdivision layout and design, including existing topography, drainage and vegetative cover (e.g., shade trees, groundcover, riparian buffers), particularly as necessary to minimize surface runoff and soil erosion, and the visual impacts of higher density development.
  - 2) Establishes or reinforces planned patterns and densities of development for the zoning district(s) in which it is located.
  - 3) Concentrates or clusters development on the most physically developable portion the site(s), in conformance with this bylaw; and excludes from development areas of very steep slope (greater than or equal to twenty five percent (25%), designated flood hazard areas, and surface waters, wetlands and associated buffers.
  - 4) Features consistent design and an overall high quality of construction and attractiveness;
  - 5) Maximizes the privacy of individual residential units included in higher density residential and mixed use development (e.g., through building design, landscaping, buffering, or architectural screening).
  - 6) Incorporates a pedestrian-friendly network of interconnecting walkways, trails and bikeways that provide alternatives to motor vehicle use.
- C. Traffic. The PUD shall not cause, or contribute to the degeneration of the Level of Service (LOS) on public highways and intersections below LOS C, or their current LOS, if lower than a C, unless the Development Review Board finds that, for a particular project, a lower LOS is appropriate to the setting, justified to avoid or minimize the adverse impacts of related traffic improvements on adjoining properties and resources, and the lower LOS does not jeopardize public safety.
- D. Phasing. The PUD shall provide for phased growth, if necessary, to prevent overburdening the existing and planned capacity of community facilities and services.

#### 702.6 Open Space Standards

- A. Designation. All PUD shall incorporate designated open space areas, as depicted on the site plan or subdivision plat, that are appropriate to the type, location and purpose of the planned development. Designated open space may include one or more common greens, playgrounds, pocket parks, community gardens or other,

more formal open space areas for use by the occupants or the general public as designated open space.

- B. Characteristics. Designated open space shall be of a character, size, extent, and shape suitable for its intended purpose or use. Designated open space areas shall not include building lots, road rights-of-way, access or parking areas, but may include other commonly held land (e.g., community water supply and wastewater system areas) only if intended open space uses can also be functionally supported.
- C. Ownership. Designated open space areas may be held in common or single ownership to include:
  - 1) Ownership by non-profit community association, corporation, or cooperative organized under the laws of Vermont (e.g., a condominium or homeowners' association), that is responsible for maintenance of all open space, as well as roadways, and other common elements of the development.
  - 2) Dedication of designated open space (e.g. a park, playground, or conserved parcel), through conveyance of land or interests in land, to a public or nonprofit entity acceptable to the Development Review Board, such as the Town of Derby, a state or federal agency, or a land trust.
- D. Management. Designated open space areas shall be managed by the owner for its intended purpose and use, as approved by the Development Review Board. The Board may require the submission of a long-term management plan for the protection and sustainable management of conserved resources.
- E. Protection. No future subdivision or development of designated open space, as approved by the Development Review Board shall be allowed, except as incidental to its intended use.
  - 1) Designated open space areas shall be clearly identified on the site plan or subdivision plat recorded in the town land records as "protected open space," with an accompanying notation that no further subdivision or development is allowed.
  - 2) A PUD shall carry with it provisions, whether by deed restrictions, restrictive covenants, easements, or other appropriate legal means as approved by the Development Review Board, to ensure the permanent retention of designated open space.

#### 702.7 Density Bonuses

- A. The Development Review Board, at the request of the applicant, may grant one or more density bonuses as an incentive to meet the following objectives for planned mixed use or clustered development. Density bonuses, as applied in combination, shall not increase the overall density of development by more than one hundred percent (100%), based on "yield" calculations under §702.4.
  - 1) Affordable Housing. A density bonus of up to fifty percent (50%) may be considered for PUD that meets the definition of affordable housing development under Article 10, as determined from current federal housing and income data, and secured by associated administration and legal agreements to ensure their availability to qualified households for a minimum of fifteen (15) years from the date a Certificate of Occupancy is issued.

- 2) **Public Dedication.** A density bonus of up to fifty percent (50%) may be considered for PUD that includes the permanent dedication of land, interests in land or facilities for public access or use (e.g., trail, park, playground, conservation area), as accepted by the Town of Derby, the state, a federal agency, or a qualified nonprofit organization acceptable to the Development Review Board (e.g., a trails association or land trust).
  - 3) **Open Space.** A density bonus of up to fifty percent (50%) may be considered for a PUD that designates at least fifty percent (50%) of the gross area as open space.
  - 4) **Building Design.** A density bonus of up to fifty percent (50%) may be considered for PUD that incorporates one or more of the following design features, as certified by a professional architect or engineer licensed by the state:
    - a) Energy efficient building design that exceeds minimum state energy efficiency standards for residential and commercial buildings.
    - b) Residential development in which single family units do not exceed 1,500 square feet, and two- and multi-family dwellings do not exceed 1,200 square feet.
    - c) Universal, barrier free architectural design that creates buildings and environments that are inherently accessible to the able-bodied, elderly and physically disabled without additional adaptation or specialization, beyond minimum Americans with Disabilities Act guidelines.
- B. In order for the Development Review Board to grant one or more density bonuses, the applicant must:
- 1) Clearly document that the developable portion of the parcel(s) and supporting roads, infrastructure, utilities and services can accommodate higher densities of development.
  - 2) Incorporate measures in development design necessary to mitigate the adverse impacts of higher density development on designated open space areas and conserved resources, adjoining properties, and the character of the area affected by the development.

## **§ 703 Mobile Home Parks**

### **703.1 New and Proposed Expansions Mobile Home Parks**

All new and proposed expansions of mobile home parks shall be submitted for site plan approval by the Development Review Board. Submitted materials shall include a site plan drawn to scale 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.

#### **A. Mobile Home Park Design Standards**

The following regulations shall apply to mobile home parks:

- 1) A mobile home park shall have an area of not less than five (5) acres.
- 2) Mobile home parks shall provide for individual mobile home spaces, access driveways, parking and recreational open spaces.
- 3) Each mobile home space shall be a minimum of sixty (60) feet wide, at least eight thousand (8,000) square feet in area and shall front on an access driveway.

- 4) All access driveways within a mobile home park shall have a right of way of at least fifty (50) feet in width. All access driveways shall be a minimum of twenty-five (25) feet in width with a base of compacted gravel at least twelve inches in depth.
- 5) Two parking spaces at least ten (10) feet wide and twenty-two (22) feet long shall be provided for each mobile home lot. All parking spaces shall have a base of compacted gravel at least twelve (12) inches in depth.
- 6) Mobile home parks shall provide at least twenty-five percent (25%) of the total land area for recreation and other open space purposes.
- 7) A level compacted surface shall be provided for each mobile home.
- 8) Each mobile home space shall have a hook up for water supply which is adequate, safe and potable. The water supply source must comply with all state and local regulations.
- 9) Each mobile home space shall have a hook-up for sewage disposal. The method of sewage disposal must comply with all state and local regulations; however, it shall not be located on the home space unless that space is at least one (1) acre in size.
- 10) A strip of land at least twenty-five (25) 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 (50) feet in width.
- 11) Provision for the disposal of household garbage and rubbish shall be made.
- 12) An electrical source supplying at least one hundred (100) amps, two hundred twenty (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.

B. 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:

- 1) Mobile home units located in mobile home parks shall be placed only in spaces approved by the Development Review Board.
- 2) Mobile home units and additions shall be placed a minimum of twenty (20) feet from access drives and a minimum of fifteen (15) feet from the approved space line, no unit shall be placed closer than thirty (30) feet to any other unit.
- 3) Accessory structures shall be placed a minimum of twenty (20) feet from access drives and five (5) feet from the approved space line.
- 4) Mobile home units, accessory structures and additions shall not exceed thirty three point three percent (33.3%) footprint coverage of an approved mobile home space.

703.2 Non-conforming Mobile Home Parks

The current locations of mobile home units and additions in non-conforming mobile home parks or non-conforming placements of those units or additions may continue indefinitely

in their original footprints and be replaced in their original or smaller footprints. Accessory structures may be replaced in their original or smaller footprints within six months of removal or destruction. Replacing mobile home units, accessory structures and additions with structures greater than their original footprints may be permitted only in conformity to the following regulations:

A. Non-conforming Mobile Home Park Design Standards

- 1) Two parking spaces at least ten (10) feet wide and twenty-two (22) feet long shall be provided for each mobile home lot. All parking spaces shall have a base of compacted gravel at least twelve (12) inches in depth.
- 2) A level compacted surface shall be provided for each mobile home.
- 3) Each mobile home space shall have a hook up for water supply which is adequate, safe and potable. The water supply source must comply with all state and local regulations.
- 4) Each mobile home space shall have a hook-up for sewage disposal. The method of sewage disposal must comply with all state and local regulations; however, it shall not be located on the home space unless that space is at least one (1) acre in size.
- 5) Provision for the disposal of household garbage and rubbish shall be made.
- 6) An electrical source supplying at least one hundred (100) amps, two hundred twenty (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.

B. Placement of mobile home units, accessory structures and additions

The purpose of these regulations is to protect the public health, safety and welfare. Placement of structures shall conform to the following provisions:

- 1) Mobile home units, accessory structures and additions shall be placed only in existing mobile home spaces.
- 2) Any increase in the footprint to an existing mobile home unit or addition shall be placed a minimum of twenty (20) feet from access drives and a minimum of fifteen (15) feet from the approved space line, no unit shall be placed closer than thirty (30) feet to any other unit.
- 3) Any increase in the footprint to an existing accessory structure shall be placed a minimum of twenty (20) feet from access drives and five (5) feet from the approved space line.
- 4) Mobile home units, accessory structures and additions shall not exceed thirty three point three percent (33.3%) footprint coverage of an approved mobile home space.

C. With the approval of the Development Review Board, any increase to the footprint of the existing structures not conforming to setback requirements in §703.2(B)(2) and §703.2(B)(3) may be enlarged, altered, or extended provided any enlargement, alteration, or extension does not bring the structure any closer to the property line causing the nonconformity or create a new nonconformity with another property line. The Development Review Board shall use the Conditional Use criteria in making their decision.

## **ARTICLE 8: LIMITATIONS AND VARIANCES**

### **§ 801 Limitations**

801.1 In accordance with VSA Title 24 §4413,

- A. The following uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use:
  - 1) Public utility power generating plants and transmission lines;
  - 2) State or community owned and operated institutions and facilities;
  - 3) Public and private schools and other educational institutions certified by the Vermont Department of Education;
  - 4) Churches and other places of worship, convents, and parish houses.;
  - 5) Public and private hospitals;
  - 6) Regional solid waste management facilities certified under VSA Title 10 Chapter 159;
  - 7) Hazardous waste management facilities for which a notice of intent to construct has been received under VSA Title 10 §6606a.
- B. Except for State-owned and -operated institutions and facilities, a municipality may regulate each of the land uses listed in subdivision (A) of this subsection for compliance with the National Flood Insurance Program and for compliance with a municipal ordinance or bylaw regulating development in a flood hazard area or river corridor, consistent with the requirements of VSA Title 24 §2291(25) and §4424. These regulations shall not have the effect of interfering with the intended functional use.

801.2 A bylaw under this chapter shall not regulate electric generation facilities, energy storage facilities, and transmission facilities regulated under VSA Title 30 §248 or subject to regulation under VSA Title 30 §8011.

801.3 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.

801.4 Agricultural/Silvicultural Uses

- A. A bylaw shall not regulate:
  - 1) Required agricultural practices, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets;
  - 2) Accepted silvicultural practices, as defined by the Commissioner of Forests, Parks and Recreation, including practices which are in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation; or
  - 3) Forestry operations.

- B. As used in this section:
- 1) "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 VSA Title 10 §6001(22), but excludes a dwelling for human habitation.
  - 2) "Forestry operations" has the same meaning as in VSA Title 10 §2602.
- C. 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.
- D. This subsection does not prevent an appropriate municipal panel, when issuing a decision on an application for land development over which the panel otherwise has jurisdiction under this chapter, from imposing reasonable conditions under VSA Title 24 §4464(b) to protect wildlife habitat, threatened or endangered species, or other natural, historic, or scenic resources and does not prevent the municipality from enforcing such conditions, provided that the reasonable conditions do not restrict or regulate forestry operations unrelated to land development.
- 801.5 A bylaw shall be subject to the restrictions created under VSA Title 24 §2295, with respect to the limits on municipal power to regulate hunting, fishing, trapping, and other activities specified under that section.
- 801.6 This section shall apply in every municipality, notwithstanding any existing bylaw to the contrary.
- 801.7 Notwithstanding any provision of law to the contrary, a bylaw shall not:
- A. Regulate the installation, operation, and maintenance, on a flat roof of an otherwise complying structure, of a solar energy device that heats water or space or generates electricity. For the purpose of this subdivision, "flat roof" means a roof having a slope less than or equal to five degrees.
  - B. Prohibit or have the effect of prohibiting the installation of solar collectors not exempted from regulation under subdivision (A) of this subsection, clotheslines, or other energy devices based on renewable resources.
- 801.8 Except as necessary to ensure compliance with the National Flood Insurance Program, a bylaw shall not regulate any of the following:
- A. Telecommunications equipment and site improvements that are primarily intended to serve a telecommunications facility, including equipment cabinets or shelters and emergency backup generators, that does not exceed a footprint of three hundred (300) square feet and a height of ten (10) feet.
  - B. The following improvements associated with the construction or installation of a communications line:
    - 1) The attachment of a new or replacement cable or wire to an existing electrical distribution or communications distribution pole.
    - 2) The replacement of an existing electrical distribution or communications distribution pole with a new pole, so long as the new pole is not more than ten (10) feet taller than the pole it replaces.



## § 802 APPEAL - VARIANCES

### 802.1 Variances

In accordance with VSA Title 24 §4469, a variance from the provisions of a bylaw may be requested for a structure. Such a request may be applied for directly to the Development Review Board or as an appeal of the action of the Administrative Officer.

- A. On an appeal under Title 24 §4465 or §4471 or on a referral under VSA Title 24 §4460(e) in which a variance from the provisions of a bylaw or interim bylaw is requested for a structure that is not primarily a renewable energy resource structure, the Development Review Board shall 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:
- 1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located;
  - 2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
  - 3) That the unnecessary hardship has not been created by the appellant;
  - 4) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and
  - 5) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the Town Plan.
- B. On an appeal under VSA Title 24 §4465 or §4471 in which a variance from the provisions of a bylaw or interim bylaw is requested for a structure that is primarily a renewable energy resource structure, the Development Review Board may grant that variance and render such decision in favor of the appellant if all the following facts are found and the finding is specified in its decision:
- 1) It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with the bylaw;
  - 2) That the hardship was not created by the appellant;
  - 3) 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, or be detrimental to the public welfare; and

- 4) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and the Town Plan.
- C. In rendering a decision in favor of an appellant under this Section, The Development Review Board may attach such conditions to variances as it may consider necessary and appropriate under the circumstances to implement the purposes of Title 24 Chapter 117 and the Town Plan.
- D. If the proposed development is located within any Flood Hazard Area, the proposal shall comply with 44 C.F.R. §60.6. Any variance issued in the Flood Hazard Area shall not increase flood heights and shall inform the applicant in writing over the signature of a community official that the issuance of a variance to construct a structure below the BFE increases risk to life and property and will result in increased flood insurance premiums up to amounts as high as \$25 for \$100 of coverage. Such notification shall be maintained with a record of all variance actions.

#### 802.2 Appeals of Decisions of the Administrative Officer

- A. Any interested person, as defined in VSA Title 24 §4465(b), may appeal any decision or act taken by the administrative officer in any municipality by filing a notice of appeal with the secretary of the development review board of that municipality or with the clerk of that municipality if no such secretary has been elected. This notice of appeal must be filed within fifteen (15) days of the date of that decision or act, and a copy of the notice of appeal shall be filed with the administrative officer.
- B. A notice of appeal shall be in writing and shall include the name and address of the appellant, a brief description of the property with respect to which the appeal is taken, a reference to the regulatory provisions applicable to that appeal, the relief requested by the appellant, and the alleged ground why the requested relief is believed proper under the circumstances.

#### 802.3 Procedures

- A. The Development Review Board shall set a date and place for a public hearing of an appeal or variance that shall be within sixty (60) days of the filing of the notice of appeal under VSA Title 24 §4465.
- B. In determining whether an appeal or variance shall be granted, the Development Review Board shall be required to give consideration to any factual evidence presented by any person who would be classified as an “interested person” by VSA Title 24 §4465(b). Upon filing an appeal or requesting a variance appellants and applicants shall submit:
  - 1) 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;
  - 2) An application form deemed complete and accurate by the Administrative Officer;
  - 3) Fees required for the application and public hearing;

Derby Zoning Bylaw – As amended July 24, 2023

- 4) A narrative describing the purposes of the appeal or variance request;
- 5) For variances, documentation of the applicability of the variance criteria defined in §802.1(A) or §802.1(B);
- 6) A list of names and addresses of all abutters;
- 7) Addressed stamped envelopes for all abutting property owners; and
- 8) Any other information deemed relevant by the Development Review Board.

## **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 four (4) years, and these terms shall be staggered so that no more than two members shall be reappointed or replaced during any future calendar year. The Selectboard shall appoint five (5) 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 Development Review Board.
- 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

As per VSA Title 24 Chapter 117 the Planning Commission may:

- 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, except to the extent that those functions are performed by a development review board.
- D. 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. Data gathered by the Planning Commission that is relevant to the geographic information system established under VSA Title 3 §20 shall be compatible with, useful to, and shared with that system.
- E. Prepare and present to the Selectboard recommended build, plumbing, fire, electrical, housing, and related codes and enforcement procedures, and construction specifications for streets and related public improvements.
- F. Prepare and present a recommended capital budget and program for a period of five (5) 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. Require from other departments and agencies of the Town of Derby such available information as relates to the work of the Planning Commission.
- I. In the performance of its functions, enter upon land to make examinations and surveys.
- J. Participate in a regional planning program.
- K. Retain staff and consultant assistance in carrying out its duties and powers.
- L. Undertake comprehensive planning, including related preliminary planning and engineering studies.
- M. 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 Development Review Board**

#### 903.1 Appointment

- A. Members of the Development Review Board shall be appointed and any vacancy filled by the Selectboard. The term of each member shall be for four (4) years, and these terms shall be staggered so that no more than two (2) members shall be reappointed or replaced during any future calendar year. The Selectboard shall appoint 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 Development Review Board shall be residents of the Town of Derby and may include as many as two (2) members of the Planning Commission.
- B. The Development Review Board 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 Development Review Board 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 Development Review Board shall be held at the call of the chairperson 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 Development Review Board

- A. The following review functions shall be performed by the Development Review Board. Unless the matter is an appeal from the decision of the Administrative Officer, the matter shall come before the Development Review Board by referral from the Administrative Officer. Any such referral decision shall be appealable as a decision of the Administrative Officer.
  - 1) Review of Right-of-Way or easements for land development without frontage as authorized in VSA Title 24 §4412(3);
  - 2) Review of land development or use within an historic district or with respect to historic landmarks as authorized in VSA Title 24 §4414(1)(F);
  - 3) Review of land development or use within a design control district as authorized in VSA Title 24 §4414(1)(E);
  - 4) Review of proposed conditional uses as authorized in VSA Title 24 §4414(3);
  - 5) Review of planned unit developments as authorized in VSA Title 24 §4417;
  - 6) Review of requests for waivers as authorized in VSA Title 24 §4414(9);
  - 7) Site plan review as authorized in VSA Title 24 §4416;
  - 8) Review of proposed subdivisions as authorized in VSA Title 24 §4418;
  - 9) Review of wireless telecommunications facilities as authorized in VSA Title 24 §4414(12);
  - 10) Appeals from a decision of the Administrative Officer pursuant to VSA Title 24 §4465;
  - 11) Review of requests for variances pursuant to VSA Title 24 §4469;

12) Any other reviews required by the bylaws.

### 903.3 Notice Procedures

Notice requirements for all development review applications before the Development Review Board shall be in accordance with VSA Title 24, §4464(a).

### 903.4 Decisions

All decisions by the Development Review Board shall be in accordance with VSA Title 24 §4464b

## **§ 904 Zoning Permit Administrative Review**

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 Application Requirements:

- A. An application for a zoning permit shall be filed with the Administrative Officer on form(s) provided by the municipality.
- B. Required application fees, as set by the Selectboard, also shall be submitted with each application.
- C. All applications should include a sketch plan, no smaller than 8.5” x 11”, that depicts the following:
  - 1) The dimensions of the lot, including existing property boundaries,
  - 2) The location and footprint of existing and proposed structures or additions,
  - 3) The location of existing and proposed accesses (curb cuts), driveways and parking areas,
  - 4) The location of existing and proposed easements and rights-of-way,
  - 5) Setbacks from property boundaries, road rights-of-way, surface waters and wetlands,
  - 6) The location of existing and proposed water and wastewater systems, and
  - 7) Other such information as required by the Administrative Officer to determine conformance with these regulations.

904.3 Development requiring approval(s) from the Development Review Board prior to the issuance of a zoning permit may require additional information. This information, as well as fees required for such approvals, shall be submitted concurrently with the

application for a zoning permit. An application that is not accompanied by all the required fees will not be subject to development review until such fees have been paid.

904.4 Within thirty (30) days of receipt of a complete application, including all application materials and fees, the Administrative Officer shall either issue or deny a zoning permit in writing, or refer the application to the Development Review Board for consideration. If the Administrative Officer fails to act within the 30-day period, a permit shall be deemed issued on the 31st day.

904.5 Zoning permits and letters of denial shall include a statement of the time within which appeals may be taken; and shall require posting a notice of permit, on a form provided by the Town of Derby. The Applicant shall post this notice of permit within view from the public right-of-way nearest the subject property until the time for appeal has expired.

904.6 Within three (3) days of the date of issuance, the Administrative Officer shall deliver a copy of the zoning permit to the Town of Derby Listers, and shall post a copy of the permit in the Town of Derby municipal offices for a period of fifteen (15) days from the date of issuance.

904.7 No zoning permit shall take effect until the time for appeal has passed, or in the event that a notice of appeal is properly filed, until final adjudication of the appeal.

904.8 Zoning permits shall remain in effect for two (2) years from the date of issuance. All development authorized by the permit shall be substantially commenced within this two (2) year period, or reapplication shall be required to continue development.

904.9 Within thirty (30) days of the issuance of a zoning permit, the Administrative Officer shall deliver the original, a legible copy, or a notice of the permit to the Derby Town Clerk for recording in the Town of Derby land records.

904.10 In the issuance of zoning permits, the Administrative Officer shall comply with all the provisions of VSA Title 24 Chapter 117.

904.11 Fees for zoning permits shall be set by the Selectboard.

## **§ 905 Certificates of Occupancy**

905.1 With the exception of single-family dwellings or two-family dwellings not within the Special Flood Hazard Area, residential accessory structures or uses, and exempt agricultural structures, a Certificate of Occupancy is required for:

- A. The occupancy and use of 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.
- E. Any new or substantially improved residential dwelling with the Special Flood Hazard Area as per §607.4(C).



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 Development Review Board.

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

#### **§ 906 Penalties**

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

#### **§ 907 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 §4441 and 4442 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 §4442 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. Examples include, garages, garden and tool sheds, and playhouses, but do not include “accessory dwellings.”

Accessory Structure (for the purposes of floodplain management): A structure which is: 1) detached from and clearly incidental and subordinate to the principal use or structure on a lot, 2) located on the same lot as the principal structure or use, 3) clearly and customarily related to the principal structure or use, and 4) only used for vehicle parking, storage, or primarily building access. Examples include, garages, garden and tool sheds, and playhouses, but do not include “accessory dwellings.”

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.

Affordable Housing: Affordable Housing means either of the following:

(A) Owner-occupied housing for which the total annual cost of ownership, including principal, interest, taxes, insurance, and condominium association fees, does not exceed thirty (30) percent of the gross annual income of a household at one hundred twenty (120) percent of the highest of the following:

- (i) the county median income, as defined by the U.S. Department of Housing and Urban Development;
- (ii) the standard metropolitan statistical area median income if the municipality is located in such an area, as defined by the U.S. Department of Housing and Urban Development; or
- (iii) the statewide median income, as defined by the U.S. Department of Housing and Urban Development.

(B) Rental housing for which the total annual cost of renting, including rent, utilities, and condominium association fees, does not exceed thirty (30) percent of the gross annual income of a household at eighty (80) percent of the highest of the following:

- (i) the county median income, as defined by the U.S. Department of Housing and Urban Development;
- (ii) the standard metropolitan statistical area median income if the municipality is located in such an area, as defined by the U.S. Department of Housing and Urban Development; or
- (iii) the statewide median income, as defined by the U.S. Department of Housing and Urban Development.

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: Synonymous in meaning with the term “special flood hazard area” for the purposes of this bylaw.

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

Associated Transportation and Utility Networks: Those transportation and utility networks connected to a bridge, culvert, or utility for the purpose of crossing a river or stream and do not include transportation or utility networks within the river corridor that merely run parallel to a river or stream.

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: The flood having a one percent chance of being equaled or exceeded in any given year (commonly referred to as the “100-year flood”).

Base Flood Elevation (BFE): The elevation of the water surface elevation resulting from a flood that has a one percent chance of equaling or exceeding that level in any given year. On the Flood Insurance Rate Map the elevation is usually in feet, in relation to the National Geodetic Vertical Datum of 1929, the North American Vertical Datum of 1988, or other

datum referenced in the Flood Insurance Study report, or the average depth of the base flood, usually in feet, above the ground surface.

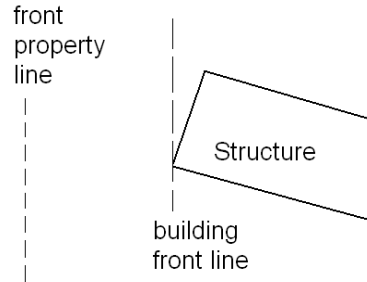
**Basement:** Any area of building, whether finished as usable space or not, having floor subgrade (below ground level) on all sides, definition includes cellar or crawl space.

**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.

**Boundary Line Adjustment:** The transfer of property by deed to a respective owner or owners of contiguous property for the purpose of adjusting a boundary line and not for the purpose of creating an additional lot or parcel.

**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:** Any lot of land containing four or more campsites occupied for vacation or recreational purposes by camping units, such as: tents, yurts, tepees, lean-tos, camping cabins, and recreational vehicles, including motor homes, folding camping trailers, conventional travel trailers, fifth wheel travel trailers, truck campers, van campers, and conversion vehicles designed and used for travel, recreation, and camping. There shall be no distinction made between noncommercial ( no charge, no service) and commercial operations.

**Cannabis Cultivation:** A lot or building used by a person licensed by the State to engage in the cultivation of cannabis.

**Cannabis Manufacturing:** A building used by a person licensed by the State to manufacture cannabis products.

Cannabis Retail: A building used by a person licensed by the State to sell cannabis and cannabis products to adults 21 years of age and older for off-site consumption.

Cannabis Testing Laboratory: A building used by a person licensed by the State to test cannabis and cannabis products.

Cannabis Wholesale: A building used by a person licensed by the Stat to purchase, process, transport, and sell cannabis and cannabis products.

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.

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

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.

Common Plan of Development: Where a structure will be refurbished or constructed under one approved plan or permit, but in separate stages, phases, or in combination with other construction activities. Such work may be planned unit by unit and may take place at different times, on different schedules.

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.

Compensatory Storage: A volume not previously used for flood storage and which shall be incrementally equal to or exceed the theoretical volume of flood water at each elevation, up to and including the base flood elevation, which would be displaced by the proposed project. Such compensatory volume shall have an unrestricted hydraulic connection to the same waterway or water body. Further, with respect to waterways, such compensatory volume shall be provided within the same reach of the river, stream, or creek.

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.

Construction Trailer: A vehicle which is: (1) built on a single chassis; (2) five hundred (500) square feet or less when measured at the largest horizontal projection; (3) designed to be self-propelled or permanently towable; and (4) designed for use as a temporary office

facility used to support management of a construction project, and not as a permanent structure.

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.

Critical Facilities: Facilities that are vital to public health and safety, including police stations, fire and rescue facilities, hospitals, shelters, schools, nursing homes, water supply and waste treatment facilities.

Design Flood Elevation: (DFE) in the Town of Derby means the Base Flood Elevation plus two feet.

Designated Center: A downtown, village center, new town center, growth center, or neighborhood development area designated pursuant to VSA Title 24 chapter 76A.

Development (for purposes of floodplain management): Any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

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.

Encroachment: Fill or development that reduces the functional river corridor (impairs the equilibrium condition) or increases flood levels.

Equilibrium Condition: The width, depth, meander pattern, and longitudinal slope of a stream channel that occurs when water flow, sediment, and woody debris are transported by the stream in such a manner that it generally maintains dimensions, pattern, and slope without unnaturally aggrading or degrading the channel bed elevation.

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.

**Fill:** Any placed material that changes the natural grade, increases the elevation, redirects the movement of flood water, or diminishes the flood storage capacity at the site. Temporary storage of material for less than 180 days is not considered fill.

**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:** Those hazards related to damage from flood-related inundation or erosion.

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

**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 watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the

water surface elevation more than one foot at any point. Please note that flood hazard areas and floodways may be shown on separate map panels.

Fluvial Erosion: The erosion or scouring of riverbeds and banks during high flow conditions of a river. Fluvial erosion is most likely to occur within the river corridor.

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.

Grading: The movement or replacement of topsoil or other material originating on the site and within the hazard area. Grading results in minor or no changes in topographic elevations. If new material is brought from outside the hazard area and such new material is not offset with an equal or greater removal of material from the portion of the site within the hazard area, the new material shall be considered “fill” and shall not be considered grading.

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.

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

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, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 C.F.R. §60.3.

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

Maintenance: Periodic actions required to keep up a condition that do not significantly change the materials or extent of an existing condition in the hazard area.

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

Manufactured Home Park: 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 used 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 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.

New Construction (for purposes of floodplain management): Structures for which the start of construction commenced on or after the effective date of floodplain management regulation adopted by the community and includes any subsequent improvements to such structures.

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.

Nonconforming Structure: 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 a structure improperly authorized as a result of error by the administrative officer. Structures that were in violation of the regulations in effect at the time of their creation, and remain so, remain violations and are not nonconforming structures.

Nonconforming Use: Use of land that does not conform to the present bylaws but did conform to all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a use improperly authorized as a result of error by the administrative officer.

Non-Residential: Includes: businesses, churches, schools, nursing homes, pool houses, clubhouses, recreational buildings, government buildings, mercantile structures, industrial structures, and warehouses.

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.

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

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.

Replacement Structure: A new building placed in the same footprint as the pre-existing building and does not include a change in use.

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).

**River:** The full length and width, including the bed and banks, of any watercourse, including rivers, streams, creeks, brooks, and branches which experience perennial flow. “River” does not mean constructed drainageways, including water bars, swales, and roadside ditches.

**River Corridor:** The land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel and that is necessary for the natural maintenance or natural restoration of a dynamic equilibrium condition and for minimization of fluvial erosion hazards, as delineated by the Vermont Agency of Natural Resources in accordance with river corridor protection procedures (VSA Title 10 §1422).

**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.

**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.

**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.

**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.

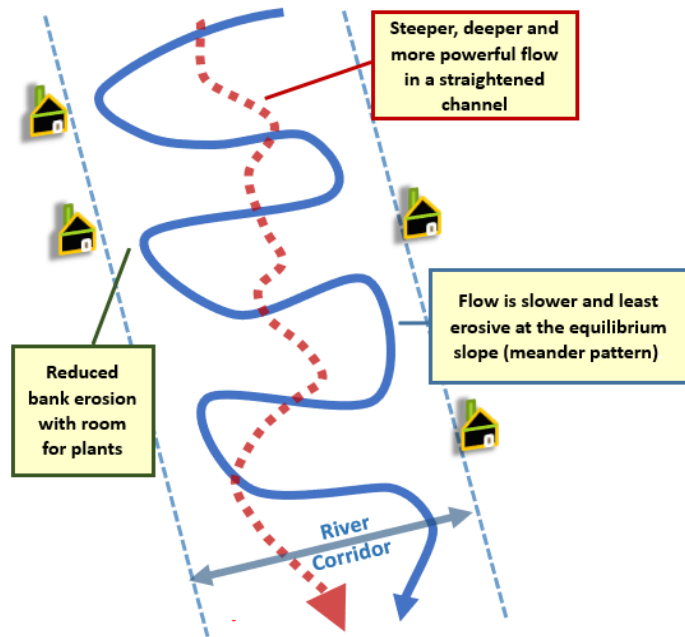


Figure 4 River Corridor Diagram showing room for river channel adjustments to minimize slope and erosive power.

**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.

**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.

**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.

**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.

**Start of Construction:** For purposes of floodplain management, determines the effective map or bylaw that regulated development in the special flood hazard area. The “start of construction” includes substantial improvement and means the date the building permit was issued provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured



home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footing, piers, or foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Storage: The aggregation of materials, items, or objects whether natural or human-made; that is kept as a stockpile, collection, or inventory; where individual materials from the stockpile, collection or inventory may change, but where the general footprint of the stored materials continues to be used for the same purpose; whether set upon the land or within a container, structure, or facility; and that would not otherwise be in compliance with these development standards.

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.

Structure (within a floodplain): A walled and roofed building, as well as a manufactured home, including gas or liquid storage tanks.

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. Boundary line adjustments (i.e. the relocation of lot lines between two or more lots, tracts, or parcels) are also considered subdivisions.

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

Substantial Improvement: Any repair, reconstruction, rehabilitation, addition, or other improvement of a structure after the date of adoption of this bylaw, the cost of which, over three years or over the period of a common plan of development, cumulatively equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage,” regardless of the actual repair work performed. The term does not, however, include either: (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been previously identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (b) Any alteration of an “historic structure,” provided that the alteration will not preclude the structure’s continued designation as an “historic structure.”

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

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.

**Top of Bank:** The point along a streambank where an abrupt change in slope is evident, and where the stream is generally able to overflow the banks and enter the adjacent floodplain during flows at or exceeding the average annual high water stage.

**Top of Slope:** A break in slopes adjacent to steep-banked streams that have little or no floodplain; or a break in slope where the side slopes adjacent to an incised, or deeply cut, channel meet floodplains that have been abandoned or are undergoing abandonment.

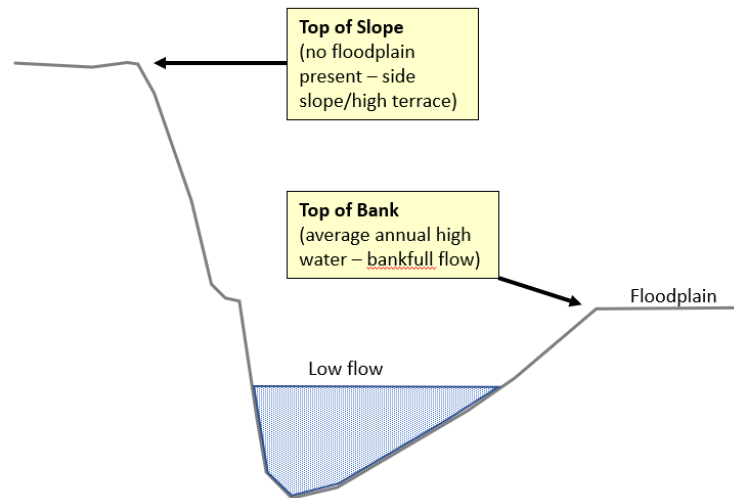


Figure 5 Diagram showing the Top of Bank where stream flows onto a floodplain and Top of Slope where floodplain access is not present.

**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.

Violation: The failure of a structure or other development to be fully compliant with this bylaw. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 C.F.R. §60.3 is presumed to be in violation until such time as that documentation is provided.

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.