

# **FAIRFAX DEVELOPMENT REGULATIONS**

**EFFECTIVE JUNE 10, 2024**

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Amended March 7, 2022  
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Amended September 19, 2016

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**Fairfax Development Regulations with Official Map**

We, the Fairfax Selectboard, hereby adopt this Development Regulation and Official Map as a strike-all and replace to the previous Development Regulation in accordance with 24 V.S.A. Chapter 117.

Adopted this 20th day of May, 2024 by the Selectboard of the Town of Fairfax.

Bryce Merrill

Tim Bunn

[Signature]

Randy Z. Deane 5/20/24

Stephen E. Bassett 5/20/24

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**ARTICLE 1. ESTABLISHMENT**

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**SECTION 1.01 TITLE**

1.01.A These are the Town of Fairfax Development Regulations and constitute the town's zoning, subdivision and flood hazard regulations.

**SECTION 1.02 AUTHORITY**

1.02.A The Town of Fairfax adopted these regulations in accordance with and under the authority of the *Vermont Municipal and Regional Planning and Development Act, 24 VSA Chapter 117*, and 10 VSA Chapter 32.

**SECTION 1.03 PURPOSE**

1.03.A These regulations implement the goals and policies of the *Fairfax Town Plan* and the *Vermont Municipal and Regional Planning and Development Act* as most recently amended. They are intended to:

- (1) Provide for orderly and coordinated development;
- (2) Ensure that land use and development will not adversely impact public health, safety and welfare;
- (3) Promote housing choice, affordability and quality in order to sustain a diverse population and conform to equal treatment and fair housing laws;
- (4) Facilitate the adequate and efficient provision of public services and facilities;
- (5) Ensure that land use and development will not adversely impact the reasonable use and enjoyment of adjoining property;
- (6) Ensure that there will be safe and adequate vehicular, pedestrian, cyclist and emergency access to and within development sites;
- (7) Ensure that development sites, structures and infrastructure are built and maintained in a safe and adequate condition;
- (8) Establish sound development and engineering standards that result in well-constructed projects that minimize their environmental and climate impacts, contribute positively to community character, and do not burden future landowners or the town with unreasonable costs to maintain or repair;

- (9) Protect agricultural, historic and cultural resources; and
- (10) Protect environmental quality and important natural resources including surface waters, wetlands, floodplains, riparian buffers and significant wildlife habitat and travel corridors.

#### **SECTION 1.04 EFFECTIVE DATE**

1.04.A These regulations will take effect in accordance with the procedures established in the *Vermont Municipal and Regional Planning and Development Act*.

#### **SECTION 1.05 AMENDMENT OR REPEAL**

1.05.A The Town of Fairfax may amend or repeal these regulations, in whole or part, at any time in accordance with the procedures established in the *Vermont Municipal and Regional Planning and Development Act*.

#### **SECTION 1.06 PRECEDENCE**

- 1.06.A If any provision of these regulations is more restrictive than any other law, regulation, rule or code, the provision of these regulations will apply and take precedence.
- 1.06.B If any provision of another law, or regulation, rule or code is more restrictive than these regulations, the provision of these regulations will be superseded and the more restrictive provision will apply.
- 1.06.C If these regulations are required to conform with a provision of state or federal law, regulation or code, a change in such a provision will take precedence over any conflicting provision of these regulations.
- 1.06.D No provision of these regulations will be interpreted to prevent the Town of Fairfax from acting to prevent or eliminate threats to public health, safety and welfare under the authority granted to the municipality by the State of Vermont.

**SECTION 1.07 SEVERABILITY**

1.07.A If a court of competent jurisdiction invalidates any provisions of these regulations, that decision will not affect the validity, application or enforcement of the remaining provisions of these regulations.

**SECTION 1.08 LIABILITY**

1.08.A These regulations do not create any liability on the part of the Town of Fairfax, its officials, agents, employees or representatives for alleged damages that result from reliance on these regulations or any lawful administrative action or decision taken under these regulations.

**SECTION 1.09 APPLICABILITY**

1.09.A Unless specifically exempted in these regulations, all land development within the Town of Fairfax requires a zoning permit or subdivision approval issued in accordance with these regulations. Land development means:

- (1) The division of a parcel into two or more parcels, or any other change in the location of lot lines;
- (2) The construction, reconstruction, demolition, structural alteration, conversion, relocation or enlargement of any structure;
- (3) Mining, excavating or filling land; or
- (4) Any change in or extension of the use of land or a structure.

1.09.B Within the flood hazard overlay district also see SECTION 2.13.

**SECTION 1.10 STATUTORY EXEMPTIONS**

1.10.A **Farming and Forestry Practices.** In accordance with state statute, landowners do not need to obtain a zoning permit to conduct required agricultural practices or accepted silvicultural practices as defined by the State of Vermont Agency of Agriculture or Department of Forests, Parks and Recreation, respectively. The Zoning Administrator may require a landowner to provide a written determination from the applicable state agency as to whether the subject land use activity is a required agricultural or accepted silvicultural practice.

- 1.10.B **Farm Structures.** In accordance with state statute, landowners do not need to obtain a zoning permit to build a farm structure in accordance with state regulations and the following:
- (1) Landowners must submit a zoning permit application demonstrating that proposed development qualifies as an exempt farm structure, but they do not have to pay the associated application fee.
  - (2) The Zoning Administrator may require landowners to provide a written determination from the Vermont Agency of Agriculture, Food and Markets as to whether proposed development qualifies as an exempt farm structure.
  - (3) Farm structures, other than walls or fences used for farming purposes, must meet the setback requirements for the district unless the applicant provides the Zoning Administrator with a written waiver from the Vermont Agency of Agriculture, Food and Markets.
  - (4) Farm structures are not required to meet bulk or height requirements for the zoning district.
  - (5) Walls or fences used for farming purposes must form a continuous barrier intended to keep livestock in and/or keep wildlife out. Such walls or fences are not required to meet setback requirements.
  - (6) Upon finding that the proposed development qualifies as an exempt farm structure, the Zoning Administrator will issue a letter stating that the landowner may build and use the structure for agricultural purposes in accordance with the state's required agricultural practices without a zoning permit, but that the owner must obtain a zoning permit before using the structure for any other purpose.
  - (7) Farm worker housing does not qualify as an exempt farm structure. However, the owner of an operating farm may apply for a zoning permit to construct or install not more than two detached one-unit dwellings or one detached two-unit dwelling to provide housing to farm employees and their families as an accessory use to the farm. Such dwellings must conform to the dimensional standards of the applicable zoning district and must be smaller in size and prominence than the principal farmhouse.
- 1.10.C **Development Subject to a Certificate of Public Good.** In accordance with state statute, landowners do not need to obtain a zoning permit for development associated with

utility, energy or telecommunications facility that receives a Certificate of Public Good from the Public Utilities Commission.

1.10.D **Solar Energy Devices.** In accordance with state statute, landowners do not need to obtain a zoning permit for a solar energy device that:

- (1) Will be installed on and project not more than 10 feet above the surface of a roof with a slope greater than 5%; or
- (2) Will be installed on a roof with a slope of 5% or less.

Landowners should be aware that building mounted solar photovoltaic systems are subject to Section 16 of the Town of Fairfax Building Inspections, Code Enforcement and Fire Safety Ordinance.

1.10.E **Antennas.** In accordance with state statute, landowners do not need to obtain a zoning permit for antennas (including television antennas, radio antennas, satellite dishes or similar devices used to provide on-site communication including business dispatch or to provide public safety dispatch) that:

- (1) Are not more than 15 square feet in area, if a dish antenna;
- (2) Do not extend more than 12 feet above the roofline, if attached to a building;
- (3) Do not extend more than 50 feet above the ground, if freestanding;
- (4) Meet applicable setback requirements for the zoning district;
- (5) Do not interfere with public safety communications; and
- (6) Are installed in a location that minimizes visibility from public vantage points and adjoining property to the greatest extent feasible while allowing for reasonable function.

1.10.F **Telecommunications Equipment.** In accordance with state statute, landowners do not need to obtain a zoning permit for telecommunications equipment and related site development that does not exceed a footprint of 300 square feet and a height of 10 feet.

1.10.G **Utility Poles and Lines.** In accordance with state statute, landowners do not need to obtain a zoning permit for electrical or communications distribution poles being:

- (1) Replaced with new poles (including an increase in pole height); or

(2) Repaired or upgraded with new or replacement cable or wire.

1.10.H **Wells and Septic Systems.** Landowners do not need to obtain a zoning permit for the installation, maintenance, repair and replacement of a well or septic system subject to a state Wastewater System and Potable Water Supply Permit.

1.10.I **Hunting, Fishing, Trapping or Shooting.** In accordance with state statute, landowners do not need to obtain a zoning permit to engage in non-commercial hunting, fishing, trapping or shooting activities on their property. A landowner will need to obtain a zoning permit to construct or install a structure associated with such activities unless the structure is specifically exempted in SECTION 1.11.

## SECTION 1.11 GENERAL EXEMPTIONS

1.11.A **Interpretation.** The standards of these regulations, including but not limited to setbacks and other dimensional requirements of the applicable zoning district, do not apply to land development exempted by this section unless specifically stated.

1.11.B **Flood Hazard Overlay District.** The exemptions listed below may not apply within the flood hazard overlay district. See SECTION 2.13.

1.11.C **Exempt Land Use and Development Activities.** A zoning permit is not required for:

- (1) **Emergency repair and stabilization** of a structure damaged by any cause to the extent necessary to protect public health and safety, and to protect the damaged structure from the elements.
- (2) **Normal maintenance and repair** of existing structures.
- (3) **Interior alterations** that do not increase the floor area within the structure.
- (4) **Additions** that do not increase the building footprint by more than 200 square feet and that conform to the dimensional standards of the applicable zoning district.
- (5) **Accessory structures** that:
  - (a) Have a footprint that does not exceed 200 square feet;
  - (b) Are not more than 15 feet tall;
  - (c) Are not closer than 5 feet to any side or lot line except that no rear setback requirement will be applied in the Village district;

- (d) Are located behind the frontline of the principal building on the lot in the Village and Residential districts; and
  - (e) Are not used as a dwelling or lodging unit.
- (6) **Accessibility structures** such as ramps, entry stairs, walkways or elevators that do not:
- (a) Extend into or obstruct a public right-of-way;
  - (b) Interfere with corner visibility or sight distance for vehicular traffic; or
  - (c) Affect existing drainage patterns on adjacent lots or public rights-of-way.
- (7) **Fences or walls** that:
- (a) Do not extend into or obstruct a public right-of-way;
  - (b) Do not interfere with corner visibility or sight distance for vehicular traffic;
  - (c) Do not affect existing drainage patterns on adjacent lots or public rights-of-way;
  - (d) Do not pose a safety hazard;
  - (e) Are not designed to inflict physical harm; and
  - (f) Are installed so that any support posts are to the inside and the “finished” or “good” side faces out.
- (8) **Unroofed patios or decks** that:
- (a) Have a footprint that does not exceed 200 square feet; and
  - (b) Meet applicable setback and lot coverage requirements for the zoning district.
- (9) **Swimming pools** that:
- (a) Do not exceed a horizontal width of 24 feet in any dimension or a depth of 5 feet;
  - (b) Meet applicable setback and lot coverage requirements for the zoning district; and
  - (c) Are installed and secured to prevent unauthorized access.
- (10) **One storage trailer per lot** that:
- (a) Does not exceed a footprint of 200 square feet;
  - (b) Is not built on a durable in-ground foundation, footing or slab; and
  - (c) Meets applicable setback and lot coverage requirements for the zoning district.

- (11) **Private recreational activities** on residential property for noncommercial purposes.
- (12) **Landscaping, grading and excavating** for noncommercial purposes that does not affect existing drainage patterns on adjacent lots or public rights-of-way.
- (13) **Pre-development site work** consisting of the minimum amount of land clearing and improvement necessary to access undeveloped land for the purposes of completing the site design and engineering work (such as land surveying and soil testing) needed to submit an application for land development under these or other regulations.
- (14) **Home businesses** that (for home occupations or industries that do not qualify for this exemption see PARAGRAPH 1.12.C or SECTION 4.05):
  - (a) Are located within a dwelling unit or accessory structure with no exterior evidence of the business use;
  - (b) Do not have any non-resident employees working on the premises; and
  - (c) Do not have a sign.
- (15) **Family childcare homes** that:
  - (a) Are operated by a resident of the dwelling;
  - (b) Are registered with the state and conform to all applicable state health and safety codes; and
  - (c) Do not provide care for more than 6 children on a full-time basis (more than 4 hours per day) and 4 children on a part-time basis (not more than 4 hours per day), not including any children who live in the home.
- (16) **Casual sales** (such as garage sales, yard sales, lemonade stands) that are held on residential property and occur not more than 6 days in any calendar year.
- (17) **Farmstands** that sell locally grown agricultural products and that operate for not more than 180 days in any calendar year.
- (18) **Concession stands** that are operated by a non-profit organization and that operate for not more than 180 days in any calendar year.

## SECTION 1.12 STATUTORY LIMITATIONS

### 1.12.A Government and Community Facilities

- (1) In accordance with state statute, the provisions of this section apply to the following facilities:

- (a) Institutions or facilities owned and operated by the municipality, county or state;
  - (b) Public and private schools or other educational institutions certified by the state;
  - (c) Places of worship or religious institutions owned and operated by a 501(c)(3) (tax-exempt) organization;
  - (d) Public and private hospitals certified by the state;
  - (e) Waste management facilities certified by the state; and
  - (f) Emergency shelters without any limitation on daily or seasonal hours of operation.
- (2) The facilities listed above are allowed in any zoning district as a conditional use and may be allowed as a permitted use in specified zoning districts.
  - (3) Landowners must obtain a zoning permit and site plan or conditional use approval as applicable for development associated with a listed facility unless otherwise exempted under these regulations.
  - (4) Development associated with a listed facility must meet the same standards as comparable types of private development unless the applicant demonstrates that meeting the standard(s) would interfere with the intended function or use of the facility.

**1.12.B Residential Care or Group Homes**

- (1) In accordance with state statute, landowners do not need to obtain a zoning permit to use an existing one-unit dwelling as a residential care or group home that will house not more than 8 people who have a disability and that will be operated under state licensing or registration.
- (2) Landowners must obtain a zoning permit for home construction or other associated land development to the same extent as required for other one-unit dwellings in the zoning district.

**1.12.C Residential Accessory Uses.** A zoning permit (no site plan approval required) may be issued for the following uses in any zoning district:

- (1) **Accessory Dwelling.** One accessory dwelling unit (ADU) that:
  - (a) Is located within or appurtenant to a primary, one-unit dwelling;

- (b) Is located on an owner-occupied lot (owner may live in the primary dwelling or the ADU);
  - (c) Is clearly subordinate to the primary dwelling;
  - (d) Shares a driveway with the primary dwelling;
  - (e) Has provisions for independent living, including sleeping, food preparation and sanitation;
  - (f) Does not exceed 900 square feet or 30% of the habitable floor area of the primary dwelling (prior to the creation of the ADU), whichever is greater;
  - (g) Meets the minimum parking requirements for residential uses of SECTION 5.04;
  - (h) Meets the applicable dimensional standards of the zoning district, notwithstanding interior space within a pre-existing nonconforming structure may be converted to an ADU; and
  - (i) Meets the water supply and wastewater disposal standards of SECTION 3.09.
- (2) **Two-Unit Dwellings (Duplexes)**
- (a) Any pre-existing one-unit dwelling may be converted to a two-unit dwelling irrespective of the density or dimensional standards of the applicable zoning district provided that the following are met:
    - (i) Minimum parking requirements for residential uses under SECTION 5.04; and
    - (ii) Water supply and wastewater disposal requirements under SECTION 3.09.
  - (b) Any lot allowed to be developed with a one-unit dwelling under these regulations may be developed to the same extent with a two-unit dwelling provided that the following are met:
    - (i) District dimensional standards applicable to one-unit dwellings;
    - (ii) Minimum parking requirements for residential uses under SECTION 5.04; and
    - (iii) Water supply and wastewater disposal requirements under SECTION 3.09.
- (3) **Home Occupation.** A home occupation that:
- (a) Is operated by a resident of the associated dwelling;

- (b) Does not generate regular traffic in excess of 10 vehicle trips per day;
  - (c) Meets the performance standards of SECTION 5.05;
  - (d) Is not primarily retail in nature, except that retail sales of goods manufactured on the premises, ancillary sales of products directly related to the provision of a service (e.g. sales of hair care products by a hair stylist) and internet / mail-order businesses that do not generate customer traffic will be allowed;
  - (e) Does not provide repair services for vehicles, equipment or other large goods that cannot be serviced or stored within the dwelling or an accessory structure;
  - (f) Does not occupy more than 40% of the habitable floor area of the dwelling and/or more than 1,500 square feet in one or more accessory buildings;
  - (g) Does not employ more than one full time equivalent who do not live in the associated dwelling and who work on the premises;
  - (h) Does not have any outdoor storage or use areas, including product display or parking of heavy vehicles/equipment outside an enclosed structure in an area that is visible from the road or adjoining properties (this will not be interpreted to include storage of business related items within a lawful storage unit located on the premises); and
  - (i) Provides employee and/or customer parking when necessary (in addition to the parking required for the dwelling unit) under SECTION 5.04 as follows:
    - (i) If there will not be regular customer traffic, 1 parking space for each non-resident employee; or
    - (ii) If there will be regular customer traffic, the number of spaces required under SECTION 5.04 based on the floor area devoted to the home occupation.
  - (j) May have an unlit sign that does not exceed 4 square feet in area and 6 feet in height.
  - (k) For business activities that cannot meet the standards above, see SECTION 4.05.
- (4) **Bed-and-Breakfast.** A bed and breakfast that:
- (a) Is located within a dwelling and/or accessory building(s) to a dwelling;

- (b) Is operated by a resident of the dwelling, who must be on the premises when guests are present;
- (c) Is licensed by the state and conforms to all applicable state health and safety codes;
- (d) Does not have a lodging capacity of more than 10 guests;
- (e) Does not house any guest for a continuous period of 30 days or more;
- (f) Does not offer meals to the general public; and
- (g) Provides guest parking under SECTION 5.04 as required for lodging uses.

### SECTION 1.13 VESTED RIGHTS

1.13.A **Prior Applications.** The Zoning Administrator and Development Review Board will review applications based on the regulations in effect at the time the Zoning Administrator determined that the filed application was complete.

#### 1.13.B **Prior Permits and Approvals**

- (1) **Zoning Permits Issued Prior to Amendment or Adoption of these Regulations.** If the Zoning Administrator lawfully issued a zoning permit before the Town of Fairfax adopted or amended these regulations, an applicant will not need a new or amended permit for the project. If such an applicant does not substantially complete the development or receive an extension before that permit expires, the applicant will need to apply for a new zoning permit, including any development approvals as applicable, under the regulations in effect at the time of the new application.
- (2) **Prior Zoning Permits for Phased Projects.** If an applicant received approval for a phased project before the Town of Fairfax adopted or amended these regulations, the Zoning Administrator will issue permits for the development as approved irrespective of any change in the regulations. However, if such an applicant does not substantially complete the phased project as a whole within the timeframe specified in the approval, the applicant will need to apply for a new zoning permit, including any development approvals as applicable, under the regulations in effect at the time of the new application.
- (3) **Prior Development Approvals.** If an applicant does not obtain a zoning permit for proposed development (other than a subdivision) that the Development Review Board approved within 24 months of receiving that development

approval, the approval will expire and the applicant will need to apply for a new approval under the regulations in effect at the time of the new application. See PARAGRAPH 7.03.B(9)(b), which allows the applicant to request a delay in effect for a zoning permit and/or development approval.

- (4) **Lawfully Recorded Subdivision Plats.** If an applicant lawfully recorded an approved subdivision plat in the Town of Fairfax Land Records, that plat will remain valid and will not expire irrespective of any change in these regulations. For the purposes of administering these regulations, the boundaries of lot shown on a lawfully recorded subdivision plat will be as established on the plat and will supersede any property description included in a deed or other document filed in the Town of Fairfax Land Records, and the lot boundaries shown on the Town of Fairfax Property Tax Maps.

1.13.C **Change in Ownership or Tenancy.** Zoning permits, development approvals and lawfully filed subdivision plats 'run with the land' and remain valid irrespective of any change in ownership or tenancy of the property.

1.13.D **Change in Use**

- (1) **Change from One Use Definition to Another.** A landowner must obtain a zoning permit, and any development approvals as applicable, for a change of use if the two uses do not fall under the same definition in ARTICLE 8 (e.g., a personal service use such as a barber shop to a restaurant use such as a coffee shop).
- (2) **Change within a Use Definition.** A landowner will not need to obtain a zoning permit or development approval for a change of use if both uses fall under the same definition in ARTICLE 8 (e.g., a retail sales use such as a bookstore to a retail sales use such as a home furnishings store). Other building modifications or site development associated with the change of use may require a permit or approval (e.g., new or modified signage, outdoor lighting, parking, etc.).

1.13.E **Expansion of Use**

- (1) **Nonresidential Uses.** A landowner must obtain a zoning permit, and any development approvals as applicable, to expand a nonresidential use to occupy additional space in a structure or on a lot.
- (2) **Residential Uses.** A landowner will not need to obtain a zoning permit to expand a residential use to occupy existing space in a building (ex., finish off space in a

basement or attic). Creation of any additional units within the building, including an accessory dwelling, will require a zoning permit.

**1.13.F Discontinuance of Use**

- (1) **Nonresidential Uses.** A landowner must obtain a new zoning permit, and any development approvals as applicable, to resume a lawful nonresidential use that has been discontinued for more than 24 months except if the:
  - (a) Use is nonconforming, see PARAGRAPH 1.14.B; or
  - (b) Landowner has had to discontinue a nonresidential use as result of damage to the structure in which it was housed, the owner may re-establish the use once the structure has been repaired or rebuilt in accordance with 1.13.H.
- (2) **Residential Uses.** A landowner will not need to obtain a zoning permit to resume residential use of a lawful vacant dwelling unit. If the use is nonconforming, see PARAGRAPH 1.14.B.

**1.13.G Abandoned Development.** If the development authorized by a zoning permit is abandoned without being completed, a landowner must demolish or secure any partially completed structures, remove all construction materials and debris from the site, restore the site to a natural grade, and re-establish groundcover to prevent erosion prior to the expiration of the zoning permit.

**1.13.H Damaged or Destroyed Structures**

- (1) **Stabilize and Secure.** A landowner must act promptly to stabilize and secure a structure damaged or destroyed by any cause as necessary to protect public health and safety, and to maintain it in a stabilized and secure condition until such time as it is reconstructed or demolished.
- (2) **Reconstruction or Demolition.** Within 12 months of a structure being damaged or destroyed by any cause, a landowner must either obtain a zoning permit for reconstruction or demolish the structure. The landowner will not have to pay the associated application fee if a complete application is filed within 12 months of the structure being damaged or destroyed.
- (3) **Extension of Period to Act.** The Zoning Administrator may extend the deadline to obtain a zoning permit to not more than 24 months in the case of a declared

disaster or upon the landowner demonstrating that the deadline cannot be met due to factors beyond their control (e.g., legal or insurance processes).

- (4) **Failure to Act.** The failure to obtain a zoning permit for reconstruction or demolition, or to stabilize or secure a damaged or destroyed structure as required under this section will be considered a violation of these regulations subject to enforcement under SECTION 7.16.
- (5) **Nonconforming Structures.** If a nonconforming structure is damaged or destroyed, a landowner may rebuild and use the structure in accordance with PARAGRAPH 1.14.A provided that:
  - (a) The structure as reconstructed is not more nonconforming than the structure as it existed at the time of the damage or destruction; and
  - (b) The landowner submits a complete application for a zoning permit for reconstruction within 12 months of the structure being damaged or destroyed.

## SECTION 1.14 NONCONFORMITIES

### 1.14.A Nonconforming Structures

- (1) **General.** A nonconforming structure that lawfully existed when the Town of Fairfax adopted or amended these regulations may continue to exist unchanged indefinitely.
- (2) **Use.** A landowner may obtain a zoning permit, and any applicable development approvals, to use a nonconforming structure for any land use allowed in the zoning district.
- (3) **Maintenance and Repair.** A landowner may undertake normal maintenance and repair of a nonconforming structure in accordance with SECTION 1.11.
- (4) **Additions.** The Zoning Administrator may issue a zoning permit for development that would authorize changes to the exterior dimensions of a nonconforming structure provided that the proposed development:
  - (a) Will not result in any nonconforming expansion of the building footprint or an increase in height of any nonconforming portion of the building;
  - (b) Will not convert a nonconforming porch, deck, entryway or similar unenclosed feature to enclosed and/or conditioned building space;

- (c) Is not subject to conditions from prior approvals or permits that would otherwise restrict the proposed development; and
  - (d) Would not otherwise require a development approval from the Development Review Board.
- (5) **Code or Accessibility Improvements.** The Zoning Administrator may issue a zoning permit for development that would authorize changes to the exterior dimensions of a nonconforming structure, including further encroachments beyond the existing nonconforming building line or height, to the minimum extent necessary to comply with state or federal building code, energy code or accessibility requirements.
  - (6) **Damaged or Destroyed Structures.** A landowner may obtain a zoning permit to reconstruct a nonconforming structure that has been damaged or destroyed by any cause in accordance with PARAGRAPH 1.13.H and provided that the reconstruction does not change the exterior dimensions of the structure in a manner that would result in the reconstructed structure or portion of the structure encroaching further beyond the previous nonconforming building line or height.
  - (7) **Waiver or Variance.** A landowner may obtain a waiver or variance in accordance with PARAGRAPH 7.15.D or PARAGRAPH 7.15.E that would authorize further encroachments beyond the existing nonconforming building line or height.

#### 1.14.B Nonconforming Uses

- (1) **General.** A nonconforming use that lawfully existed when the Town of Fairfax adopted or amended these regulations may continue to exist in its current location, configuration and intensity indefinitely.
- (2) **Relocation.** A landowner must not move a nonconforming use from one location to another where it would also be a nonconforming use.
- (3) **Resumption.** A landowner must not resume a nonconforming use that was abandoned, discontinued or replaced with another use for more than 12 months. If a nonconforming use is located in a structure that is damaged or destroyed by any cause, the landowner may resume the use once the structure is reconstructed in accordance with PARAGRAPH 1.13.H.
- (4) **Minor Expansion.** The Zoning Administrator may issue a zoning permit to allow a landowner to extend or expand a nonconforming use to:

- (a) Fully occupy space within the associated structure as that structure existed as of \*effective date; or
  - (b) Occupy up to 25% more floor area than when the use became nonconforming in another structure or in a lawful addition to the existing structure.
- (5) **Major Expansion.** The Development Review Board may approve a greater extension or expansion of a nonconforming use as a conditional use upon the applicant demonstrating the proposed extension or expansion will not result in greater adverse impacts on the character of the area.
- (6) **Change of Use.** The Development Review Board may approve the change of one nonconforming use to another nonconforming use as a conditional use upon the applicant demonstrating that the proposed nonconforming use will be less intensive in nature, have fewer off-site impacts and will be more compatible with the character of the area than the existing nonconforming use.

#### 1.14.C Nonconforming Lots

- (1) **General.** A nonconforming lot may continue to exist unchanged indefinitely.
- (2) **Merger.** If a nonconforming lot comes into common ownership with one or more contiguous lots, the Town of Fairfax will not deem the lot merged with the contiguous lot(s) for the purposes of these regulations (a landowner may choose to merge contiguous lots under SECTION 7.06).
- (3) **Lot Size.** In accordance with statute, a landowner may develop a lot that does not meet the minimum lot size for the zoning district in accordance with all other applicable provisions of these provided that the lot:
  - (a) Is legally subdivided and able to be conveyed separate from any other lot;
  - (b) Existed as of the effective date of these regulations;
  - (c) Is either:
    - (i) Served by municipal water and sewer; or
    - (ii) Is at least 1/8 acre (5,445 square feet) in area and not less than 40 feet wide or deep.
- (4) **Lot Frontage.** A landowner with a lot that does not meet the minimum lot frontage for the zoning district:

- (a) May develop that lot in accordance with all other applicable provisions of these regulations provided that:
- (b) The lot has access to a maintained public or private road by lot frontage, permanent easement or right-of-way at least 20 feet in width; and
- (c) Access to the proposed development will conform to the requirements of SECTION 3.02.
- (d) May only subdivide the lot if:
  - (i) The lot has access to a maintained public or private road by lot frontage, permanent easement or right-of-way at least 50 feet in width;
  - (ii) The lots will be served by a shared driveway; and
  - (iii) Access to the subdivided lots will conform to the requirements of SECTION 3.02.

1.14.D **Creation of a Nonconformity.** The Town of Fairfax prohibits any development that would create a nonconformity except for:

- (1) A public project that requires the transfer or taking of land (e.g., street widening); or
- (2) Development that receives a waiver or variance under PARAGRAPH 7.15.D or PARAGRAPH 7.15.E.

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**ARTICLE 2. ZONING DISTRICTS**

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**SECTION 2.01 ESTABLISHMENT OF BASE ZONING DISTRICTS**

2.01.A These regulations establish the following base zoning districts as shown on the Official Zoning Maps and described in this article:

- (1) Village
- (2) Residential
- (3) Rural
- (4) Conservation

**SECTION 2.02 ESTABLISHMENT OF OVERLAY ZONING DISTRICTS**

2.02.A These regulations establish the following overlay zoning districts as shown on the Official Zoning Maps and described in this article:

- (1) Flood Hazard Overlay (FHO) District;
- (2) Source Water Protection (SWO) Overlay District

**SECTION 2.03 OFFICIAL ZONING MAPS**

2.03.A The Town of Fairfax incorporates the maps delineating the boundaries of the base and overlay zoning districts by reference into these regulations and adopts them as part of these regulations.

2.03.B The Official Zoning Maps are available at the town office in paper and electronic form. The Zoning Administrator and Development Review Board must use the Official Zoning Maps for all measurements and interpretations of the district boundaries. The small-scale, unofficial versions of the maps included in these regulations and any maps provided online are for convenience only.

2.03.C If a specific distance or measurement is not specified on the Official Zoning Maps, the Zoning Administrator will interpret the boundaries:

- (1) Following, parallel to or extending from roads, railroad lines, power lines or rights-of-way to follow, parallel or extend from the centerlines of such roads, railroad lines, power lines or rights-of-way;

- (2) Following or extending from lot lines or municipal boundaries to follow or extend from such lines or boundaries;
- (3) Following or parallel to rivers, streams or other drainageways to follow or parallel the centerlines of such rivers, streams or drainageways; and
- (4) Following contour (elevation) lines to follow the specified contour line prior to any site grading and as identified based on a current survey stamped by a Vermont-licensed surveyor or the most recent lidar data published by the State of Vermont.

2.03.D The Zoning Administrator will interpret any of the features listed in PARAGRAPH C above to be located where they exist on the ground or as shown on a professionally-prepared survey at the time of the interpretation if they vary from their depiction on the Official Zoning Maps except that:

- (1) A boundary line adjustment, lot merger, subdivision or other change to the location of a lot line will not change the location of any zoning district boundary indicated as following that lot line; and
- (2) The reclassification or discontinuance of a road will not change the location of any zoning district boundary indicated as following that road.

#### **SECTION 2.04 LOTS DIVIDED BY A ZONING DISTRICT OR MUNICIPAL BOUNDARY**

2.04.A When a lot includes land in two or more zoning districts, proposed development on the portion of the lot in one zoning district may only extend across the district boundary if it conforms to the standards of the adjoining district(s). If creating a lot with land in more than one zoning district, see PARAGRAPH 2.07.B.

2.04.B When a lot includes land in two or more municipalities, proposed development may only extend into the portion of the lot in Fairfax if it conforms to the standards of the applicable district. However, the standards of the applicable district can be met by considering the entire lot including portions of the lot not located in Fairfax (ex., lot size, frontage and access requirements can be met from land in the adjoining town).

**SECTION 2.05 MULTIPLE USES OR BUILDINGS ON A LOT**

- 2.05.A **Multiple and Mixed Uses.** A landowner may use a lot or structure for any combination of uses allowed in the applicable zoning district.
- 2.05.B **Accessory Uses.** A landowner may establish accessory uses on a lot.
- 2.05.C **Principal Buildings.** A landowner may use or construct more than one principal building on a lot in accordance with the standards below:
- (1) The total amount of development on the lot must not exceed the maximum density and lot coverage allowed in the applicable zoning district;
  - (2) Each new principal building must meet the dimensional standards of the applicable zoning district;
  - (3) The distance between new principal buildings or between a new principal building and an existing principal building must not be less than twice the side setback required in the applicable zoning district;
  - (4) There must not be more than two buildings wholly or partially used as a dwelling unit (inclusive of accessory dwellings) on any lot unless approved as part of a planned unit development;
  - (5) No provision of this section will be interpreted to prevent a pre-existing building from being used to the extent allowed in the applicable zoning district; and
  - (6) Approval of multiple principal buildings on a lot will not constitute a right to convey them separately unless:
    - (a) The subject lot will be lawfully subdivided in accordance with the provisions of these regulations; or
    - (b) The building will be lawfully converted to condominium ownership, which may include the creation of footprint lots.
- 2.05.D **Accessory Structures.** Landowners may locate accessory structures on a lot.

**SECTION 2.06 USE STANDARDS**

- 2.06.A **Permitted Uses.** The Zoning Administrator may issue a zoning permit for a permitted use under SECTION 7.03.

- 2.06.B **Conditional Uses.** The Zoning Administrator may issue a zoning permit for a conditional use under SECTION 7.03 only after the applicant obtains a conditional use approval from the Development Review Board under SECTION 7.05.
- 2.06.C **Site Plan Approval.** Uses other than farming, forestry, single- and two-unit dwellings, and related accessory uses or structures will also require site plan approval from the Zoning Administrator or Development Review Board as applicable under SECTION 7.04.
- 2.06.D **Prohibited Uses.** A use not specifically listed as permitted or conditional in a zoning district is prohibited in that zoning district unless the applicant demonstrates to the Zoning Administrator that the unlisted use:
- (1) Is a pre-existing nonconformity and the proposed development conforms with the requirements of PARAGRAPH 1.14.B;
  - (2) Is materially similar to a use that is permitted or conditional in the same zoning district under PARAGRAPH 2.06.E; or
  - (3) Is required to be allowed in a zoning district by state or federal law.
- 2.06.E **Materially Similar Uses.** The Zoning Administrator may make a written determination that a proposed use, which is not listed on the use table as permitted or conditional in any zoning district, is materially similar to a use listed as permitted or conditional in the applicable zoning district. Such an unlisted use will be allowed to the same extent and subject to the same standards as that listed permitted or conditional use. To determine that a use is materially similar, the Zoning Administrator must find that the proposed use has:
- (1) Similar off-site impacts such as traffic, noise and lighting as the listed use; and
  - (2) Similar functional characteristics such as building type, site arrangement, floor area, number of employees, customer traffic, equipment use, hours of operation, parking, vehicle trips and signage as the listed use.

## SECTION 2.07 DIMENSIONAL STANDARDS

- 2.07.A **Applicability.** Development must conform to the dimensional standards for the applicable zoning district unless:

- (1) A subject lot or structure is a pre-existing nonconformity and the proposed development is in conformance with SECTION 1.14;
- (2) The applicant receives a waiver or variance under PARAGRAPH 7.15.D or PARAGRAPH 7.15.E; or
- (3) The proposed development will be approved as a planned unit development.

**2.07.B Lot Size.** Lot size will be regulated as follows:

- (1) Lot size will be measured as the total area within the property boundaries excluding any land within a road right-of-way;
- (2) Any lot created under these regulations must meet the minimum lot size requirement for the applicable zoning district unless approved as part of a planned unit development;
- (3) A waiver or variance will not be granted to allow the creation of a lot that does not meet the minimum lot size requirement for the applicable zoning district;
- (4) An existing lot must not be reduced in size below the minimum lot size requirement for the applicable zoning district unless the reduction is the result of:
  - (a) Land being acquired for a public purpose (ex. road widening);
  - (b) A boundary line adjustment approved in accordance with SECTION 7.06; or
  - (c) Bringing an existing road or driveway into conformance with the requirements of these regulations for access to development.
- (5) A pre-existing lot that does not meet the minimum lot size requirement for the applicable district may be used and developed in accordance with PARAGRAPH 1.14.C;
- (6) A lot created under these regulations that will include land in more than one zoning district must meet the minimum lot size requirement for the zoning district that the portion of the lot the building envelope is located in. If the building envelope will be located in more than one zoning district, the lot must meet the smallest minimum lot size requirement.

**2.07.C Lot Frontage.** All lots must front on a maintained public or private road as specified in the applicable zoning district as follows:

- (1) **Measurement.** Lot frontage will be measured along the edge of the road right-of-way. If the edge of the road right-of-way is a curved line, the measurement will be taken along an imaginary straight line drawn between the points where the side lot lines meet the edge of the road right-of-way.
- (2) **New Lots.** All new lots created under these regulations must have the minimum frontage on a maintained public road (state highway, or Class 1, 2 or 3 town road) or a private road unless the Development Review Board approves:
  - (a) A lot with less frontage as part of a planned unit development;
  - (b) A waiver to reduce the frontage requirement to not less than 30 feet for irregularly shaped lots when necessary to accommodate a physical site constraint (ex. stream, wetland, topographic feature, etc.);
  - (c) A waiver to reduce or eliminate the frontage requirement for a lot accessed by a shared driveway with a permanent easement or right-of-way) to be developed with 1-4 unit dwelling; or
  - (d) A waiver to reduce or eliminate the frontage requirement for lots restricted to farming, forestry or open spaces uses through a legally enforceable and permanent means such as a conservation easement.
- (3) **Corner Lots.** Lots that front on more than one road must have the minimum frontage on any road from which the lot will be accessed.
- (4) **Pre-Existing Lots.** The Zoning Administrator and Development Review Board must not issue a permit or approval for development on an existing lot without the minimum required frontage on a maintained public road or private road unless the lot has access to such a road over a permanent easement or right-of-way not less than 30 feet wide.

2.07.D **Lot Coverage.** The total footprint of impervious surface on a lot must not exceed the maximum lot coverage established for the applicable zoning district. Impervious surface will include all the surfaces on the lot that do not permit water to infiltrate into the ground below (ex. buildings, driveways, parking areas, walkways, other hard-surfaced areas, retaining walls, patios, decks, pools, etc.). Any compacted surface material (gravel, stone dust, soil, etc.) and areas of ledge or stone outcroppings will be considered impervious. Pervious paving will be included in the calculation of impervious surface unless otherwise approved and conditioned upon

the applicant submitting and implementing an appropriate maintenance plan for the paving material.

2.07.E **Setbacks.** Development must meet setback requirements for the applicable zoning district as follows:

- (1) **Corner and Through Lots.** Lots with frontage on more than one road must meet front setback requirements on each road, and must meet side setback requirements on the remaining sides.
- (2) **Interior Lots.** Lots with no frontage must meet the greatest setback (front, side or rear) for the applicable district on all sides.
- (3) **Lots in Common Ownership.** Side and rear setback requirements will apply irrespective of whether the same property owner owns the adjoining lot.
- (4) **Front Setbacks.** Front setback requirements will be measured horizontally from the edge of the road right-of-way to the closest point of the structure. If the location of the edge of the road right-of-way is uncertain, it will be assumed to be 25 feet from the centerline of the road. If the road is known to have a right-of-way width other than 3 rods (50 feet), the front setback will be assumed to be one-half the known right-of-way width from the centerline of the road.
- (5) **Side and Rear Setbacks.** Side and rear setbacks will be measured horizontally along a line that runs perpendicular to the property line to the closest point of the structure.
- (6) **Waiver or Variance.** A landowner may seek a waiver or variance to reduce setback requirements under [PARAGRAPH 7.15.D](#) or [PARAGRAPH 7.15.E](#).

2.07.F **Height.** Structures must meet height requirements for the applicable zoning district as follows:

- (1) **Exemptions.** Height limits do not apply to:
  - (a) Belfries, spires, steeples, cupolas, domes or similar architectural features not used for human habitation;
  - (b) Mechanical or utilitarian features such as skylights, parapet walls, cornices, chimneys, ventilators, bulkheads, building-mounted solar panels or equipment typically located on a roof, provided that such features are limited to the height necessary for their proper functioning; and

- (c) Sport or recreational field lighting.
  - (2) **Measurement.** Height will be measured:
    - (a) From the average finished grade at ground level to the midpoint between the eaves and the ridgeline for structures with a primary roof pitch of 5:12 or steeper; or
    - (b) From the average finished grade at ground level to the highest portion of the structure excluding the architectural features listed in PARAGRAPH (1) above.
  - (3) **Accessory Structures.** Accessory structures must not exceed a height of 24 feet unless otherwise specified in these regulations. Height limits do apply to flag poles, light poles, signs and similar freestanding structures not located within public rights-of-way.
  - (4) **Waiver or Variance.** A landowner may seek a waiver or variance to height requirements under PARAGRAPH 7.15.D or PARAGRAPH 7.15.E for:
    - (a) Commercial or industrial structures upon the applicant demonstrating that the additional height:
      - (i) Is the minimum necessary to accommodate the proposed activity; and
      - (ii) Will not pose a risk to public safety including, but not limited to, consideration of setbacks; and
    - (b) Tree houses or other structures that are not built at ground level and that are not used as a dwelling unit or for lodging upon the applicant demonstrating that the:
      - (i) Additional height will not pose a risk to public safety including, but not limited to, consideration of setbacks; and
      - (ii) Structure will not unreasonably reduce privacy on adjoining lots.
  - (5) **Footprint.** Building footprint will be measured as the area enclosed by the building's outer walls at ground level.
- 2.07.G **Residential Density.** The number of dwelling units on a lot (exclusive of accessory dwellings) must not exceed the maximum density as specified in the applicable district. Maximum density will be calculated based on total lot area within the property boundaries excluding any land within a road right-of-way.

**SECTION 2.08 DIMENSIONAL AND USE STANDARDS SUMMARY TABLES**

2.08.A Dimensional Table

	<b>VIL</b>	<b>RES</b>	<b>RRL</b>	<b>CON</b>
Minimum lot size	5,000 sf	20,000 sf	2 ac	5 ac
Minimum lot frontage	50 ft	80 ft	100 ft	50 ft
Maximum lot coverage	70%	50%	30%	15%
Minimum development envelope for a building with 1-4 units	n/a	10,000 sf	1 ac	3 ac
Minimum development envelope per unit for 5+ unit building	n/a	5,000 sf	0.5 ac	n/a
Minimum front setback	15 ft	20 ft	30 ft	40 ft
Minimum side setback	10 ft	10 ft	20 ft	20 ft
Minimum rear setback	30 ft	30 ft	40 ft	40 ft
Maximum structure height	35 ft	35 ft	35 ft	35 ft

2.08.B Use Table

	<b>VIL</b>	<b>RES</b>	<b>RRL</b>	<b>CON</b>
Single or two unit dwelling	P	P	P	P
Three or four unit dwelling	P/S	P/S	P/S	P/S
Multi-unit dwelling	P/S	P/S	P/S	X
Attached dwelling	P/S	P/S	P/S	P/S
Accessory dwelling	P	P/S	P/S	P/S
Primitive camp	X	X	P/S	P/S
Rooming and boarding house	P/S	P/S	P/S	X
Home occupation	P	P/S	P/S	P/S
Childcare home	P	P/S	P/S	P/S
Residential care home	P	P/S	P/S	P/S
Bed and breakfast	P	P/S	P/S	P/S
Accessory on-farm business	P/S	P/S	P/S	P/S
Agribusiness	C/S	X	C/S	C/S
Animal services	X	X	C/S	C/S
Campground	X	X	C/S	C/S
Clubs	C/S	C/S	C/S	C/S

P = Permitted    C = Conditional    S = Site Plan Review    X = Prohibited

	<b>VIL</b>	<b>RES</b>	<b>RRL</b>	<b>CON</b>
Community care facility	C/S	C/S	C/S	X
Community center	P/S	C/S	C/S	X
Daycare center	P/S	C/S	C/S	X
Earth resource extraction	X	X	C/S	C/S
Farm market	P/S	C/S	C/S	C/S
Fuel/service station	C/S	X	X	X
Home industry	C/S	C/S	C/S	C/S
Indoor recreation	C/S	C/S	C/S	C/S
Light industry	C/S	X	C/S	X
Lodging establishment	C/S	C/S	C/S	X
Motor vehicle repair	C/S	X	C/S	X
Motor vehicle sales	C/S	X	C/S	X
Outdoor recreation	C/S	C/S	C/S	C/S
Personal or professional service	P/S	C/S	C/S	X
Place of worship	P/S	P/S	P/S	P/S
Public facility	P/S	P/S	P/S	P/S
Public recreation	P/S	P/S	P/S	P/S
Restaurant or drinking establishment	C/S	X	C/S	X
Retail sales	C/S	X	C/S	X
Storage facility	X	X	C/S	X
Wireless telecommunication facility	X	X	C/S	C/S

P = Permitted    C = Conditional    S = Site Plan Review    X = Prohibited

**SECTION 2.09 VILLAGE DISTRICT**

2.09.A **Purpose.** The Village encompasses and extends out from the traditional village center in Fairfax developed with a mix of uses and a compact settlement pattern. Infill development should be designed and sited to extend the settlement pattern, built form and scale of Fairfax’s traditional village center through an interconnected road network shared by motorists, cyclists and pedestrians. The district should continue to host community services, recreation amenities and small businesses that draw people to the village and contribute to a high quality of life for village residents. The village is served by municipal water and sewer systems allowing it to accommodate higher densities of residential development, including larger multi-unit residential buildings. The village should offer a range of housing options to suit the needs of a diverse population.

2.09.B **Dimensional Standards.** Lots and structures must meet the dimensional standards below (for pre-existing, non-conforming lots or structures, see [SECTION 1.14](#)):

- |                              |                   |
|------------------------------|-------------------|
| (1) Minimum lot size         | 5,000 square feet |
| (2) Minimum lot frontage     | 50 feet           |
| (3) Maximum lot coverage     | 70%               |
| (4) Minimum front setback    | 15 feet           |
| (5) Minimum side setback     | 10 feet           |
| (6) Minimum rear setback     | 30 feet           |
| (7) Maximum structure height | 35 feet           |

2.09.C **Permitted Uses.** The Zoning Administrator may issue a zoning permit for the uses listed below. Site plan review under [SECTION 7.04](#) is required for all uses other than single- and two-unit dwellings.

- |                              |                                  |
|------------------------------|----------------------------------|
| Single to four unit dwelling | Personal or professional service |
| Multi-unit dwelling          | Daycare center                   |
| Attached housing             | Farm market                      |
| Rooming and boarding house   | Accessory on-farm business       |
| Accessory dwelling           | Community center                 |
| Home occupation              | Place of worship                 |
| Childcare home               | Public recreation                |
| Residential care home        | Public facility                  |
| Bed and breakfast            |                                  |

2.09.D **Conditional Uses.** A landowner must obtain a conditional use approval from the Development Review Board before the Zoning Administrator may issue a zoning permit for the uses listed below.

- |                                      |                         |
|--------------------------------------|-------------------------|
| Home industry                        | Motor vehicle repair    |
| Retail sales                         | Motor vehicle sales     |
| Lodging establishment                | Indoor recreation       |
| Restaurant or drinking establishment | Outdoor recreation      |
| Light industry                       | Clubs                   |
| Agribusiness                         | Community care facility |
| Fuel/service station                 | Public facility         |

2.09.E **District Standards**

*[reserved]*

**SECTION 2.10 RESIDENTIAL DISTRICT**

2.10.A **Purpose.** The Residential District is intended to provide opportunity for residential growth extending out from the Fairfax village center. The configuration of lots, layout of roads and driveways, and placement of buildings should be regular with variation when necessary to respond to the terrain and natural features on the site. A connected road and pedestrian network should link neighborhoods and provide convenient access to village services and amenities. Residents should enjoy access to recreation lands and open space. Neighborhoods should offer a range of housing options to suit the needs of a diverse population.

2.10.B **Dimensional Standards.** Lots and structures must meet the dimensional standards below (for pre-existing, non-conforming lots or structures, see SECTION 1.14):

- |                                  |   |
|----------------------------------|---|
| (1) Minimum lot size             | 20,000 square feet  |
| (2) Minimum lot frontage         | 80 feet   |
| (3) Maximum lot coverage         | 50%   |
| (4) Minimum development envelope | 10,000 sq ft of buildable land (1-4 du)<br>5,000 sq ft per unit for 5+ unit buildings |
| (5) Minimum front setback        | 20 feet   |
| (6) Minimum side setback         | 10 feet   |
| (7) Minimum rear setback         | 30 feet   |
| (8) Maximum structure height     | 35 feet   |

2.10.C **Permitted Uses.** The Zoning Administrator may issue a zoning permit for the uses listed below. Site plan review under SECTION 7.04 is required for all uses other than single- and two-unit dwellings.

- |                              |                            |
|------------------------------|----------------------------|
| Single to four unit dwelling | Residential care home      |
| Multi-unit dwelling          | Bed and breakfast          |
| Attached housing             | Place of worship           |
| Rooming and boarding house   | Public recreation          |
| Accessory dwelling           | Public facility            |
| Home occupation              | Accessory on-farm business |
| Childcare home               |                            |

2.10.D **Conditional Uses.** A landowner must obtain a conditional use approval from the Development Review Board before the Zoning Administrator may issue a zoning permit for the uses listed below.

- |                                  |                    |
|----------------------------------|--------------------|
| Home industry                    | Community center   |
| Daycare center                   | Farm market        |
| Personal or professional service | Indoor recreation  |
| Lodging establishment            | Outdoor recreation |
| Community care facility          | Clubs              |

2.10.E **District Standards**

*[reserved]*

**SECTION 2.11 RURAL DISTRICT**

2.11.A **Purpose.** The Rural District is intended to provide opportunity for residential living in a rural setting and to support Fairfax’s rural economy and way of life. The configuration of lots, layout of roads and driveways, and placement of buildings should be varied in response to the terrain and natural features on the site with building sites sensitively located along the edges of fields or pastures, and lot lines, roads or drives following hedgerows, fence lines or stone walls. In forested areas, clearing for access, house sites and view corridors should be minimized to the greatest extent feasible and development should be sited in proximity to existing road and utility corridors to avoid further encroachment into currently undisturbed areas.

2.11.B **Dimensional Standards.** Lots and structures must meet the dimensional standards below (for pre-existing, non-conforming lots or structures, see [SECTION 1.14](#)):

- |                                  |   |
|----------------------------------|---|
| (1) Minimum lot size             | 2 acres   |
| (2) Minimum lot frontage         | 100 feet  |
| (3) Maximum lot coverage         | 30%   |
| (4) Minimum development envelope | 1 acre of buildable land (1-4 du)<br>0.5 acres per unit for 5+ unit buildings |
| (5) Minimum front setback        | 30 feet   |
| (6) Minimum side setback         | 20 feet   |
| (7) Minimum rear setback         | 40 feet   |
| (8) Maximum structure height     | 35 feet   |

2.11.C **Permitted Uses.** The Zoning Administrator may issue a zoning permit for the uses listed below. Site plan review under [SECTION 7.04](#) is required for all uses other than single- and two-unit dwellings.

- |                              |                            |
|------------------------------|----------------------------|
| Single to four unit dwelling | Childcare home             |
| Multi-unit dwelling          | Residential care home      |
| Attached housing             | Bed and breakfast          |
| Rooming and boarding house   | Place of worship           |
| Accessory dwelling           | Public recreation          |
| Primitive camp               | Public facility            |
| Home occupation              | Accessory on-farm business |

2.11.D **Conditional Uses.** A landowner must obtain a conditional use approval from the Development Review Board before the Zoning Administrator may issue a zoning permit for the uses listed below.

Home industry	Agribusiness
Daycare center	Earth resource extraction
Retail sales	Farm market
Personal or professional service	Animal services
Lodging establishment	Motor vehicle repair or service
Campground	Motor vehicle sales
Restaurant or drinking establishment	Indoor recreation
Light industry	Outdoor recreation
Storage facility	Clubs
Community care facility	Wireless telecommunication facility
Community center	

2.11.E **District Standards**

- (1) Conditional uses may only be approved on lots 5 acres or more in size.
- (2) Any new structures, including driveways and parking areas to be used for a conditional use must meet an increased 50-foot setback requirement (front, side and rear).
- (3) Commercial uses that will regularly generate more than 10 customer or client trips per day must be accessed directly from a state highway or Class 2 town road.
- (4) An undeveloped lot that is 10 or more acres in area and that does not have a designated development envelope must have an approved building envelope prior to the Zoning Administrator issuing a zoning permit for development.

**SECTION 2.12 CONSERVATION DISTRICT**

2.12.A **Purpose.** The Conservation District includes areas generally not physically suited for development, which should be protected for their inherent natural resource and ecological value. An overall low density of development should be maintained to minimize environmental impacts and retain rural character. Conservation subdivisions that cluster house sites and preserve open space may be required to achieve those purposes.

2.12.B **Dimensional Standards.** Lots and structures must meet the dimensional standards below (for pre-existing, non-conforming lots or structures, see SECTION 1.14):

- |                                  |                                    |
|----------------------------------|------------------------------------|
| (1) Minimum lot size             | 5 acres                            |
| (2) Minimum lot frontage         | 50 feet                            |
| (3) Maximum lot coverage         | 15%                                |
| (4) Minimum development envelope | 3 acres of buildable land (1-4 du) |
| (5) Minimum front setback        | 40 feet                            |
| (6) Minimum side setback         | 20 feet                            |
| (7) Minimum rear setback         | 40 feet                            |
| (8) Maximum structure height     | 35 feet                            |

2.12.C **Permitted Uses.** The Zoning Administrator may issue a zoning permit for the uses listed below. Site plan review under SECTION 7.04 is required for all uses other than single- and two-unit dwellings.

- |                              |                            |
|------------------------------|----------------------------|
| Single to four unit dwelling | Residential care home      |
| Attached dwelling            | Bed and breakfast          |
| Accessory dwelling           | Place of worship           |
| Primitive camp               | Public recreation          |
| Home occupation              | Public facility            |
| Childcare home               | Accessory on-farm business |

2.12.D **Conditional Uses.** A landowner must obtain a conditional use approval from the Development Review Board before the Zoning Administrator may issue a zoning permit for the uses listed below.

- |                           |                    |
|---------------------------|--------------------|
| Home industry             | Animal services    |
| Agribusiness              | Indoor recreation  |
| Campground                | Outdoor recreation |
| Earth resource extraction | Clubs              |

Farm market

Wireless telecommunication facility

#### 2.12.E **District Standards**

- (1) Conditional uses may only be approved on lots 5 acres or more in size.
- (2) Any new structures, including driveways and parking areas to be used for a conditional use must meet an increased 50-foot setback requirement (front, side and rear).
- (3) Commercial uses that will regularly generate more than 10 customer or client trips per day must be accessed directly from a state highway or Class 2 town road.
- (4) An undeveloped lot that is 10 or more acres in area and that does not have a designated building envelope must have a building envelope approved prior to the Zoning Administrator issuing a zoning permit for development.

**SECTION 2.13 FLOOD HAZARD DISTRICT**

2.13.A **Purpose.** The Flood Hazard Overlay District is intended to:

- (1) 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;
- (2) Ensure that the selection, design, creation, and use of development in this overlay district is reasonably safe and is accomplished in a manner that minimizes or eliminates the potential for loss and damage to life and property due to flooding;
- (3) Manage special flood hazard areas in accordance with state and federal law;
- (4) Make the Town of Fairfax, its landowners, residents and businesses eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds, as may be available;
- (5) Allow for the wise use of floodplain lands in a way that minimizes potential damage to existing structures and development located within this overlay district;
- (6) Provide an adequate means of protecting the beneficial functions of undeveloped floodplains and development that is already located within floodplains;
- (7) Avoid encroachments that may result in cumulative degradation of natural floodplain function leading to increased flood elevations, velocities, and river instability;
- (8) Protect infill and redevelopment from inundation hazards; and
- (9) Discourage new encroachments on undeveloped property that provides for floodwater and sediment storage.

2.13.B **Precedence.** The provisions of this section will take precedence where they impose a greater restriction than another provision of these regulations. If there is a conflict between the provisions of this section, the most restrictive provision will apply.

2.13.C **Warning.** The provisions of this section do not imply that lands outside of this overlay district will be free from flooding.

- 2.13.D **District Boundaries.** The provisions of this section apply to all flood hazard areas in the Town of Fairfax identified on the most current flood insurance studies and maps published by the U.S. Department of Homeland Security, Federal Emergency Management Agency (FEMA), National Flood Insurance Program (NFIP), which are adopted by reference into these regulations. The flood hazard area consists of the floodway and flood fringe (commonly referred to as the 100-year floodplain).
- 2.13.E **LOMAs and LOMRs.** Applicants may provide a FEMA Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR), which will constitute proof of the location of the flood hazard area boundary. A Letter of Map Revision based on Fill (LOMR-F) issued on or after January 20, 1982 may not be used to remove lands from the jurisdiction of this section.
- 2.13.F **Applicability.** A landowner must obtain a zoning permit for all development (as defined in PARAGRAPH 2.13.V) located within this overlay district that is not exempted in PARAGRAPH 2.13.H. The Zoning Administrator must condition all permits for development within this overlay district on the applicant obtaining all necessary state and federal permits prior to the start of construction.
- 2.13.G **Allowed Uses.** The uses allowed in the base zoning district are allowed to the same extent within this overlay district provided:
- (1) The proposed development is not prohibited in PARAGRAPH 2.13.I; and
  - (2) The applicant demonstrates compliance with PARAGRAPH 2.13.K or PARAGRAPH 2.13.L as applicable.
- 2.13.H **Exempt Development.** The following development is exempt from the provisions of this section (a zoning permit or development approval may still be required under other provisions of these regulations):
- (1) Agricultural and silvicultural practices or farm structures exempted under PARAGRAPH 1.10.A or PARAGRAPH 1.10.B;
  - (2) Normal maintenance and repair that does not meet the definition of development in PARAGRAPH 2.13.V;
  - (3) Improvements to existing buildings (interior or exterior) that cost less than \$500;

- (4) Demolition of a structure or portion of a structure provided that there is no increase in elevation under or adjacent to the removed structure or portion of a structure (for damaged structures where owners may be using FEMA mitigation funds, FEMA may require a damaged structure to remain in place until funds are granted);
- (5) Subdivision of land;
- (6) Public water access and recreational trails that do not require active management or alteration of the river or stream;
- (7) Planting projects to restore natural and beneficial floodplain functions that do not involve grading or construction of structures;
- (8) Development subject to a Stream Alteration Permit from the Vermont Agency of Natural Resources;
- (9) Development subject to a Certificate of Public Good from the Vermont Public Utilities Commission; and
- (10) State owned and operated facilities or institutions.

2.13.I **Prohibited Development.** The following development is prohibited within this overlay district:

- (1) Fully enclosed areas below grade on all sides (including below grade crawlspaces and basements) for new, replacement or substantially improved structures, or for structures that have incurred substantial damage;
- (2) New dwellings (this will not be interpreted to include replacement of a pre-existing residential structure in full conformance with the standards of this section);
- (3) Outdoor storage of goods, materials, equipment or vehicles;
- (4) New critical facilities as defined in PARAGRAPH 2.13.V;
- (5) Expansion of existing structures within the floodway where the footprint of the structure is proposed to expand laterally into the floodway more than 500 square feet; and
- (6) Any development within Zones AE and A1-A30 where FEMA has not determined floodway limits unless the applicant demonstrates that the cumulative impact of the proposed development, when combined with all other existing and anticipated encroachment, will not increase the base flood

elevation more than 1 foot at any point within the town by submitting technical data that conforms to standard hydraulic engineering principles prepared and certified by a qualified engineer.

2.13.J **Pre-Existing Structures.** Within this overlay district, a landowner may only:

- (1) Reconstruct a substantially damaged or destroyed structure in its original location if it is rebuilt to comply with all requirements of the National Flood Insurance Program and this section; or
- (2) Re-occupy a structure that has been unused or uninhabited for more than 12 months if it is brought into compliance with all requirements of the National Flood Insurance Program and this section.

2.13.K **Floodway Standards.** Within the floodway:

- (1) New encroachments are prohibited except for the following, which must meet the requirements of PARAGRAPH (2) below:
  - (a) Changes to existing structures where the footprint is proposed to expand horizontally into the floodway less than 500 square feet;
  - (b) New encroachments relating to bridges, culverts, roads, stabilization projects, public utilities, functionally dependent uses, and river or floodplain restoration projects; and
  - (c) New encroachments required to meet health, safety and accessibility standards under federal or state codes or regulations if no other practicable alternative is available.
- (2) For new encroachments or development allowed under PARAGRAPH (1) above that will result in an increase of grade, applicants must provide either a:
  - (a) FEMA Conditional Letter of Map Revision (CLOMR) to demonstrate that the proposed development will not have an adverse impact; or
  - (b) Hydraulic analysis performed by a registered professional engineer in accordance with standard engineering practice certifying that the proposed development will:

- (i) Not result in any increase in flood levels during the occurrence of the base flood;
  - (ii) Not increase base flood velocities; and
  - (iii) Not increase any risk to surrounding properties, facilities, or structures from erosion or flooding.
- (3) The applicant must demonstrate that any new encroachments or development allowed under PARAGRAPH (1) above have been designed in accordance with the standards of PARAGRAPH 2.13.L except for the requirement for compensatory flood storage.

**2.13.L Flood Fringe Standards.** Within the flood fringe:

- (1) **Compensatory Flood Storage.** Development that displaces floodwater storage must provide compensatory storage in accordance with the following unless exempted in Paragraph (c) below:
- (a) Applicants must provide either:
    - (i) Volumetric analyses and supporting data prepared and certified by a qualified engineer; or
    - (ii) A hydraulic analysis that demonstrates that a project will not increase flood elevations and velocities on floodwaters prepared and certified by a qualified engineer.
  - (b) Applicants must provide a statement from a qualified engineer certifying that the compensatory flood storage design will not materially impact adjacent properties by increasing base flood elevations or velocities.
  - (c) Upon the applicant obtaining a written statement of concurrence from the Vermont Agency of Natural Resources Regional Floodplain Manager, the Zoning Administrator or Development Review Board may waive the compensatory flood storage requirement for:

- (i) Designs that have no more than a minimal effect on floodwater storage and will not divert floodwaters onto adjacent property;
- (ii) Remediation of brownfield sites provided the applicant submits a hydraulic analysis that demonstrates that the remediation will not increase flood elevations and velocities on floodwaters prepared and certified by a qualified engineer;
- (iii) A replacement structure provided there is no increase in the structure's footprint or an open foundation design is used; and
- (iv) Streets, driveways, utilities and replacement on-site septic systems upon the applicant demonstrating that the placement of fill cannot be mitigated.

2.13.M **General Standards for All Development.** Applicants must demonstrate that the proposed development will 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 to prevent water from entering or accumulating within the components during conditions of flooding; and
- (6) Adequately drained to reduce exposure to flood hazards.

2.13.N **Structural Standards.** Applicants must demonstrate that:

- (1) **Residential.** New residential structures or existing residential structures to be substantially improved or replaced, or that have incurred substantial damage will be located such that the lowest floor is at least 2 feet above base flood elevation (BFE) as documented in the proposed and as-built condition with a FEMA Elevation Certificate.

- (2) **Non-Residential.** New non-residential structures, and non-residential structures to be substantially improved, replaced, or that have incurred substantial damage will:
  - (a) Meet the standards of PARAGRAPH (1) above; or
  - (b) Have the lowest floor, including basement, together with attendant utility and sanitary facilities, designed so that 2 feet above the BFE the structure is dry floodproofed in accordance with accepted standards of practice for meeting NFIP requirements as certified by a registered professional engineer or architect.
- (3) **In Zone AO.** New structures, or existing structures to be substantially improved or replaced, or that have incurred substantial damage in Zone AO will have the lowest floor, including basement, elevated above the highest adjacent grade, at least 2 feet above the depth number specified on the town's FIRM, or at least 3 feet if no depth number is specified.
- (4) **Critical Facilities.** Critical facilities that are to be replaced, substantially improved, or meet the definition of substantial damage will:
  - (a) Be constructed so that the lowest floor, including basement, will be elevated or dry-floodproofed at least 1 foot above the elevation of the 0.2% annual flood height (500-year floodplain), or 3 feet above BFE, whichever is higher; and
  - (b) Have at least one access road connected to land outside the 0.2% annual chance floodplain that is capable of accommodating emergency services vehicles, and the top of the access road will be no lower than 6 inches below the elevation of the 0.2% annual chance flood event.
- (5) **Historic Structures.** For historic structures that would meet the definition of substantial improvement or substantial damage if not for their historic structure designation, the improved or repaired building will meet the following mitigation performance standards for areas below the base flood elevation:
  - (a) Any future damage to enclosures below the lowest floor must not result in damage to the foundation, utility connections, or elevated portions of the building or nearby structures;
  - (b) Utility connections (e.g., electricity, water, sewer, natural gas) must be protected from inundation and scour or be easily repaired;

- (c) The building foundation must be structurally sound and reinforced to withstand a base flood event;
  - (d) The structure's historic designation must not be precluded;
  - (e) The likelihood of flood waters entering the structure during the base flood must be reduced; and
  - (f) There must be no expansion of uses below BFE except for parking, storage, building access, or, in the case of non-residential buildings, where the space is dry floodproofed.
- (6) **Enclosed Areas Below BFE.** Fully enclosed areas that are above grade, below the lowest floor, below BFE, and subject to flooding, will:
- (a) Be solely used for parking of vehicles, storage, or building access, and such a condition will clearly be stated on any permits;
  - (b) Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters in accordance with accepted standards of practice for meeting NFIP requirements as certified by a registered professional engineer or architect; and
  - (c) Include a signed agreement from the owner of the structure with the permit application stating that the:
    - (i) Enclosed area below the BFE will not be converted to a use other than parking, storage or building access; and
    - (ii) Zoning Administrator will be allowed to inspect the exterior and interior of the enclosed area as necessary to ensure compliance.

2.13.O **Small Accessory Structures.** Applicants will not be required to elevate an accessory structure with a footprint of 500 square feet or less to the base flood elevation provided that the structure is:

- (1) Located on the building site so as to offer the minimum resistance to the flow of floodwaters; and
- (2) Designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters in accordance with accepted standards of practice for meeting NFIP requirements as certified by a registered professional engineer or architect .

2.13.P **Fuel Storage Tanks.** Applicants must demonstrate that fuel storage tanks will be:

- (1) Securely anchored to prevent flotation;
- (2) Located on the landward or downstream side of the building;
- (3) Only placed on a structure or platform that is designed to withstand anticipated flood loads and forces; and
- (4) Elevated so that all inlets, fill openings, line connections and vents will be elevated at least 2 feet above BFE. If elevating the tank is not possible due to the location of the fuel line or hook-up serving an existing building:
  - (a) The tank vent pipe/valve must be located at least 2 feet above BFE; or
  - (b) The tank may be located underground provided it will be securely anchored and protected from flood forces as certified by a qualified professional.

2.13.Q **Utilities and Service Facilities.** For any new structure, replacement structure, substantially improved structure, or structure that has experienced substantial damage, applicants must demonstrate that outdoor utilities (electrical, heating, ventilation, plumbing, and air conditioning equipment) and other service facilities (such as sewer, gas, and water systems) will be located on the landward or downstream side of the building and/or behind structural elements, and will be located and constructed to minimize or eliminate flood damage.

2.13.R **Water and Wastewater Facilities.** Water supply systems must be designed to minimize or eliminate infiltration of flood waters into the system. Sanitary sewage systems must be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters. On-site waste disposal systems must be located to avoid impairment to them or contamination from them during flooding.

2.13.S **Temporary Structures and Vehicles.** Temporary structures and vehicles must either:

- (1) Be currently registered, licensed and ready for highway use, if a motor vehicle or trailer;
- (2) Be located within this overlay district for less than 180 consecutive days; or
- (3) Conform to all applicable provisions of this section for permanent structures.

2.13.T **Subdivisions and Planned Unit Developments (PUDs).** Applicants must design any subdivision or PUD that includes land within this overlay district so that all lots have a building envelope located outside the flood hazard area and so that those envelopes will be accessible over land located outside the flood hazard area.

2.13.U **Administration**

- (1) **Application Requirements.** In addition to all other requirements of these regulations, an application for development within this overlay district must include:
  - (a) Base flood elevation (BFE) for:
    - (i) Replacement, substantially improved or substantially damaged structures;
    - (ii) Projects requiring elevation or dry-floodproofing above BFE; and
    - (iii) Additions to existing historic structures.
  - (b) Floodway data with electronic input/output files and mapping showing cross-section locations certified by a registered professional engineer for development within the floodway that includes:
    - (i) Hydraulic calculations demonstrating no rise in BFE or velocity for proposed new or expanded encroachments within the floodway; and
    - (ii) A floodway delineation that demonstrates that the proposed development, when combined with all existing and anticipated future development, will not increase the water surface elevation of the base flood by more than 1 foot at any point within the Town of Fairfax if FEMA has provided BFE data but not designated floodway areas.
  - (c) A No Adverse Impact (NAI) volumetric analysis and supporting data certified by a registered professional engineer for development that requires compensatory flood storage under PARAGRAPH 2.13.L.
- (2) **Referrals.** The Zoning Administrator must send a copy of all complete applications for development within this overlay district to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources. The Zoning Administrator must not act on an application for development within this overlay district until the agency comments or the 30-day comment period elapses, whichever occurs first.

- (3) **Substantial Improvement and Substantial Damage Determinations.** The Zoning Administrator will make a determination of substantial improvement or substantial damage in accordance with current FEMA guidelines, which will establish the appropriate standards for repair and rebuilding under this section. The applicant may provide additional documentation including, but not limited to:
  - (a) A recent building appraisal completed by a qualified professional that documents the structure's market value, excluding land value, prior to the damage or improvement;
  - (b) A cost estimate provided by a qualified professional that includes material and labor costs and a detailed accounting of the proposed project; or
  - (c) In the case of substantial damage, an estimate of structure damage prepared by a state or local official using FEMA's Substantial Damage Estimator software.
- (4) **Certificate of Compliance.** The applicant must obtain a Certificate of Compliance for all development subject to the provisions of this overlay district in accordance with the provisions of PARAGRAPH 7.03.E. The Zoning Administrator must not issue a Certificate of Compliance for development within this overlay district until the applicant has submitted all required as-built documentation.
- (5) **Administrative Records.** In addition to all other applicable requirements of these regulations, the Zoning Administrator must file and maintain a record of:
  - (a) FEMA Elevation Certificates with the as-built elevation of the lowest floor, including basement, of all new, replacement, substantially improved, substantially damaged or flood-proofed principal buildings; and
  - (b) All floodproofing and other certifications required under this section.
- (6) **Variances.** The Development Review Board may grant variances within this overlay district as established in PARAGRAPH 7.15.E. Any variance granted for development within the flood hazard area must include the following statement, "The issuance of a variance to construct a structure below the base flood elevation increases risk to life and property and will result in increased flood insurance premiums up to amounts as high as \$25 for \$100 in coverage."
- (7) **Violations.** In addition to all other applicable provisions of these regulations, the Zoning Administrator must:

- (a) Send a copy of any notice of violation issued for development within this overlay district to the State National Flood Insurance Program Coordinator; and
  - (b) Submit a declaration of any unresolved violation to the Administrator of the National Flood Insurance Program requesting a denial of flood insurance to the property in accordance with federal law.
- (8) **Appeals.** The applicant or other interested person may appeal any action or decision taken under this section in accordance with the provisions of Section 2402 or Section 2403 as applicable.

2.13.V **Definitions.** The definitions below apply to terms used within this section. Any term not defined below will be as defined in ARTICLE 8.

- (1) **Base Flood** means the flood having a 1% chance of being equaled or exceeded in any given year (commonly referred to as the "100-year flood").
- (2) **Base Flood Elevation (BFE)** means the elevation of the water surface elevation resulting from the base flood. On the Flood Insurance Rate Maps, 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 average depth of the base flood, usually in feet, above the ground surface.
- (3) **Basement** means any area of the building having its floor elevation sub-grade (below ground level) on all sides.
- (4) **Compensatory Storage** means a volume not previously used for flood storage that must be incrementally equal to the theoretical volume of flood water at each elevation, up to and including the base flood elevation, that would be displaced by the proposed project. Such compensatory volume must:
  - (a) Have an unrestricted hydraulic connection to the same waterway or water body; and
  - (b) Be provided within the same reach of the river, stream, or creek.
- (5) **Critical Facilities** mean 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.
- (6) **Development** means 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.

- (7) **Encroachment** means activities or construction including fill, substantial improvements, structures and other development that may cause an increase in flood levels.
- (8) **Fill** means 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.
- (9) **Flood** means:
  - (a) A general and temporary condition of partial or complete inundation of normally dry land areas from:
    - (i) The overflow of inland or tidal waters,
    - (ii) The unusual and rapid accumulation or runoff of surface waters from any source, and
    - (iii) Mudslides which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current; or
  - (b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining:
    - (i) Caused by waves or currents of water exceeding anticipated cyclical levels, or
    - (ii) Suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.
- (10) **Flood Fringe** means the portion of the flood hazard area that is outside of the floodway but still inundated by the base flood (the flood having a 1% chance of being equaled or exceeded in any given year).
- (11) **Flood Hazard** means those hazards related to damage from flood-related inundation or erosion.

- (12) **Flood Insurance Rate Map (FIRM)** means an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. The hazard boundaries are available in paper, PDF, or Geographic Information System formats as a Digital Flood Insurance Rate Map (DFIRM).
- (13) **Flood Insurance Study (FIS)** means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood-related erosion hazards.
- (14) **Floodplain or Flood-Prone Area** means any land area susceptible to being inundated by water from any source (see definition of "flood").
- (15) **Floodproofing** means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.
- (16) **Floodway** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point. Please note that flood hazard areas and floodways may be shown on a separate map panels.
- (17) **Grading** means 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 will be considered "fill" and will not be considered grading.
- (18) **Historic Structure** means any structure that is:
  - (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
  - (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or

- a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on the Vermont State Register of Historic Places; 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.
- (19) **Letter of Map Change (LOMC)** means a letter issued by FEMA officially removing a structure or lot from the flood hazard area based on information provided by a certified engineer or surveyor. This is used where structures or lots are located above the base flood elevation and have been inadvertently included in the mapped special flood hazard area. A LOMC can include a Letter of Map Amendment (LOMA), Letter of Map Revision (LOMR), Letter of Map Revision based on Fill (LOMR-F), or a Letter of Map Revision for a Floodway (LOMR-FW).
- (20) **Lowest Floor** means 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 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 CFR § 60.3.
- (21) **National Flood Insurance Program** means the National Flood Insurance Program under 42 U.S.C. Chapter 50 and implementing federal regulations in 44 C.F.R. Parts 59 and 60. The National Flood Insurance Program aims to reduce the impact of flooding on private and public structures. It does so by providing affordable insurance to landowners in communities that adopt and enforce floodplain management regulations. These efforts help mitigate the effects of flooding on new and improved structures.
- (22) **Natural and Beneficial Floodplain Functions** mean the functions associated with the natural or relatively undisturbed floodplain that includes moderating flooding, retaining flood waters, and reducing erosion, sedimentation and flood-related damage. Ancillary beneficial functions include support of

ecosystem services such as wildlife habitat, water quality, and groundwater recharge.

- (23) **New Construction** means structures for which the “start of construction” commenced on or after January 20, 1982 and includes any subsequent improvements to such structures.
- (24) **Person** means an individual, a corporation, a partnership, an association, and any other incorporated or unincorporated organization or group.
- (25) **Public Water Access** means a public access to a water of the state and, except for toilet facilities, will not include structures as defined in this section.
- (26) **Redevelopment** means construction, installation, modification, renovation, or rehabilitation of land, interests in land, buildings, structures, facilities, or other development in a previously developed area. The term includes substantial improvements and repairs to substantially damaged buildings.
- (27) **Replacement Structure** means a new building placed in the same footprint as the pre-existing building and does not include a change in use.
- (28) **Special Flood Hazard Area** means the land in the floodplain subject to a 1% or greater chance of flooding in any given year. This area is usually labeled Zone A, AO, AH, AE, or A1-30 in the most current FIS and on the FIRM. Maps of this area are available for viewing in the town office or online from the FEMA Map Service Center ([msc.fema.gov](https://www.msc.fema.gov)). FEMA has not determined base flood elevations in Zone A where the flood risk has been mapped by approximate methods. Base flood elevations are shown at selected intervals on maps of special flood hazard areas that are determined by detailed methods. Where floodways have been determined they may be shown on separate map panels from the FIRM.
- (29) **Start of Construction** means the date the town issued a permit authorizing development, 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 any of the following:
  - (a) The first placement of permanent construction of a structure on a site, which includes the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, but does not include:

- (i) Land preparation, such as clearing, grading and filling
  - (ii) Installation of streets and/or walkways;
  - (iii) Excavation for a basement, footing, piers, or foundations or the erection of temporary forms; or
  - (iv) Installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.
- (b) The placement of a manufactured home on a foundation.
- (c) The first alteration of any wall, ceiling, floor, or other structural part of a building, regardless whether that alteration affects the external dimensions of the building.
- (30) **Storage** means the aggregation of materials, items, or objects whether natural or human-made:
- (a) That is kept as a stockpile, collection, or inventory;
  - (b) 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;
  - (c) Whether set upon the land or within a container, structure, or facility; and
  - (d) That would not otherwise comply with the provisions of this section.
- (31) **Structure** means a walled and roofed building, as well as a manufactured home, including gas or liquid storage tanks.
- (32) **Substantial Damage** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50% of the market value of the structure before the damage occurred.
- (33) **Substantial Improvement** means any repair, reconstruction, rehabilitation, addition, or other improvement of a structure on or after December 16, 1980, the cost of which over 3 years, or over the period of a common plan of development, cumulatively equals or exceeds 50% 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:

- (i) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specification which have been previously identified by the code enforcement official and which are the minimum necessary to assure safe living conditions or
  - (ii) Any alteration of a "historic structure" provided that the alteration will not preclude the structure's continued designation as a "historic structure."
- (34) **Violation** means the failure of a structure or other development to be fully compliant with the provisions of this section. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR § 60.3 is presumed to be in violation until such time as that documentation is provided.

## SECTION 2.14 SOURCE WATER DISTRICT

- 2.14.A **Purpose.** The Source Water Protection Overlay District is intended to protect public health and safety by preventing contamination, promoting recharge and maintaining the supply of public drinking water sources.
- 2.14.B **Protection Areas.** The Source Water Protection Overlay District includes the following zones of the mapped source protection areas (SPAs) for the Town of Fairfax municipal water supply and the City of St. Albans municipal water supply within the Town of Fairfax as mapped by the Vermont Agency of Natural Resources Department of Environmental Conservation;
- (1) Zone A. Zone A, the Drinking Water Critical Impact Zone, is the area within Zones 1 and 2.
  - (2) Zone B. Zone B, the Drinking Water Potential Impact Zone, is the area within Zone 3.
- 2.14.C **Use Standards.** The following uses are prohibited in Zone A. If allowed in the underlying zoning district, the following uses are conditional in Zone B. All other uses allowed in the underlying zoning district are allowed to the same extent within this overlay district.
- (1) Funeral service or cemetery

- (2) Dry cleaner
- (3) Golf course
- (4) Stormwater management facility
- (5) Highway maintenance facility
- (6) Contractor's yard
- (7) Vehicle or equipment maintenance or fueling facility
- (8) Machine shop or light industry
- (9) Mineral extraction or stone products manufacturing
- (10) Salvage yard, landfill or waste service
- (11) Composting facility
- (12) Underground storage tanks
- (13) Injection wells, dry wells, sumps or floor drains
- (14) Bulk storage of flammable, combustible, toxic or hazardous materials (including for on-site use)
- (15) Extraction or use of more than 10,000 gallons of water per day for purposes other than supplying the water system associated with the protection area

2.14.D **Performance Standards.** Applicants must:

- (1) Locate proposed development outside the overlay district to the maximum extent feasible if the subject lot includes land outside the overlay district.
- (2) Adhere to applicable federal and state standards for the storage, handling, use and disposal of materials or wastes that have the potential to contaminate the drinking water supply if released into the environment.
- (3) Design any above ground facility (including open lagoons or ponds) involving the collection, handling, production, manufacture, use, storage, transfer or disposal of materials or wastes that have the potential to contaminate the drinking water supply if released into the environment with a secondary containment system that:
  - (a) Is designed to intercept any leak or spill from the primary containment vessel or structure;
  - (b) Is provided with an overflow recovery catchment area (sump).

- (c) Is easily inspected; and
  - (d) Capable of containing 110% of the largest volume of storage (a larger volume of storage may be necessary if precipitation will be able to collect in the secondary containment system).
- (4) Design any below ground facility (including storage tanks and pipes) containing or carrying of materials or wastes that have the potential to contaminate the drinking water supply if released into the environment with:
- (a) Double walls and inspectable sumps; and
  - (b) A monitoring system and secondary standpipe for monitoring and recovery.
- (5) Maintain an up-to-date contingency plan for preventing contamination of the drinking water supply in the event of floods, fires, other natural catastrophes, equipment failure or other releases if use involves the collection, handling, production, manufacture, use, storage, transfer or disposal of materials or wastes that have the potential to contaminate the drinking water supply if released into the environment; and
- (6) Report all releases of materials or wastes that have the potential to contaminate the drinking water supply to the Town of Dorset and the Vermont Agency of Natural Resources.
- 2.14.E **Referral.** The Zoning Administrator must send a copy of all complete applications for development within this overlay district to the water system operator and the Vermont Agency of Natural Resources Drinking Water and Groundwater Protection Division. The Zoning Administrator must not act on an application for development within this overlay district until the water system operator and the agency comment or the 30-day comment period elapses, whichever occurs first.

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**ARTICLE 3. GENERAL REVIEW STANDARDS**

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**SECTION 3.01 APPLICABILITY**

3.01.A The standards of this article apply to all proposed development.

**SECTION 3.02 DRIVEWAYS**

3.02.A Proposed development must be served by a driveway that conforms to all applicable town ordinances and specifications.

3.02.B A driveway must not serve more than 4 dwelling units or 2 non-residential principal uses. Driveways include circulation and service drives providing vehicular access within a lot. All other vehicular travel ways will be considered roads under these regulations.

3.02.C Before the Zoning Administrator may issue a zoning permit for a new principal structure or use to be served by a shared driveway, the applicant must demonstrate that an access easement and a shared driveway agreement have been recorded in the town land records.

**SECTION 3.03 HEIGHT LIMITS**

3.03.A No structure may exceed 35 feet in height above ground level, except for wireless telecommunication facilities and small off-grid wind turbines.

3.03.B Height will be measured as the vertical distance from the mean level of the finished grade of the building to the ridge-line or deck-line of the roof.

3.03.C Ornamental and symbolic features of buildings and structures including spires, towers, cupolas, belfries, domes are exempt from the height regulations provided they are not used for human occupancy or commercial advertisement and do not take up more than 10% of the total roof area.

### SECTION 3.04 CAMPING VEHICLES

3.04.A A travel trailer, recreational vehicle, motor coach, or other travel vehicle with sleeping quarters may be stored or parked on a lot provided that the following conditions are met:

- (1) It must meet the district setbacks.
- (2) It shall not be permanently attached to the land.
- (3) It shall be for non-commercial use only.
- (4) It may not be occupied for more than 90 days in a calendar year.
- (5) It must comply with all other provisions of these regulations.

### SECTION 3.05 SIDING AND FOUNDATION

3.05.A Any permanent structure intended for the shelter of persons must have a permanent foundation. Permanent siding must be installed within six months after occupancy.

### SECTION 3.06 SMALL OFF-GRID WIND ENERGY SYSTEMS

3.06.A **Purpose and Applicability.** The purpose of this section is to promote the safe, effective and efficient use of small off-grid wind energy systems which are not regulated by the Vermont Public Service Board. Small wind energy systems are a permitted use in all zoning districts subject to the requirements of this section.

3.06.B **Application Requirements.** An application for a small off-grid wind energy system must include:

- (1) Standard drawings of the wind turbine structure, including the tower, base, and footings.
- (2) An engineering analysis of the tower showing compliance with the Uniform Building Code and certified by a Vermont Licensed Engineer. This analysis is frequently supplied by the manufacturer.

3.06.C **Review Standards.** The Zoning Administrator must find that proposed small off-grid wind energy systems comply with the following standards before issuing a zoning permit:

- (1) **Tower Height:** For property sizes between ½ acre and one acre the tower height shall be limited to 80 feet. For property sizes of one acre or more, there is no limitation on tower height, except as imposed by FAA Regulations.
- (2) **Setback:** The tower base shall be setback a distance no less than the tower height (including blade, rotor, or other vertical elements), which shall create a fall zone entirely on the landowners property. Guy wire anchors and other accessory elements may extend to the setback for the applicable zoning district.
- (3) **Noise:** Small off-grid wind energy systems shall not exceed 60 dBA, as measured at the closest neighboring inhabited dwelling. The level, however, may be exceeded during short-term events such as utility outages and/or severe windstorms.
- (4) **Compliance with State and Federal Codes and Regulations:** Small off-grid wind energy systems must comply with all required state and federal codes and regulations, including the FAA Regulations and the National Electrical Code. The manufacturer frequently supplies this information.

### **SECTION 3.07 STREAM CORRIDOR PROTECTION**

- 3.07.A All structures that require a zoning permit under these regulations must be set back at least 50 feet from each side of all named streams according to the Vermont Hydrography Dataset RF 5,000 scale, published by the Vermont Center for Geographic Information.
- 3.07.B Stream buffers are measured inland perpendicular from either the top of bank or the top of slope, depending on the stream channel characteristics as described below:
- (1) Stream buffers measured from the top of bank are those with a flat, wide floodplain onto which the stream overflows during periods of high water flow. The top of bank begins at the streamside edge of the adjacent floodplain. If there is a wetland present adjacent to the floodplain, the top of bank begins at the upland edge of the contiguous wetland.
  - (2) Stream buffers measured from the top of slope are those with steep valley side slopes or high terraces.

**SECTION 3.08 WASTE MANAGEMENT**

- 3.08.A Any parcel that is developed which has frontage on a town road will deposit its trash and recycling at the intersection of its driveway (or approved right-of way) and the town road, at the designated time and day of trash collection as established by the Town of Fairfax.
- 3.08.B Any parcel or development which does not have frontage on a town road will deposit its trash and recycling in an area established for that purpose by approval of the DRB at the intersection with a public road, or will make arrangements for pick-up at each dwelling with a private contractor. The DRB may require such designated areas to be enclosed in an appropriate manner to prevent the unwanted dispersal of trash prior to pick-up.

**SECTION 3.09 WASTEWATER DISPOSAL AND WATER SUPPLY**

- 3.09.A Applicants proposing land development that generates wastewater or requires access to potable water must contact the Agency of Natural Resources to determine if a state Wastewater System and Potable Water Supply Permit is required. The Zoning Administrator may require evidence from an applicant that the Agency has been contacted and the resulting determination.
- 3.09.B A new principal structure or accessory dwelling requiring a state Wastewater and Potable Water Supply Permit must not be used or occupied until the Zoning Administrator issues a certificate of compliance under PARAGRAPH 7.03.E.

## **ARTICLE 4. SPECIFIC USE STANDARDS**

### **SECTION 4.01 APPLICABILITY**

4.01.A The standards of this article apply to specific uses.

### **SECTION 4.02 ACCESSORY DWELLINGS**

4.02.A An accessory dwelling unit (ADU) must:

- (1) Be located within or appurtenant to a single-unit dwelling;
- (2) Be clearly subordinate to the primary dwelling;
- (3) Share a driveway with the primary dwelling;
- (4) Have provisions for independent living, including sleeping, food preparation and sanitation;
- (5) Not exceed 900 square feet or 30% of the habitable floor area of the primary dwelling (prior to the creation of the ADU), whichever is greater;
- (6) Provide at least 1 off-street parking space for each dwelling unit;
- (7) Meet the applicable dimensional standards of the zoning district, notwithstanding interior space within a pre-existing nonconforming structure may be converted to an ADU; and
- (8) Meet the water supply and wastewater disposal standards of SECTION 3.09.

4.02.B There must not be more than one ADU for each single-unit dwelling on a lot.

4.02.C The landowner must reside in either the primary dwelling or the ADU.

4.02.D The landowner must retain the ADU in common ownership with the primary dwelling.

4.02.E An ADU will be considered an accessory use of residential property and will not require site plan approval, but the applicant must certify that the dwelling meets all applicable state health and safety codes.

4.02.F An ADU requires a certificate of compliance under PARAGRAPH 7.03.E.

**SECTION 4.03 FARMWORKER HOUSING**

- 4.03.A A landowner may obtain a zoning permit to construct or install two dwellings on an operating farm solely for the purposes of providing housing to farm employees and their households.
- 4.03.B Farmworker housing must be smaller in size and prominence than the principal farmhouse.

**SECTION 4.04 EARTH RESOURCE EXTRACTION**

- 4.04.A **Applicability.** Earth resource extraction:
- (1) Includes the commercial extraction of minerals, including solids such as sand and gravel, liquids such as water, and gases such as natural gas.
  - (2) May include preparation activities such as crushing and washing customarily part of earth resource extraction activities.
  - (3) Does not include the removal of natural resources from a farm operation, nursery, or cemetery to the extent that such removal is necessary to the operation of the same.
  - (4) Requires conditional use and site plan approval in the Rural District and is prohibited in all other districts.
- 4.04.B **Application Requirements.** In addition to all other applicable requirements of these regulations, earth resource extraction proposals must be prepared by a Vermont licensed engineer and include:
- (1) the depth of excavation
  - (2) existing grade and proposed grade created by removal or addition of material
  - (3) proximity to roads and adjacent properties
  - (4) the average amount of earth resource to be extracted on a monthly or annual basis
  - (5) the hours of operation and seasons of use
  - (6) the expected duration of operation
  - (7) the number of truck trips per day traveling to/from the extraction site

- (8) an erosion and sediment control plan to be following while the extraction operation is active
- (9) a reclamation plan that addresses grading, seeding, mulching, planting, fencing, drainage, and other measures

4.04.C **Standards.** In addition to all other applicable requirements of these regulations, the following standards apply:

- (1) The operation must not have an adverse effect upon the use of adjacent property or town roads due to noise, dust, or vibration.
- (2) Within the required setback areas, the natural vegetation must be retained, and supplementary planting or other screening may be required in order to buffer impacts from the operation.
- (3) Power-activated sorting or crushing machinery or equipment must be set back not less than 300 feet from public road rights-of-way and property lines. All such machinery must be equipped with satisfactory dust control devices.
- (4) The operation must not create traffic hazards or excessive congestion or physical damage to public highways and expected routes of truck traffic.
- (5) All surface drainage affected by excavation operations must be controlled by the owner to prevent erosion debris and other loose materials from filling any drainage course, street, or private property.
- (6) Suitable fencing or other appropriate safety precautions may be required around extraction sites, sedimentation ponds, and spoil or equipment storage areas.
- (7) Explosives may be used only per a plan approved by the DRB.
- (8) The operation must reclaim the site by removing all debris, leveling all cut slopes and soil banks and grading to an even low angle, and establishing a firm cover of grass or other vegetation sufficient to prevent erosion.

#### SECTION 4.05 HOME INDUSTRY

4.05.A **Applicability.** A business operating from residential property that does not qualify as a home business or occupation under [SECTION 1.11](#) or [SECTION 1.12](#) may be approved as a home industry. Home industry is an allowed use in all zoning districts subject to site plan and conditional use approval.

4.05.B **Standards.** In addition to all other applicable requirements of these regulations, the home industry:

- (1) Must be carried on by members of the household living on the premises plus no more than three full time equivalent employees who are not members of the residential household.
- (2) May have business signage to the extent permitted under SECTION 5.06.
- (3) Must not generate traffic in a volume that alters the essential character of the neighborhood or substantially impairs the use of adjacent property.
- (4) Must not generate excessive noise, smoke, vibration, dust, glare, odors, electrical interference or heat that is detectable at the boundaries of the property.
- (5) Must provide off-street parking under SECTION 5.04.
- (6) Must not have any exterior storage of materials within setback areas. Exterior storage areas must be screened by landscaping or other appropriate methods.
- (7) Must not pose a potential risk to public health, such as toxic emissions or on-site disposal of hazardous wastes.

#### SECTION 4.06 MOTOR VEHICLE RELATED USES

4.06.A **Standards.** In all districts where allowed, fuel/service stations, motor vehicle repair and/or service, and motor vehicle sales must comply with the following as applicable:

- (1) A new fuel/service station must not be located within 300 feet of any lot occupied by a school, hospital, library, or religious institution. (This standard does not apply to motor vehicle repair and/or service and motor vehicle sales uses).
- (2) All automotive parts and dismantled vehicles must be stored within a building or be effectively screened from adjacent properties and roads. No major repair work may be performed outside a building.
- (3) A landscaped area must be maintained at least 10 feet in depth along all lot frontage not used as a driveway to be planted with a mix of trees, shrubs and herbaceous plants. The DRB may require a larger landscaped area as deemed necessary to conform to these regulations.

**SECTION 4.07 WIRELESS TELCOMMUNICATION FACILITIES**

4.07.A **Applicability.** New or expanded wireless telecommunications facilities that are not exempted under SECTION 1.10 are an allowed use in all zoning districts subject to site plan and conditional use approval except:

- (1) **De Minimis Impact.** The Zoning Administrator may approve and issue a zoning permit for an application for a wireless telecommunications facility if it conforms to all applicable provisions of these regulations and imposes no or de minimis impact on any criteria established in these regulations. The Zoning Administrator will only consider an application to have a de minimis impact if it meets all of the following:
  - (a) The height and width of the facility or tower, excluding equipment, antennas or ancillary improvements, will not increase;
  - (b) The total amount of impervious surface, including access roads, associated with the facility or tower will not increase by more than 300 square feet;
  - (c) Any addition, modification or replacement of an antenna or other equipment will not extend vertically more than 10 feet above and horizontally more than 10 feet out from the facility or tower as currently configured; and
  - (d) Any additional or replacement equipment, antennas or ancillary improvements, excluding cabling, will not increase the aggregate surface area of the faces of the equipment, antennas or ancillary improvements on the facility or support structure by more than 75 square feet, and will not exceed the loading capacity of the support structure.

4.07.B **Application Requirements.** In addition to all other applicable requirements of these regulations, an application for a wireless telecommunications facility must include:

- (1) A location map showing the general area within a 2-mile radius of the facility.
- (2) A vicinity map showing the entire vicinity within a 2,500-foot radius of the facility, including the location of all existing and proposed towers, topography, public and private roads and driveways, buildings, structures, utilities, water bodies, wetlands, 50-foot contour lines, landscape features, historic sites, and significant wildlife habitats. It shall indicate the property lines of the proposed

facility site parcel and all easements or rights-of-way needed for access from a public way to the facility.

- (3) Elevations and proposed site plans of the facility showing all facades and indicating all exterior materials and colors of towers, buildings and equipment, as well as all landscaping, utility wires, guy wires and screening. (All plans except the vicinity map shall be drawn at a minimum scale of 1 inch = 50 feet.)
- (4) In the case of a site that is forested, the approximate average elevation of the existing vegetation within 50 feet of any tower base.
- (5) A report from a qualified Vermont Licensed Engineer that:
  - (a) Describes any tower's design and elevation.
  - (b) Documents the elevation above grade for all proposed mounting positions for antennas to be mounted on a tower and the minimum distances between antennas.
  - (c) Describes a tower's capacity, including the number, elevation, and types of antennas that the tower is proposed to accommodate.
  - (d) In the case of new facilities, demonstrates that existing towers and structures within five miles of the site cannot reasonably be modified to provide adequate coverage and adequate capacity to the community.
  - (e) Describes potential changes or additions to existing structures or towers that would enable them to provide adequate coverage.
  - (f) Describes the output frequency, number of channels, and the power output per channel for each antenna. As an alternative, a coverage map may be provided.
  - (g) Demonstrates the facility's compliance with the standards set forth in these Regulations or other applicable standards.
  - (h) Provides proof that at the proposed facility site the applicant will be in compliance with all FCC Regulations, standards and requirements, and includes a statement that the applicant commits to continue to maintain compliance with all FCC Regulations, standards and requirements for radio frequency radiation (RFR).
  - (i) Includes such other information as determined by the DRB to evaluate the application.

- (6) A letter of intent committing the facility owner and its successors to permit shared use of any tower if the additional users agree to meet reasonable terms and conditions for shared use, including compliance with all applicable FCC Regulations, standards and requirements and the provisions of these Development Regulations and all other applicable laws.
- (7) In the case of an application for additional antennas or other equipment to be installed on an existing facility, a copy of the executed contract with the owner of the existing structure.
- (8) To the extent required by the National Environmental Policy Act (NEPA) and as administered by the FCC, a complete Environmental Assessment (EA) draft or final report describing the probable impacts of the facility, or a written statement by the applicant that an EA is not required for the facility.

4.07.C **Construction Standards.** Telecommunications facilities must conform to the following construction standards:

- (1) The facility must not be built on speculation. If the applicant is not a telecommunication service provider, the applicant must provide a copy of a contract or letter of intent showing that a telecommunication service provider is legally obligated to locate a wireless telecommunication facility on lands owned or leased by the applicant.
- (2) The facility must not project more than 20 feet above the average elevation of the tree line measured within 100 feet of the highest vertical element of the wireless telecommunication facility, unless the proposed elevation is reasonably necessary to provide adequate telecommunication service capacity or coverage to Fairfax, or to accomplish co-location.
- (3) All telecommunication facilities must comply with the setback provisions of the applicable zoning district. Notwithstanding the above, in order to ensure public safety, the minimum distance of any wireless telecommunication facility to any property line, dwelling, or occupied structure must be no less than the height of the tower, including antennas or other vertical appurtenances. This setback will be referred to as a fall zone. In the event that an existing structure such as a barn silo, church steeple, or utility pole is proposed as a mounting for a wireless telecommunication facility, a fall zone setback may not be required.

- (4) The facility must not be illuminated by artificial means and must not display any lights or signs except for such lights and signs as required by Federal Aviation Administration, federal or state law, or these regulations.
- (5) The DRB may require the applicant to provide a bond, or other form of financial guarantee acceptable to the DRB, to cover the cost of removal of the facility, should the facility be abandoned or cease to operate.
- (6) The applicant must demonstrate that the facility will be in compliance with all FCC standards and requirements regarding radio frequency radiation. The owner of a wireless tele-communication facility must, on a yearly basis, file a certificate to the Zoning Administrator showing that it is in compliance with all FCC standards and requirements regarding radio frequency radiation, and that adequate insurance has been obtained for the facility.
- (7) The facility must be properly identified with appropriate warnings indicating the presence of radio frequency radiation.
- (8) The proposed equipment must be installed on an existing wireless telecommunication facility, unless it is demonstrated by the applicant that such co-location is not structurally or spatially possible.
- (9) The facility must provide reasonable opportunity for the installation and operation of other telecommunications equipment (co-location).
- (10) Unless otherwise approved by the DRB, an abandoned or unused wireless telecommunication facility must be removed within 2 years of abandonment or cessation of use. The applicant may apply to the DRB for an extension for removal. If the facility is not removed, or an extension granted, within 2 years of abandonment or cessation of use, the DRB may cause the facility to be removed. The costs of removal shall be assessed against the facility owner.
- (11) Unused portions of a wireless telecommunication facility shall be removed within 1 year of the time that such portion is no longer used. Replacement of portions of a facility previously removed shall require a new permit.

4.07.D **Review Criteria.** In addition to all other applicable criteria, the DRB must find that:

- (1) The facility will not unreasonably interfere with the view from any public park, natural scenic vista, historic building or district, or major view corridor.

- (2) The facility will not have an undue adverse aesthetic impact. In determining this, the DRB must consider the following factors:
  - (a) The results of a balloon test, if conducted.
  - (b) The extent to which the proposed towers and equipment have been designed to blend into the surrounding environment through the use of screening, camouflage, architectural design, and/or imitation of natural features.
  - (c) The extent to which access roads have been designed to follow the contour of the land and will be constructed within forest or forest fringe areas and not open fields.
  - (d) The duration and frequency with which the facility will be viewed from a public road or from public property.
  - (e) The degree to which the facility will be screened by existing vegetation, topography, or existing structures.
  - (f) Background features in the line of sight to the facility that obscure or make the facility more conspicuous.
  - (g) The distance of the facility from the point of view and the proportion of the facility that is above the skyline.
  - (h) The sensitivity or unique value of a particular view affected by the facility.
  - (i) Any significant disruption of a viewshed that provides context to an important historic or scenic resource.
- (3) The facility will not generate undue noise.

## ARTICLE 5. PLANNING AND DESIGN STANDARDS

### SECTION 5.01 APPLICABILITY

- 5.01.A The standards of this article apply to proposed development subject to major site plan, conditional use, subdivision or PUD approval.
- 5.01.B In applying these standards, the Zoning Administrator or Development Review Board:
- (1) May establish design, phasing and/or permit conditions to avoid or mitigate any adverse impacts and to ensure conformance with these standards.
  - (2) May require a certificate from a Vermont licensed engineer as to the satisfactory completion of any required improvements.
  - (3) May require a performance bond or equivalent surety to secure completion of such improvements and their maintenance.
  - (4) Must require an engineering certificate to certify satisfactory completion of all new, extended or reconstructed roads.

### SECTION 5.02 LANDSCAPING AND SCREENING

- 5.02.A **Landscape Improvements.** Applicants must retain or install landscaping to interrupt the scale and bulk of large facades, to integrate the building site with the surrounding landscape, and/or to enhance the quality of the environment, both visually and physically as follows:
- (1) Landscaping must be integrated throughout the site, including front and side yards, within and around parking areas, sidewalks/walkways, and public spaces.
  - (2) Existing trees, shrubs, and other vegetation must be preserved on the site to the extent practicable.
  - (3) New landscaping must include a variety of plantings and features as appropriate, such as deciduous or coniferous shade giving trees; complementary flowering, ornamental or other small trees; landscaping beds, hedges or shrubs that define buildings, planting strips, lawns or buffer areas; and grasses/groundcover.

- (4) Street trees are required along new or extended roads and existing roads in the Village and Residential districts unless waived by the DRB for topographical or physical limitations.
- (5) Landscaping must be installed within a time frame established by the DRB.

5.02.B **Screening.** Applicants must provide screening as follows:

- (1) Commercial and industrial properties must be screened from abutting residential properties.
- (2) In the Rural district, commercial and industrial properties must also be screened from public roads in the immediate neighborhood.
- (3) Parking areas must be screened from adjacent uses.
- (4) Screening is not required to block all views. Rather, screening must be designed to reduce the visual prominence of the features being screened by breaking up the view of utilitarian or unattractive site features with attractive site features such as plantings, landscape walls and decorative fencing.
- (5) The amount and type of screening must be sufficient to fulfill its intended function based on the following standards in order of priority:
  - (a) Natural terrain and topography must serve as screening wherever feasible;
  - (b) Existing trees, shrubs, evergreens and other vegetation must be preserved and used as a method for screening wherever feasible; and
  - (c) Where natural terrain and existing vegetation does not provide sufficient screening, new plantings and other landscaping materials such as berms, fences and stone walls, shall be installed for the purpose of screening.
- (6) Wooden stockade fencing or chainlink fencing with slats may not be used as screening without substantial landscaping provided to the exterior of the fence.
- (7) Screening must be installed within a time frame established by the DRB.

5.02.C **Planting Specifications**

- (1) New plantings and other landscaping materials must be selected to meet seasonal conditions, soil conditions, erosion control, and light on the site.
- (2) Plant selections must be non-invasive and rated for an appropriate plant hardiness zone. Vermont native species are preferred.

## SECTION 5.03 OUTDOOR LIGHTING

- 5.03.A Applicants must retain or install outdoor lighting where necessary to illuminate areas such as roads, sidewalks, and parking areas as follows:
- (1) Outdoor lighting fixtures must be designed to shield the light source and adjusted so as not to cast light directly on adjacent roadways or properties.
  - (2) Lamps must be warm white in color with a:
    - (a) Color rendering index (CRI) not less than 70; and
    - (b) Correlated color temperature (CCT) not greater than 3000 K, except that street lights at crosswalks and intersections may have a CCT not greater than 4000 K.
  - (3) Fixtures that cause excessive glare within the property or on adjoining properties are prohibited.
- 5.03.B The Zoning Administrator or Development Review Board may limit or adjust the number, intensity, and location of fixtures to provide for even treatment of lighting, reduce impacts on the night sky, and to ensure limited impact on surrounding properties.

## SECTION 5.04 PARKING REQUIREMENTS

- 5.04.A **Minimum Requirements.** Off street parking spaces must be provided as specified by use in the off-street parking space table below. The Development Review Board may reduce the minimum parking requirements upon the applicant submitting a professionally prepared parking study demonstrating a need for fewer spaces.
- 5.04.B **Maximum Requirements.** The proposed number of parking spaces must not exceed 200% of the minimum requirement unless specifically approved by the Development Review Board. The applicant must submit a professionally prepared parking study to demonstrate a need for any spaces in excess of 200% of the minimum. The Development Review Board may limit the amount of parking or require shared parking among compatible uses where appropriate.
- 5.04.C **Remote Parking.** Parking may be located on a separate lot from the use being served in accordance with the following:

- (1) Remote parking spaces must be not more a ¼-mile walk to a primary entrance for the use being served as measured along the path of pedestrian travel.
- (2) The path of travel from the remote parking to a primary entrance must have adequate facilities for pedestrians to safely travel between the two locations (e.g., sidewalks and crosswalks).
- (3) Accessible parking spaces must be located on-site.
- (4) If remote parking spaces will be under separate ownership from the principal lot, the applicant must submit an executed parking agreement between the owners for approval. The agreement must run with the land on which the remote parking is located and guarantee the use and operation of the remote parking for the life of the use being served. The approved agreement must be filed in the town land records.

#### 5.04.D **Off-Street Parking Standards**

- (1) Adequate space for maneuvering in and out of parking and loading areas must be provided and located so as not to interfere with circulation to and within the site.
- (2) Parking areas must be landscaped and screened from adjacent uses.
- (3) New parking must be located to the side or rear of the building served unless the applicant demonstrates that is not practicable due to a physical site constraint.
- (4) Parking is prohibited from setback areas. This provision will not apply to parking shared between adjoining lots.
- (5) Relocation or redesign of parking areas may be required to limit runoff and control erosion.
- (6) The DRB may limit the size and location of any paved area.
- (7) All parking spaces must be clearly defined and marked.

5.04.E **Bicycle Parking.** In the Village district, bicycle parking is required. The number of spaces will be 20% of the minimum required vehicular parking spaces except that multi-unit residential buildings with 10 or more units must provide a minimum of one covered bicycle parking space per unit.

Off Street Parking Spaces Table

Use	Minimum Parking Spaces Required
Lodging establishments	1.0 per sleeping unit
Residential	1.0 per dwelling unit
Church & Private School	1.0 per 3.0 seats in principal room
Club	1.0 per 6.0 members
Theater	1.0 per 6.0 seats
Hospital or Nursing Home	1.0 per 3.0 beds & 1 per employee
Professional Office, Business Service or Medical Clinic	1.0 per 250.0 sq. ft. of gross floor area
Retail Store	1.0 per 300.0 sq. ft. of gross sales area
Eating Establishments	1.0 per every 4.0 seats
Industrial	1.0 per each 1.5 employees on the largest shift
Other uses	As required by the DRB

**SECTION 5.05 PERFORMANCE STANDARDS**

5.05.A Uses must not under normal circumstances:

- (1) Emit any intensity of odor which is considered offensive and uncharacteristic of the area.
- (2) Produce noise that exceeds 70 decibels at the property line, unless it is the result of occasional, customary activities associated with an allowed use (e.g., lawn mowing or property maintenance).
- (3) Emit any smoke in excess of that shown on Ringelmann Chart #2.
- (4) Emit any dust, dirt or noxious gases which endanger the health, comfort, safety, or welfare of the public or of neighbors, or which causes any damage to property, business or vegetation.
- (5) Have lighting or signs which create glare and which could impair the vision of a driver of any motor vehicle.
- (6) Present an unreasonable risk of fire or explosion or threat to public safety.
- (7) Cause sewage or other harmful wastes to be discharged into any watercourse or into any sewage disposal system beyond its proper capacity.

**SECTION 5.06 SIGNS**

5.06.A **Applicability.** A zoning permit is required to construct, erect, replace, alter, attach or relocate any sign or sign structure in accordance with the provisions of this section except:

- (1) A protected noncommercial message of any type may be substituted in whole or part for the commercial message displayed on an existing lawful sign without a permit.
- (2) The following signs are exempt from permitting and are not subject to the standards of this section:
  - (a) Temporary signs (unlighted, and not to exceed 6 square feet per side). Signs remaining in place for more than 6 months are not considered to be temporary. Temporary signs must be on the property being advertised.
  - (b) Sandwich boards or other similar signs placed in the front of the business or public use and which must be removed at night. Such signs are not to exceed 6 square feet per side.
  - (c) Signs in rights-of-way erected by the state or town.
  - (d) Official business directional signs and non-advertising signs for directional, safety or public service purposes provided they are in conformance with Vermont statute.
  - (e) Signs conveying legal warnings relating to the property on which they are posted, such as those related to trespassing and hunting.
  - (f) Temporary election signs to be posted and removed in accordance with state law (10 VSA Chapter 21).
  - (g) Window signs, not to exceed 10 square feet per window.
  - (h) Bulletin boards or similar displays for announcing community affairs.
  - (i) Devices such as clocks displaying the time, temperature and/or date.
  - (j) House numbers.
  - (k) Temporary public notices in accordance with state law.

5.06.B **Permitted Signs.** The Zoning Administrator may issue a permit for the signs listed below. All other signs are prohibited.

- (1) **Business Signs.** Permanent signs for allowed business uses must comply with the requirements of this section. Each business property is allowed up to three signs:
  - (a) One free standing sign not to exceed 25 square feet per side;
  - (b) One wall-mounted sign, either mounted on the surface of the building wall and not to exceed 10 square feet, or hung from and perpendicular to the building wall and not to exceed 6 square feet per side;
  - (c) One door sign not to exceed 3.5 square feet.
- (2) **Construction Signs.** One temporary sign, advertising or indicating a subdivision or residential development, is allowed at the entrance of the project. It may contain the name of the general contractor and the subcontractors. The sign must not exceed 2) square feet per side and must be promptly removed when construction is complete.
- (3) **Subdivision or Development Signs.** One permanent sign (no larger than 15 square feet per side), indicating a subdivision or residential development.

#### 5.06.C **General Standards**

- (1) Signs must not be designed, constructed, or positioned to constitute a hazard to public safety.
- (2) No outdoor advertising sign is allowed in any district except on premise for an allowed use.
- (3) All sign lighting must be designed, located, shielded and directed to prevent glare or light trespass onto streets and adjoining properties, and to prevent the distraction of motorists or pedestrians as follows:
  - (a) **External Illumination**
    - (i) All external sign lighting must concentrate the illumination upon the sign message area.
    - (ii) All external sign lighting must be from above the sign message area.
    - (iii) All lamps must be shielded so that no exposed bulbs are visible.
  - (b) **Internal Illumination**

- (i) The sign face must cover all internal illumination components so that no exposed bulbs are visible.
  - (ii) The sign face of internally illuminated signs must function as a filter to diffuse illumination.
  - (iii) The sign background must be opaque or dark colored (HSL color model: lightness of <30%).
- (4) Signs must not have moving or animated parts or displays except that electronic changeable copy signs may be permitted as follows:
- (a) Sign copy must be static (no scrolling, flashing, animation or video) and may not change more frequently than once per minute. This provision will not apply to video display screens positioned behind window glass that are not more than 2.5 square feet in area.
  - (b) The sign must be equipped and operated with photocell technology that automatically adjusts the brightness of the sign in response to ambient light conditions.
  - (c) The sign must be turned off or set to a solid black display when other outdoor lighting on the premises is required to be extinguished.
- (5) Free standing signs must not exceed 15 feet in height, as measured from the average grade of the ground to the top of the sign.
- (6) All signs must be maintained in a secure and safe condition.
- (7) Signs are allowed in a setback area, but no sign may be placed in the road right-of-way.
- (8) Wall signs that extend above the eave, and roof signs, are prohibited.

## **SECTION 5.07 SITE PRESERVATION AND EROSION CONTROL**

### **5.07.A Preservation of Existing Features**

- (1) Site amenities such as trees and tree lines, water courses or drainage ways, scenic roads, historic sites, unique geologic features, fences, stone walls, or any other features which the DRB feels are an asset to the site and/or community must be preserved insofar as possible through harmonious design and appropriate construction methods.

- (2) Development near shorelines and stream banks must maintain existing vegetation as much as possible.
- (3) Land must be subdivided and developed to minimize grading, cut, and fill, and to the degree possible, to retain the natural contours. Wherever possible, natural cover shall be conserved to minimize stormwater runoff.

**5.07.B Wetlands, Streams, Springs, Swales, Drainage ways and Lowland Areas.**

Wetlands (as mapped in the Vermont Significant Wetlands Inventory or the most current Wetland Advisory Map published by the Vermont Agency of Natural Resources), streams, springs, swales, drainage ways and lowland areas warrant restrictive land use controls because of flooding hazards to human life and property, their ground water recharge functions, their importance to water quality and the health of aquatic communities, and their wildlife habitats. Due to the extreme limitations of these features, subdivision boundaries, lot layouts, and building envelopes must be located and configured to avoid any adverse impacts to them. Methods for avoiding such adverse impacts include, but may not be limited to, locating and sizing building envelopes to exclude these features, designating undisturbed buffer areas to protect the identified feature(s), and designing roads, driveways, and utilities to avoid and/or prevent the fragmentation of identified features.

**5.07.C Steep Slopes.** Steeply sloping lands (25% and greater) are prone to severe erosion if disturbed. Erosion and the resulting overland flow of soil sediments into streams, ponds, and public roads is detrimental to water quality and aquatic life, and a potential hazard to public safety. Steep slopes of 25% grade or greater are unsuitable for development of structures, roads, and public utilities. Subdivision boundaries, lot layouts, and building envelopes must be located and configured to avoid any adverse impacts to steep slopes. Methods of avoiding such adverse impacts are the same as identified in (B) above.

**5.07.D Erosion and Sediment Control.** All areas exposed during construction shall be protected in accordance with standards contained in the Low Risk Site Handbook for Erosion Prevention and Sediment Control published by the Vermont Department of Environmental Conservation, Agency of Natural Resources, including any updated versions of this publication. A State of Vermont Construction General Permit may be required.

**SECTION 5.08 STORMWATER**

5.08.A Stormwater drainage, infiltration, retention and treatment facilities, including culverts and ditches, shall be designed to accommodate potential stormwater runoff from the entire upstream drainage area, based on conditions of total potential development, in accordance with the following standards:

- (1) Post-development peak storm flows must be maintained at predevelopment levels.
- (2) All stormwater management facilities must be designed in accordance with best management practices for stormwater management as most recently amended by the Vermont Agency of Natural Resources.
- (3) The preparation and implementation of a stormwater management plan, prepared by a Vermont Licensed Engineer, may be required by the DRB.
- (4) Off-site easements and/or management facilities may also be required by the DRB as needed to accommodate stormwater runoff on adjoining properties or downstream from the proposed development.

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**ARTICLE 6. SUBDIVISION STANDARDS**

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**SECTION 6.01 APPLICABILITY**

- 6.01.A All division of land into two or more lots must conform to the standards of this article.
- 6.01.B A lot must be lawfully established by recording an approved subdivision plat in the town's land records in full conformance with these regulations prior to being sold, transferred or leased except that a landowner may:
- (1) Lease land for farming or forestry purposes; or
  - (2) Sell or grant rights-of-way or easements that do not result in the subdivision of land.
- 6.01.C A landowner must not commence any site preparation, construction or land development for purposes other than farming or forestry on land to be subdivided prior to recording an approved subdivision plat in the town's land records in full conformance with these regulations.
- 6.01.D The Zoning Administrator must not issue any permits for land development on a lot created by subdivision until the landowner has recorded a subdivision plat in the town's land records in conformance with these regulations.

**SECTION 6.02 PURPOSE**

- 6.02.A The purpose of subdivision review is to ensure that:
- (1) Subdivided lots are suitable for development without endangering public health, safety or welfare;
  - (2) Appropriate provisions are made for necessary improvements including, but not limited to, water supply, sewage disposal, stormwater management, fire and emergency protection and access, utilities, and parks and open space;
  - (3) Proposed subdivisions are complimentary to and functionally integrated with surrounding development and the town's road network to the greatest extent feasible; and

- (4) Proposed subdivisions are designed to avoid, mitigate and/or minimize adverse environmental effects to the greatest extent feasible.

### **SECTION 6.03 SUITABILITY OF THE LAND**

6.03.A The applicant must demonstrate that the land to be subdivided into lots is suitable for development without adversely impacting:

- (1) Public health or safety;
- (2) Environmental quality; and
- (3) Adjoining properties.

6.03.B Land with inadequate capability to support development or subject to hazardous conditions including, but not limited to, periodic flooding, poor drainage, high water table, shallow depth to bedrock, erosion, landslide or slope instability, must not be subdivided into developable lots unless the applicant can demonstrate that appropriate measures will be taken to overcome any physical limitations.

6.03.C Each lot approved under this chapter must have a designated development envelope shown on the plat that conforms to dimensional requirements of the applicable zoning district. The applicant must establish development envelopes that exclude land deemed unsuitable for development including, but not limited to:

- (1) Surface waters with a 50-foot buffer
- (2) Wetlands with a 50-foot buffer
- (3) Special flood hazard area and river corridor
- (4) Slopes in excess of 25% (to be based on natural grade prior to any site work)
- (5) Any land subject to an easement prohibiting development

6.03.D All structures subject to a zoning permit under these regulations must be located within a designated development envelope except:

- (1) Infrastructure serving the lot that is substantially at or below ground level including, but not limited to utilities, driveways, septic systems, drinking water systems and stormwater systems.

**SECTION 6.04 CAPABILITY OF COMMUNITY FACILITIES AND SERVICES**

- 6.04.A The applicant must demonstrate that the proposed subdivision will not cause a disproportionate or unreasonable burden on the community's ability to provide public facilities, services and infrastructure including, but not limited to:
- (1) School facilities and educational services;
  - (2) Police, fire protection and ambulance services;
  - (3) Road infrastructure and maintenance;
  - (4) Parks and recreation facilities; and
  - (5) Water supply, sewage disposal and stormwater systems and infrastructure.
- 6.04.B The Development Review Board may require that development be phased and/or condition approval on the applicant upgrading or contributing to the improvement of public facilities, services and infrastructure that may be disproportionately or unreasonably burdened by the proposed subdivision. The Development Review Board may require the applicant to submit professionally prepared impact studies that include estimates of the cost of public improvements that may be necessary to serve the proposed subdivision.

**SECTION 6.05 LOT DESIGN AND CONFIGURATION**

- 6.05.A **Lot Arrangement.** The applicant must design the subdivision:
- (1) To provide for orderly and coordinated development in Fairfax;
  - (2) To follow and extend the planned settlement pattern (including lot size, lot configuration, road layout and building location) as defined by the purpose and standards of the applicable zoning district to the maximum extent feasible given the site's topography and natural features;
  - (3) To connect to and extend existing road, sidewalk, path, trail, utility, greenway, and open space corridors to the maximum extent feasible given the site's topography and natural features;
  - (4) To respond sensitively to the existing terrain and natural and constructed features that define the site including, but not limited to: streams or drainage swales, hills or ridgelines, tree lines and specimen trees, stonewalls or fence lines;

- (5) To minimize the amount of cut and fill required to construct roads, driveways and buildings within the subdivision;
- (6) So that there will be no foreseeable impediments to obtaining zoning permits to build on all lots in accordance with the standards of these regulations;
- (7) To minimize the number of lots that are in more than one zoning district;
- (8) So that there will be no foreseeable impediments to providing access to each lot from an existing or planned road;
- (9) To minimize the number of new curb cuts along town or state highways;
- (10) With a coordinated stormwater drainage pattern for the subdivision;
- (11) So that there will be positive drainage away from buildings sites;
- (12) So that there will be no privately-owned reserve strips of land located between the subdivision and adjoining parcels that is not commonly held by property owners within the subdivision or is not dedicated to public use; and
- (13) To allow further subdivision on and access to any remaining undivided land, lots with further subdivision potential and/or adjoining undeveloped parcels in a manner that would result in a logical and coordinated development pattern and extension of an interconnected road and sidewalk/path network.

**6.05.B Lot Dimensions.** The applicant must design the subdivision:

- (1) So that all lots front on a public or private road unless otherwise provided for in the applicable zoning district;
- (2) So that lot dimensions meet the minimum standards for the zoning district;
- (3) Except as otherwise approved by the Development Review Board to allow lot lines to respond to the site's topography and natural features:
  - (a) So that side lot lines are at right angles to straight road segments or radial to curved road segments;
  - (b) So that rear lot lines are parallel to front lot lines;
  - (c) So that the lot ratio (width-to-depth or depth-to-width) does not exceed 1:5;
  - (d) To minimize the number of lots with frontage on more than one road; and
  - (e) To minimize the number of lots with a rear lot line that abuts the side lot line of an adjacent lot.

6.05.C **Screening and Buffers.** The applicant must design the subdivision to maintain existing mature vegetation and/or install additional landscaping or fencing as necessary to provide:

- (1) A buffer between incompatible uses;
- (2) Screening of utilities, trash storage and other utilitarian site features; and
- (3) Privacy between residential building sites within and adjoining the subdivision.

**SECTION 6.06 GENERAL REQUIREMENTS FOR NECESSARY IMPROVEMENTS**

- 6.06.A **Public Works Specifications.** Applicants must construct new or extended roads, utilities and other improvements in accordance with any public works specifications duly adopted by the Town of Fairfax. In the case of a conflict between a provision of these regulations and a provision of the public works specifications, the public works specifications will take precedence.
- 6.06.B **Technical Review.** The Zoning Administrator may forward subdivision applications to town or state employees, as applicable, for review and comment upon receipt of a complete application. The Development Review Board may require the applicant to pay the reasonable cost of a technical review by a third-party qualified professional selected by the town. The Development Review Board or Zoning Administrator may condition or deny any approval or permit based on technical review comments.
- 6.06.C **Common Infrastructure.** Water, wastewater, stormwater or other common infrastructure serving multiple lots within the subdivision must be located on commonly owned land. If an owners association is not formed for the subdivision, the applicant must file a maintenance agreement for any common infrastructure in the town land records.
- 6.06.D **Construction and Maintenance.** The applicant must:
- (1) Construct roads, utilities and other improvements in accordance with all conditions of approval under these regulations and any applicable public works specifications.
  - (2) Demonstrate how roads, utilities and other improvements required under this section will be maintained once lots or units have been sold and/or developed. This must include establishment of an owners' association, filing of maintenance agreements or similar legally enforceable instruments to ensure continuing maintenance of all private roads, shared infrastructure, or other common land or facilities within the subdivision. The town may require a third party legal review of documents prior to subdivision approval.
  - (3) Maintain roads, utilities and other improvements until lots or units within the subdivision are sold and/or developed in accordance with all conditions of approval.

6.06.E **Monuments and Lot Corner Markers.** The applicant must:

- (1) Show the locations of all right-of-way monuments and lot corner markers on the final subdivision plat;
- (2) Install permanent right-of-way monuments at all road intersections and other critical points in street lines in accordance with state statutes and rules; and
- (3) Install lot corner markers at corners and angle points of all lots in accordance with state statutes and rules.

6.06.F **Engineer Certification.** A professional engineer licensed to practice in Vermont must certify that all new or extended roads, utilities and other improvements were designed and constructed in accordance with all applicable public works specifications, provisions of these regulations and any conditions of approval prior to buildings served by such roads, utilities or other improvements being occupied. This certification may exclude the final topcoat on new or extended roads. The applicant must submit as-built drawings of any roads, utilities or other improvements that the town agrees to take over or maintain.

6.06.G **Acceptance of Roads or Other Necessary Improvements.** No provision of these regulations will be interpreted to require the Town of Fairfax to accept roads, utilities and other improvements serving a subdivision. Acceptance is subject to the approval of the Fairfax Selectboard.

## SECTION 6.07 ROAD DESIGN AND CONFIGURATION

6.07.A **Applicability.** Applicants must design and construct all new or extended roads within a subdivision in accordance with the Town of Fairfax Highway Ordinance and any other applicable town ordinances or specifications and this subsection. Any vehicular way that will access more than 4 dwelling units or 2 non-residential principal uses will be considered a road and must conform to the standards of this section irrespective of whether it will be public or private.

6.07.B **Existing Roads.** The applicant must demonstrate that an existing private road or Class 4 town road meets or will be improved to meet minimum requirements for emergency vehicle access before it may be used to access a subdivision. The Development Review Board may require the applicant to improve an existing road

or road segment to the standards of this article before it may be used to access a subdivision. Further:

- (1) **Private Roads.** Before an existing private road may be used to access a subdivision, the applicant must file a road maintenance agreement in the town land records. The owners of all lots served by the private road must be signatories to the agreement. The agreement must run with the land and be binding on all future property owners served by the road.
- (2) **Class 4 Town Roads.** Before an existing Class 4 town road may be used to access a subdivision, the applicant must obtain approval from the Fairfax Selectboard. The Selectboard may condition approval upon the applicant upgrading the road and/or entering into a maintenance agreement with the town in accordance with adopted town road standards and policies.

6.07.C **General Standards.** Applicants must design and construct all new or extended roads within a subdivision to:

- (1) Safely accommodate all users (including vehicular, bicycle and pedestrian traffic);
- (2) Calm traffic and discourage travel speeds in excess of the posted speed limit;
- (3) Avoid congestion on existing roads;
- (4) Minimize the number of curb cuts on public roads;
- (5) Provide adequate access and suitable turnarounds, when applicable, for emergency and service vehicles;
- (6) Logically extend and improve the connectivity of the town's existing road network;
- (7) Provide efficient access to property;
- (8) Minimize the amount of impervious surface necessary to provide convenient and safe access to property;
- (9) Be graded and laid out to conform as closely as possible to the pre-existing topography;
- (10) Provide adequate drainage and minimize run-off or sediment entering the public right-of-way or surface waters;

- (11) Be located the maximum distance feasible from surface waters (at least 150 feet is preferred and additional stormwater management practices may be required if that separation distance cannot be achieved); and
- (12) Minimize the number of stream crossings.

6.07.D **Access Management.** Applicants must implement proper access management techniques in the design of subdivisions. Applicants must obtain an access permit or a letter of intent for subdivision roads that intersect with town roads or state highways prior to final subdivision approval. Lots within a major subdivision must not be accessed via driveways on an existing public road unless specifically approved by the Development Review Board to accommodate physical site constraints.

6.07.E **Connectivity.** New or extended roads must function as part of an interconnected road network to the maximum extent feasible given physical site constraints and existing development patterns on adjoining land. The applicant must propose a road network that provides at least two routes for vehicular access to lots within the subdivision wherever practicable.

- (1) To that end, new dead-end roads:
  - (a) Must not exceed 600 feet in length;
  - (b) Must not serve more than 6 principal buildings; and
  - (c) Must terminate in a L, T or Y turnaround.
- (2) The applicant must design the subdivision so that vehicular access extends to the property boundaries at locations where it will be physically possible to continue the road onto adjoining property and where it will facilitate orderly and coordinated development of the adjoining property. The right of the adjoining property owner to connect to the road must be legally established through the subdivision plat, deeds and other legal means as appropriate. The applicant must either:
  - (a) Construct the road to the property boundary; or
  - (b) Provide the Town of Fairfax a surety and written agreement to construct the remaining segment if a development with a connecting road is approved on the adjoining land within five years of the last lot within the subdivision being sold or developed.

- (3) The Development Review Board may waive or modify connectivity requirements if the applicant demonstrates:
  - (a) The proposed road includes one or more stubs designed allow vehicular and/or pedestrian connections when adjacent property is subdivided or developed; or
  - (b) Pre-existing development patterns or development restrictions on adjacent property, topography, ledge, streams, wetlands or other physical site constraints make construction of a through road or second road connection impractical or undesirable.
- (4) If the Development Review Board does not require a road or road right-of-way to be extended to the property boundaries, the applicant must provide pedestrian connections between the proposed subdivision and adjoining property where physically possible.

6.07.F **Fire Apparatus Access.** A fire apparatus access road must have not less than 20 feet of clear width and 13.5 feet of vertical clearance unless the applicant obtains a variance from the fire code. The clear width area may include surfaces next to the roadway with a load capacity that meets fire code requirements.

6.07.G **Road Names and Signs.** The applicant must name new or extended roads and install road signs in accordance with state and town requirements. The owners of a private road are responsible for maintaining required road signs.

6.07.H **Drainage.** Applicants must design new or extended roads:

- (1) With green stormwater practices consistent with the Vermont Stormwater Manual and the Vermont Green Streets Guide to the maximum extent feasible given the physical characteristics of the property (ex., soils and slopes);
- (2) To not block or restrict the flow of drainage in existing ditches, swales or gutters;
- (3) To not contribute to an accumulation of stormwater that would exceed the capacity of downstream facilities or infrastructure;
- (4) With culverts that are sized to convey anticipated peak stormwater flows; and
- (5) With culverts that are installed to minimize erosion damage at the inlet and outlet.

- 6.07.I **Pedestrian and Bicycle Facilities.** An applicant for a major subdivision must integrate pedestrian and bicycle access into the design of the subdivision in accordance with the following:
- (1) Must install sidewalks along both sides of a new or extended road in the Village zoning district unless the Development Review Board waives the requirement for construction when there are no connecting sidewalks existing or planned within ¼ mile. In such case, the Development Review Board must require the applicant to provide a right-of-way or easement for future sidewalk construction.
  - (2) May be required to install on-street bicycle lanes or separated shared use paths in the Village zoning district where high volumes of bicycle traffic are anticipated such as routes that connect to the school, community center or recreation areas.
  - (3) May be required to install a sidewalk or shared use path along one side of a new or extended road in the Residential zoning district;
  - (4) May be required to install a shared use path in the Rural or Conservation zoning district:
    - (a) Where the road cannot safely accommodate pedestrians and cyclists due to traffic levels, sight distances or width; or
    - (b) Where a vehicular connection to adjoining development is not practical but a connection can feasibly be made for walking and/or cycling.
  - (5) In determining whether to require sidewalks or paths, the Development Review Board must consider:
    - (a) The Town of Fairfax Official Map as most recently adopted;
    - (b) The location of the proposed development in relation to walking/cycling destinations and existing or planned sidewalks or paths; and
    - (c) The size of the proposed subdivision.
  - (6) Sidewalks in the Village district must be constructed of concrete. The Development Review Board may allow sidewalks in other districts to be surfaced with asphalt.
  - (7) Must design and construct sidewalks, shared use paths or bike lanes in accordance with the most recently amended Specifications for Construction published by the Vermont Agency of Transportation.

6.07.J **Street Trees.** The applicant must install street trees along new or extended roads in accordance with the following:

- (1) **Location.** Street trees must be planted within the road right-of-way and must not be closer than 4 feet from the edge of the road or 2 feet from the edge of a sidewalk or path.
- (2) **Specification, Size and Spacing.** Street trees must be sized and planted with a reasonably even, linear spacing as follows:
  - (a) Where there are no existing or proposed overhead utility lines street trees must be large trees.
  - (b) Where there are existing or proposed overhead utility lines street trees must be small or medium trees.
  - (c) Large trees must be planted at a minimum ratio of one for every 50 feet of frontage.
  - (d) Medium or small trees must be planted at a minimum ratio of one for every 30 feet of frontage.
  - (e) The Development Review Board may modify the above requirements and allow the applicant to plant medium or small trees if buildings or other obstructions will conflict with large trees as they mature.
  - (f) The Development Review Board may modify the above requirements and allow the applicant to shift the spacing and/or size of street trees to accommodate site features and underground utilities, or to maintain sight distance.
  - (g) Applicants must plant a diversity of tree species recommended as street trees by the Vermont Urban and Community Forestry Program.
- (3) **Preservation of Existing Trees.** The Town of Fairfax strongly encourages preservation of existing, healthy, mature trees. The Development Review Board may waive the location, spacing and alignment standards above to allow existing healthy trees within the road right-of-way to meet street tree requirements.
- (4) **Establishment.** Newly planted street trees must be regularly watered during their first growing season to promote healthy establishment. The Town of Fairfax will require the applicant to provide a surety to cover the cost of replacing any street trees that do not survive their first two growing seasons.

- (5) **Maintenance and Replacement.** Street trees must be maintained in a safe and healthy condition as part of normal road maintenance practices. A street tree that dies or is damaged or removed must be replaced but the replacement may be relocated within the right-of-way if necessary.

**SECTION 6.08 STORMWATER MANAGEMENT DESIGN**

- 6.08.A The applicant must design the subdivision to implement Low Impact Development (LID) and Green Stormwater Infrastructure (GSI) practices.
- 6.08.B Where the subdivision will require a state stormwater permit, the Town of Fairfax will not review the stormwater management plan. The Development Review Board will condition subdivision approval on the applicant filing a copy of the state stormwater permit with the Zoning Administrator prior to the start of construction.
- 6.08.C Where the subdivision will not require a state stormwater permit, the applicant must either:
- (a) Submit a stormwater management plan prepared by a professional engineer or landscape architect licensed to practice in Vermont; or
  - (b) Demonstrate that the Vermont GSI Simplified Sizing Tool has been used to select and size green stormwater management practices within the subdivision.

**SECTION 6.09 OTHER NECESSARY IMPROVEMENTS**

- 6.09.A **Firefighting Facilities.** Where there is not an adequate source of water for fire protection within a subdivision as determined by the Fairfax Fire Chief, the applicant must install a source of water that meets Fire Department requirements or construct all residences and public buildings within the development with approved sprinkler systems.
- 6.09.B **Water and Wastewater.** The applicant must design the subdivision to provide water and wastewater service to each lot. The applicant must demonstrate that the proposed subdivision conforms to the Vermont Wastewater System and Potable Water Supply Rules. Further:
- (1) All proposed subdivisions within the Town of Fairfax municipal water system service area must connect to the public water system unless the applicant obtains a letter from the Town of Fairfax Water Commissioners indicating that the system is unable to serve the proposed development.
  - (2) All proposed subdivisions within the Town of Fairfax municipal wastewater system service area must connect to the public sewer system unless the

applicant obtains a letter from the Town of Fairfax Board of Sewer and Water Commissioners indicating that the system is unable to serve the proposed development.

6.09.C **Public and Private Utilities.** The applicant must design the subdivision with electric and telecommunications utility services provided to each lot as specified below.

- (1) All utilities must be located underground unless prevented by ledge or other physical conditions that make burying lines impractical.
- (2) Utilities must be located within road rights-of-way to the maximum extent feasible.
- (3) The applicant must provide the town with a maintenance and access easement for any utilities not located within a public right-of-way.

## SECTION 6.10 RECREATION LANDS

6.10.A An applicant must design a major subdivision intended for residential or mixed use development with recreation land as follows:

- (1) A minimum of 2,000 square feet of recreation land is required for each lot within the subdivision to be developed with a 1-4 unit dwelling (or for each principal building if not on separate lots) or for each dwelling unit within a multi-unit or attached building.
- (2) The Development Review Board may approve a reduction of up to 30% in the total amount of recreation land required if public access is provided for and ensured through easements or other legal means. In determining whether to reduce the recreation land requirement, the Development Review Board must consider the accessibility of the land and its potential contribution to public recreation access for all Fairfax residents.
- (3) Land must be suitable for passive or active outdoor recreation such as playgrounds, sport fields or courts, community greens or walking paths. Land considered unsuitable for development under SECTION 6.03 must not be counted towards the recreation land requirement.
- (4) No provision of this section will be interpreted to require the Town of Fairfax to accept recreation land. Acceptance is subject to the approval of the Fairfax Selectboard.

**SECTION 6.11 SITE WORK**

6.11.A **Soil Preservation.** The applicant must:

- (1) Implement erosion control practices as recommended in the Low Risk Site Handbook;
- (2) Retain and stockpile all topsoil removed during the course of construction on-site;
- (3) Redistribute stockpiled topsoil to provide even cover on all disturbed areas to be seeded or planted;
- (4) Make reasonable efforts to repair any soil compaction prior to seeding or planting such as tilling, subsoiling, plug aeration and/or organic amendments; and
- (5) Not remove any sand, gravel, rock or other earth resources from the site for any purpose other than the minimum necessary to meet the construction needs of the subdivision.

6.11.B **Debris Removal.** The applicant must remove any debris generated during the course of construction from the site in accordance with state regulations. Burying debris or using it as fill within development envelopes is prohibited.

**SECTION 6.12 LOTS NOT FOR DEVELOPMENT**

6.12.A The Development Review Board may approve the creation of a lot not for development for the purposes of conservation, farming or forestry, recreation, roads, or commonly owned improvements or infrastructure within a subdivision.

6.12.B In approving the creation of such a lot, the Development Review Board may waive or modify the standards of this chapter and the dimensional requirements of the zoning district.

6.12.C The restrictions on the future use or development of such a lot must be clearly described on the plat and the Development Review Board may require the applicant to file covenants or easements as appropriate.

### SECTION 6.13 GOVERNING DOCUMENTS

6.13.A The applicant must provide drafts of any covenants, articles of incorporation, bylaws, maintenance agreements, easements or other legal documents prepared by an attorney licensed to practice in Vermont for review prior to final approval of the subdivision and must record executed documents with the town along with the final plat.

### SECTION 6.14 RURAL PLANNED UNIT DEVELOPMENT

6.14.A **Applicability.** Major residential subdivisions proposing 10 or more lots or principal buildings in the Rural or Conservation district must be designed as a planned unit development (PUD). All requirements of these regulations applicable to subdivisions apply to planned unit developments unless specifically waived or modified in this section.

6.14.B **General Intent.** A rural planned unit development must result in a compact settlement pattern that concentrates development on a minor portion of the site and conserves the natural and agricultural resources needed to sustain Fairfax's rural economy and way of life.

6.14.C **Multiple Parcels.** An application for a planned unit development may include multiple parcels of land within the Rural or Conservation district provided the parcels are under common ownership. Density may be transferred between parcels within the proposed planned unit development.

6.14.D **Waiver of Dimensional Standards.** The minimum development envelope standard will not apply to lots within a planned unit development.

6.14.E **Modification of Dimensional Standards.** An applicant may modify the dimensional standards of the zoning district only as specified below:

- (1) Minimum lot size may be reduced to not less than 10,000 square feet, but must not exceed 40,000 square feet for lots with only one principal building
- (2) Minimum lot frontage may be reduced to not less than 50 feet
- (3) Maximum lot coverage may be increased to not more than 60%
- (4) Minimum front and rear setbacks may be reduced to not less than 20 feet

- (5) Minimum side setbacks may be reduced to not less than 10 feet within the planned unit development, but must not be reduced around the perimeter of the development

**6.14.F Multiple Principal Buildings.** Multiple principal buildings may be located on a lot within a planned unit development. Principal buildings must be separated from one another by not less than 20 feet. The Development Review Board may approve footprint lots for buildings located on common land within a planned unit development.

**6.14.G Allowable Density.** The maximum density of the zoning district will not apply within a planned unit development. The applicant must calculate the maximum density of a planned unit development as follows:

- (1) Density will be calculated based on the total acreage of buildable land on the site. Buildable land will not include:
  - (a) Surface waters with a 50-foot buffer
  - (b) Wetlands with a 50-foot buffer
  - (c) Special flood hazard area and river corridor
  - (d) Slopes in excess of 25% (to be based on natural grade prior to any site work).
  - (e) Any land subject to an easement that prohibits development.
- (2) The maximum density of the planned unit development must not exceed 1 dwelling unit per 2.5 acres of buildable land except:
  - (a) If at least 20% of both the ownership and rental units within the planned unit development will meet the current state definition of affordable housing, the applicant may increase the maximum density up to 2 dwelling units per acre of buildable land.

**6.14.H Open Space Requirements.** An area not less than 60% of the total acreage on the site must be set aside as permanent open space as follows:

- (1) The applicant must demonstrate that the planned unit development has been designed to maximize the conservation of working farm and forest land within the open space area. To the maximum extent feasible, open space must:
  - (a) Include primary agricultural soils;

- (b) Be configured to follow existing field or pasture boundaries;
  - (c) Be sized to allow continued productive use, including but not limited to, consideration of the access and maneuvering requirements of farming or forestry vehicles and equipment; and
  - (d) Be sited and designed with an adequate buffer from the developed portion of the site in order to mitigate any noise, dust and odors generated by farming and forestry activities.
- (2) The applicant must submit a plan for the continued productive use of farm or forest land within the permanent open space area. This may include transfer, sale or lease to a third party provided there is a conservation easement filed in the town's land records to limit future use of the land to farming or forestry.
- (3) Not less than 40% of the buildable land on the site must be included within the open space area.
- (4) The requirement for recreation lands under SECTION 6.10 may be fulfilled in whole or part by the permanent open space area provided it is accessible and suitable for passive recreation by residents of the planned unit development.
- (5) Above ground infrastructure and utilities serving the planned unit development must not be located within the permanent open space area except:
- (a) A renewable energy system subject to a certificate of public good that is sized to supply some or all of the electricity needs of the planned unit development may be located within the permanent open space area provided it will not result in a permanent loss or degradation of primary agricultural soils.
- (6) To the maximum extent feasible, the planned unit development must be designed with a contiguous open space area. Greenway corridors and smaller, non-contiguous open space areas may be approved associated with site specific resources such as streams or wetlands.

## ARTICLE 7. ADMINISTRATIVE PROCEDURES

### SECTION 7.01 ROLES AND RESPONSIBILITIES

#### 7.01.A Zoning Administrator

- (1) The Planning Commission nominates and the Selectboard appoints a Zoning Administrator in accordance with state statute. The Selectboard may appoint an Acting or Assistant Zoning Administrator to act under the supervision of the Zoning Administrator, in the Zoning Administrator's absence, and/or if the Zoning Administrator has a conflict of interest.
- (2) The Zoning Administrator must:
  - (a) Assist applicants in determining whether and which town permits and/or approvals will be needed for the proposed land development;
  - (b) Provide applicants with application forms;
  - (c) Review applications for zoning permits and development approvals as specified in these regulations;
  - (d) Refer applications to the Development Review Board as required under these regulations with an accompanying report evaluating compliance with these regulations;
  - (e) Inspect projects during construction when required as a condition of approval or to ensure compliance with these regulations;
  - (f) Maintain public records;
  - (g) Respond to complaints and violations; and
  - (h) Perform all other tasks necessary to administer these regulations.
- (3) The Zoning Administrator must enforce the provisions of these regulations strictly and may only issue a zoning permit or other approval for development that conforms to these regulations.

7.01.B **Development Review Board.** The Selectboard appoints members to the Development Review Board in accordance with state statute. The Development Review Board reviews applications for development approvals and appeals as specified in these regulations, state statute and its adopted rules of procedure.

7.01.C **Planning Commission.** The Selectboard appoints members to the Planning Commission in accordance with state statute. The Planning Commission may prepare amendments to these regulations and make recommendations to the Selectboard on the amendment of these regulations.

## SECTION 7.02 FEES AND FILING REQUIREMENTS

7.02.A **Permit Fees.** The Selectboard may establish reasonable fees for the Zoning Administrator or other town employees to charge for administering these regulations. These fees may include, but are not limited to, the cost of posting and publishing notices, holding public hearings, recording documents, and conducting inspections. An applicant must pay the applicable permit fees when submitting an application. The Zoning Administrator must not deem an application complete until all applicable permit fees are paid in full.

7.02.B **Impact Fees.** Upon adoption of an impact fee ordinance, the Town of Fairfax may require applicants to pay impact fees in accordance with that ordinance and state statute. An applicant must pay any applicable impact fees prior to the issuance of a zoning permit, the start of construction, and/or the issuance of a certificate of compliance as specified by the Zoning Administrator.

7.02.C **Independent Review Costs.** The Selectboard may establish procedures and standards authorizing the Zoning Administrator or Development Review Board to hire qualified professionals to provide an independent review of an application when deemed necessary to ensure compliance with these regulations. The Zoning Administrator or Development Review Board must notify the applicant prior to hiring a consultant to conduct an independent review. The applicant must pay the reasonable cost of any required independent review prior to obtaining a zoning permit or filing a subdivision plat.

### 7.02.D **Performance Bonds or Sureties**

- (1) In accordance with state statute, the Zoning Administrator or Development Review Board may require an applicant to provide a performance bond or surety as a condition of approval to insure the:
  - (a) Completion of proposed development in accordance with approved plans and applicable town or state specifications; and/or

- (b) Protection of any public infrastructure or facilities that may be affected by proposed development.
  - (2) The Zoning Administrator or Development Review Board may require an applicant to provide a quote prepared by a qualified professional for the full project cost and then may base the amount of any bond or surety on that quote.
  - (3) If the applicant does not either complete the proposed development within 3 years or request a one-time extension for not more than 3 additional years, the bond or surety will be forfeited to the town.
  - (4) The Town of Fairfax will only release a required bond or surety after certification by the applicant and determination by the Zoning Administrator that the proposed development has been satisfactorily completed.
- 7.02.E **Monitoring or Inspection Costs.** The Zoning Administrator or Development Review Board may condition approval upon monitoring and inspection during construction or once the use has commenced when deemed necessary to ensure compliance with these regulations. The applicant must pay the reasonable cost of any required monitoring or inspection.
- 7.02.F **As-Built Drawings.** The Zoning Administrator or Development Review Board may require an applicant to file as-built drawings as a condition of approval. The Town of Fairfax requires as-built drawings for any infrastructure to be built within town rights-of-way or to be turned over to the town. The Zoning Administrator must require an applicant to file revised plans or as-built drawings when approved site or subdivision plans are amended or when minor adjustments to approved plans are necessary to respond to unforeseen conditions that arise during construction.
- 7.02.G **Other Permits, Approvals or Certifications.** The Zoning Administrator or Development Review Board may condition approval upon the applicant filing other permits, approvals or certifications required by the Town of Fairfax, the State of Vermont or other regulatory entities prior to the issuance of a zoning permit, the start of construction, and/or the issuance of a certificate of compliance as specified by the Zoning Administrator.

**SECTION 7.03 ZONING PERMITS****7.03.A Submitting a Zoning Permit Application**

- (1) **Zoning Administrator.** The Zoning Administrator must assist prospective applicants by:
  - (a) Determining whether a project requires a zoning permit, and any associated development approvals, under these regulations and keeping written documentation of any such determinations as part of the Zoning Administrator's records;
  - (b) Providing prospective applicants with the necessary form(s) to apply for the applicable permit(s) and approval(s);
  - (c) Notifying prospective applicants of the fees or other charges that the town may charge in relation to the application or proposed development;
  - (d) Informing prospective applicants that state permits may be required for the proposed development and recommending that applicants contact the State Permit Specialist at the Regional Office of the Vermont Department of Environmental Conservation; and
  - (e) Providing prospective applicants with copies of the state energy standards for residential or commercial buildings as applicable and informing them of the need to file energy certificates upon completion of construction.
- (2) **Applicant.** An applicant must:
  - (a) Be the landowner or a designated agent authorized of the landowner;
  - (b) Submit all required forms, supporting materials and fees to the Zoning Administrator to apply for a zoning permit or development approval under these regulations;
  - (c) Provide all the information necessary to demonstrate compliance with these regulations; and
  - (d) Certify, by signing the application form, that all the information provided is complete and accurate to the best of their knowledge. The Zoning Administrator or Development Review Board may reject an application that misrepresents any material fact. In accordance with statute, the town or other party who has incurred attorney's fees and costs in connection with an application that misrepresents any material fact may seek reasonable attorney's fees and costs from the applicant.

- (3) **Application Requirements.** The Zoning Administrator:
  - (a) May waive an application requirement upon written request by the applicant and finding the information is not necessary to determine compliance with these regulations;
  - (b) May require an applicant to provide additional information as necessary to demonstrate compliance with these regulations;
  - (c) May require an applicant to furnish a copy of the Permit Navigator results or a Project Review Sheet completed by the Agency of Natural Resources Permit Specialist for the project; and
  - (d) Must keep written documentation of any application requirement waived or additional information requested as part of the Zoning Administrator's records.
- (4) **Determination of Completeness.** The Zoning Administrator must:
  - (a) Determine whether an application is complete promptly and in no case more than 15 days after the applicant submits it unless the applicant agrees to a longer period; and
  - (b) Inform the applicant of the determination. If the application is incomplete, the Zoning Administrator must inform the applicant in writing of what additional information is required.

#### 7.03.B **Acting on a Complete Zoning Permit Application**

- (1) **Time to Act.** Once the Zoning Administrator determines that an application for a zoning permit is complete, the Zoning Administrator must act within 30 days to approve, deny or refer it to the Development Review Board except that the time period within which the Zoning Administrator must act will not commence for a zoning permit application that requires:
  - (a) One or more development approvals under these regulations until the applicant has obtained all those necessary approvals; or
  - (b) Notification of a state agency until the agency comments or the comment period elapses, whichever occurs first.
- (2) **Deemed Approval.** If the Zoning Administrator does not act on a complete application within 30 days, the applicant may file an appeal directly with the Environmental Division of the Vermont Superior Court to recognize that the

Zoning Administrator's failure to act within the 30-day period resulted in a "deemed approval" of the application.

- (3) **Review Criteria.** The Zoning Administrator must administer these regulations literally and must not approve an application for a zoning permit unless it conforms to all applicable provisions of these regulations.
- (4) **Amended Regulations under Consideration.** The Zoning Administrator must act on any application submitted while the Selectboard is considering amendments to these regulations in accordance with state statute, which requires that applications be reviewed under both the adopted and proposed regulations for a specified period.
- (5) **Decisions.** The Zoning Administrator must approve or deny applications in writing and specifically provide the following information:
  - (a) **Approval.** When approving an application, the Zoning Administrator must inform the applicant that the applicant must:
    - (i) Keep the provided notice of the zoning permit posted within view from the public right-of-way on the subject property (or within the right-of-way most nearly adjacent to the property, if no suitable frontage) for the entire 15-day appeal period; and
    - (ii) Not commence the development authorized by the permit until the 15-day appeal period has ended and the applicant provides the Zoning Administrator with copies of any other documents required under PARAGRAPH 7.02.G.
  - (b) **Denial.** When denying an application, the Zoning Administrator must:
    - (i) Inform the applicant that the denial may be appealed to the Development Review Board within 15 days of the date of the decision; and
    - (ii) Include a copy of PARAGRAPH 7.15.B explaining the appeal process.
- (6) **Permit Issuance.** The Zoning Administrator:
  - (a) **Conditions of Approval.** May issue a zoning permit with conditions as necessary to ensure compliance with these regulations.
  - (b) **Temporary Permits.** May issue a zoning permit to allow a temporary use or structure for a specified period not to exceed 2 years. A temporary permit must include conditions requiring the use to terminate or the structure to

- be removed, or that applicant obtain a zoning permit for a permanent use or structure, prior to the expiration of the permit.
- (c) **Notification Prior to Use or Occupancy.** Must condition any zoning permit on the applicant notifying the Zoning Administrator when construction is completed and/or prior to the use commencing. A Certificate of Compliance may be required under PARAGRAPH 7.03.E.
  - (d) **State Permits.** Must include a notice on any permit or approval that state permits may be required for the authorized development and that it is the permit holder's responsibility to obtain any necessary state permits prior to commencing construction or use.
  - (e) **Energy Certificates.** Must condition any zoning permit for development that is subject to the state's residential or commercial building energy standards on the applicant providing the Zoning Administrator with a copy of an energy certificate for the building when construction is completed.
  - (f) **Wastewater Permits.** Must condition any zoning permit for development that requires the construction, modification or replacement of a potable water supply or wastewater system, or that increases the design flow or modifies the operational requirements of a potable water supply or wastewater system on the applicant obtaining and providing the Zoning Administrator with a copy of a state Wastewater System and Potable Water Supply Permit prior to the start of construction.
  - (g) **Stormwater Permits.** Must condition any zoning permit for development that requires a state stormwater permit on the applicant obtaining and providing the Zoning Administrator with a copy of that permit prior to the start of construction.
  - (h) **Highway Access Permits.** Must condition any zoning permit for development that requires a new or modified access on the applicant obtaining and providing the Zoning Administrator with a copy of the state or town highway access permit, as applicable, prior to the start of construction.
- (7) **Posting Requirements.** The Zoning Administrator must post a copy of the zoning permit in at least one public place within 3 days after issuing it. The copy must remain posted throughout the 15-day appeal period.
- (8) **Filing Requirements.** The Zoning Administrator must:

- (a) Provide a copy of the permit to the Town Assessor within 3 days after issuing it;
  - (b) Deliver an original, signed copy of the zoning permit or the notice of zoning permit to the Town Clerk for recording in the town land records within 30 days after issuing it, except that temporary permits do not have to be recorded; and
  - (c) File a copy of the permit as part of Zoning Administrator's records within 30 days after issuing it.
- (9) **Obtaining a Zoning Permit**
- (a) **Permit Takes Effect.** A zoning permit takes effect on the 16th day after the Zoning Administrator issues it provided that no appeal is filed during the previous 15 days or that the applicant has not requested a delay. If an interested person files an appeal, the zoning permit does not take effect until the appeal is decided.
  - (b) **Delay in Effect.** An applicant may request that the zoning permit and any associated development approvals not take effect until all permits and approvals necessary to commence the development are obtained as follows:
    - (i) The Zoning Administrator may delay the effective date of a permit and any associated development approvals for no more than 12 months unless the Development Review Board approves a longer delay due to factors beyond the applicant's control (e.g., extended or contested Act 250 proceedings or litigation).
    - (ii) It will be the applicant's responsibility to request that the zoning permit and any associated development approvals take effect.
- (10) **Permit Timeframe and Extension.** Zoning permits and any associated development approvals expire 2 years from the date the permit takes effect unless:
- (a) The Development Review Board specifies otherwise as a condition of approval;
  - (b) The applicant commences any use and/or substantially completes any construction authorized by the permit prior to its expiration; or
  - (c) Prior to the zoning permit's expiration, the applicant requests and receives from the Zoning Administrator a one-time extension of not more than 12 months upon the applicant demonstrating that any improvements

completed to date conform to the conditions of the permit and any associated development approvals.

- (11) **Phased Projects.** If the Development Review Board approves a project to be developed in phases, the Zoning Administrator must issue zoning permits for that project in accordance with the approved phasing plan and schedule. Each zoning permit must be separately issued and administered in accordance with the provisions of these regulations.
- (12) **Projects with Multiple Units or Structures.** The Zoning Administrator may issue a zoning permit for each unit or structure within a project with multiple units or structures. If so, each zoning permit must be separately administered in accordance with the provisions of these regulations.
- (13) **Transfer of Permit.** Zoning permits and any associated development approval remain in effect as specified in these regulations irrespective of any change in change in ownership or tenancy of the subject property. All subsequent landowners or tenants are subject to the requirements and conditions of any zoning permit and associated development approvals.
- (14) **Expired Permits.** If a zoning permit expires before the permit holder substantially completes the construction or commences the use authorized by the permit, the permit holder must apply for a new zoning permit and any other associated development approvals under these regulations.
- (15) **Posting of Permit.** The permit holder must display a copy of the provided permit or permit notice in a location visible from a public portion of the subject property during construction. Locations that meet this requirement include, but are not limited to, along the street or driveway, at the front door or in a front window.

#### 7.03.C **Amending Permits or Approvals Prior to Project Completion**

- (1) A permit holder may submit a written request for the Zoning Administrator to amend a zoning permit, and any associated development approval, prior to project completion. The permit holder must demonstrate that the proposed changes to the development:
  - (a) Are in conformance with all applicable provisions of these regulations, including but not limited to, the dimensional standards of the zoning district; and

- (b) Do not have the effect of materially or substantively altering any of the findings of fact of the permit and any associated development approvals.
- (2) The Zoning Administrator may:
  - (a) Approve a request to amend a permit, and any associated development approval, in writing and may condition any approval on the applicant submitting as-built plans when construction is complete;
  - (b) Refer the request to the Development Review Board for review; or
  - (c) Deny the request and require the applicant to submit a new application for the proposed development.
- (3) No notice or posting is required for an administratively approved amendment.
- (4) Approval of an amendment does not affect the expiration date of the original permit and any associated development approvals.

7.03.D **Inspecting Development During Construction.** The Zoning Administrator may inspect any development during construction as necessary to ensure compliance with these regulations and any permit or approval conditions.

7.03.E **Obtaining a Certificate of Compliance**

- (1) **When Required.** The Zoning Administrator:
  - (a) May require a certificate of compliance prior to occupying or commencing the use of any approved development.
  - (b) Must require a certificate of compliance for:
    - (i) A new principal structure;
    - (ii) An accessory dwelling unit; and
    - (iii) Any development subject to major site plan or conditional use approval.
- (2) **Application.** The Zoning Administrator must provide applicants with the necessary form to apply for a certificate of compliance. The applicant must submit the completed form prior to the expiration of the associated zoning permit.
- (3) **Time to Act.** The Zoning Administrator must act on a complete application for a certificate of compliance promptly and in all cases within 30 days. The Zoning Administrator may:

- (a) Require the applicant to submit as-built plans or other documentation from a qualified professional certifying that the development as constructed conforms to the approved plans; and/or
  - (b) Inspect the subject property and consult with other town or state personnel as necessary to determine compliance.
- (4) **Deemed Approval.** If the Zoning Administrator does not act on a complete application for a certificate of compliance within 30 days, the applicant may file an appeal directly with the Environmental Division of the Vermont Superior Court to recognize that the Zoning Administrator's failure to act within the 30-day period resulted in a "deemed approval" of the application.
- (5) **Criteria.** Before receiving a final certificate of compliance, the applicant must certify and demonstrate to the Zoning Administrator that:
- (a) The development is substantially complete and conforms to the requirements of the zoning permit and/or development approvals, the filed plans, and the applicable provisions of these regulations;
  - (b) All commonly-owned or shared improvements and infrastructure connections are complete and conform to any applicable town or state specifications, the requirements of the zoning permit and/or development approvals, the filed plans, and the applicable provisions of these regulations;
  - (c) The applicant has recorded all required documents with the town including, but not limited to, as-built drawings, energy certificate, wastewater and potable water supply permit, access permit, or stormwater permit; and
  - (d) The applicant has paid all required fees.
- (6) **Temporary Certificate.** The Zoning Administrator may issue a temporary certificate of compliance that conditions use or occupancy on full completion of all required improvements within not more than 180 days as follows:
- (a) The Zoning Administrator may require the applicant to submit a performance bond to insure full completion of the outstanding work;
  - (b) The Zoning Administrator must require the applicant to submit a performance bond if any commonly-owned or shared improvements or infrastructure connections remain incomplete; and

- (c) The applicant must apply for a final certificate of compliance prior to the expiration of the temporary certificate.
- (7) **Phased Development.** If the development will be phased, Zoning Administrator may issue certificates of compliance for individual phases as they are completed in accordance with the permit and associated conditions of approval.
- (8) **Decisions.** The Zoning Administrator must approve or deny applications for a certificate of compliance in writing as follows:
  - (a) **Approval.** When approving an application, the Zoning Administrator must inform the applicant that the issuance of a certificate of compliance does not preclude the Town of Fairfax taking enforcement action in accordance with SECTION 7.16 for any violation of the zoning permit or associated development approvals.
  - (b) **Denial.** When denying an application, the Zoning Administrator must:
    - (i) State the reasons for the denial;
    - (ii) Inform the applicant that the denial may be appealed to the Development Review Board within 15 days of the date of the decision;
    - (iii) Include a copy of PARAGRAPH 7.15.B, which explains the appeal process; and
    - (iv) Commence appropriate enforcement action if a violation of these regulations is found.
- (9) **Reapplication.** The applicant may submit another application for a certificate of compliance, including all applicable fees, after remedying any conditions identified as the reason for the denial.
- (10) **Posting Requirements.** The Zoning Administrator must post a copy of the certificate of compliance in at least one public place within 3 days after issuing it. The copy must remain posted throughout the 15-day appeal period.
- (11) **Filing Requirements.** The Zoning Administrator must:
  - (a) Provide a copy of the certificate of compliance to the Town Assessor within 3 days after issuing it;
  - (b) Deliver an original, signed copy of the certificate of compliance to the Town Clerk for recording within 30 days after issuing it, except that temporary certificates do not have to be recorded; and

- (c) File a copy of the certificate of compliance as part of their office records within 30 days after issuing it.

7.03.F **Revoking Permits or Approvals.** The Zoning Administrator may petition the Environmental Division of Superior Court to revoke a zoning permit and any associated development approvals if an applicant:

- (1) Omits or misrepresents a material fact on an application or at a hearing; or
- (2) Violates the terms of the permit and any associated development approvals.

7.03.G **Appealing Administrative Actions or Decisions.** The applicant or other interested person may appeal any of the Zoning Administrator's actions or decisions under these regulations to the Development Review Board under PARAGRAPH 7.15.B.

#### SECTION 7.04 SITE PLAN REVIEW

7.04.A **Applicability.** All proposed development other than a single-unit or two-unit dwelling, and any accessory uses or structures to such a dwelling, requires site plan approval before the Zoning Administrator may issue a zoning permit.

7.04.B **Purpose.** The purpose of site plan review is to ensure that proposed development:

- (1) Complies with all applicable provisions of these regulations;
- (2) Is appropriately sited and functionally integrated with surrounding development;
- (3) Is of high quality and enhance its setting; and
- (4) Is adequately engineered and supported by infrastructure.

7.04.C **Classification.** The Zoning Administrator must classify applications that meet any of the criteria below as a major site plan and all other applications as minor site plans. Projects that propose one or more of the following will be classified as major and all other applications will be classified as minor:

- (1) A new conditional use or a major change in an existing conditional use.
- (2) New construction exceeding a footprint of 500 square feet or adding 500 square feet to the footprint of an existing building.
- (3) A major renovation exceeding a footprint of 500 square feet.

- (4) A new highway access.
- (5) Residential development resulting in 5 or more units in a building.
- (6) Increasing the amount of impervious surface on lot by 5,000 square feet or more.

7.04.D **Minor Site Plans.** The Zoning Administrator:

- (1) Must act on a complete minor site plan application following the same process established for zoning permit applications in SECTION 7.03;
- (2) May approve, deny or refer minor site plan applications to the Development Review Board;
- (3) Must find that the proposed development meets all of the criteria in PARAGRAPH 7.04.F before approving a minor site plan application; and
- (4) May approve a minor site plan application with conditions as necessary to ensure compliance with these regulations.

7.04.E **Major Site Plans.** The Development Review Board:

- (1) Must hold a public hearing and issue a decision on a site plan application in accordance with these regulations;
- (2) Must find that the proposed development meets all of the criteria in 7.04.F before approving a site plan application; and
- (3) May approve a site plan application with conditions as necessary to ensure compliance with these regulations.

7.04.F **Site Plan Review Criteria**

- (1) The dimensional standards of the proposed development conform to the standards of the applicable district or of SECTION 1.14 if a pre-existing nonconformity.
- (2) The proposed development will conform to any standards for the use specified in the applicable district and in ARTICLE 4, or of SECTION 1.14 if a pre-existing nonconformity.
- (3) The impacts of the proposed development will not exceed the levels established in SECTION 5.05.

- (4) The proposed development will provide safe and adequate access and circulation for motorists (including service and emergency vehicles), bicyclists and pedestrians that conforms to the standards of SECTION 3.02. Particular attention must be given to:
  - (a) Visibility at intersections;
  - (b) Traffic flow and control;
  - (c) Pedestrian safety and convenience; and
  - (d) And access in case of emergency.
- (5) The proposed development will provide sufficient parking and loading areas that conform to the standards of SECTION 5.04. Particular consideration must be given to the effect of noise, glare or odors on adjoining properties and state and town highways.
- (6) The proposed development will provide dark sky compliant exterior lighting where necessary for public safety and nighttime use that conforms to the standards of SECTION 5.03.
- (7) The proposed development will include landscaping, screening and buffers to add visual appeal and mitigate impacts that conform to the standards of SECTION 5.02. Particular consideration must be given to:
  - (a) Preservation of existing vegetation and important features of the site, including trees and tree lines, views and vistas, fences, stone walls, and shrubs;
  - (b) Visibility of unsightly or incompatible areas from the road and adjoining properties; and
  - (c) Adequacy of landscaping materials to meet seasonal conditions, soil conditions and erosion control, and light on the site.
- (8) The proposed development will implement low impact development, erosion control and stormwater management practices that conform to the standards of SECTION 5.08.
- (9) The proposed development will conform to town (or state, if applicable) specifications for construction of necessary improvements including but not limited to roads, sidewalks, driveways, utilities and emergency access. Attention must be given to provisions for refuse removal, service areas and snow removal.

- (10) The proposed development will not result in an undue adverse impact on the ability of adjacent landowners to utilize renewable energy resources.

## SECTION 7.05 CONDITIONAL USE REVIEW

- 7.05.A **Applicability.** A landowner must obtain a development approval from the Development Review Board and then a zoning permit from the Zoning Administrator prior to commencing a new conditional use or making a major change to an existing conditional use. Proposed development that includes any of the following is a major change to a conditional use:
- (1) Modification of any limits on off-site impacts established as a condition of approval including, but not limited to, hours of operation, noise, lighting, or traffic;
  - (2) Expansion of the area occupied by the conditional use by more than 500 square feet;
  - (3) Increase in the number of dwelling units (this will not be interpreted to include an accessory dwelling under PARAGRAPH 1.12.C(1)); or
  - (4) Construction of additional parking spaces or loading areas (this will not be interpreted to include construction of previously approved reserve parking or loading spaces).
- 7.05.B **Purpose.** The purpose of conditional use review is to ensure that the:
- (1) Site is a suitable location for a use of the proposed type, scale and intensity.
  - (2) Proposed use will not have undue adverse effects beyond the property.
- 7.05.C **Acting on a Conditional Use Application.** The Development Review Board must hold a public hearing and issue a decision on a conditional use application in accordance with these regulations.
- 7.05.D **Review Criteria.** To approve a conditional use application, the Development Review Board must find that the applicant has demonstrated that the proposed development meets all the review criteria below:
- (1) The demand for water supply, wastewater, educational, recreation, public safety, emergency response and other municipal services to serve the

proposed development will be reasonable and will not create an undue adverse effect upon the capacity existing or planned (as established in any duly adopted capital budget and program) community facilities or services.

- (2) Traffic generated by the proposed development will not exceed the capacity of, unreasonably reduce the service level of, create congestion on, and/or contribute to unsafe conditions for motorists, bicyclists and pedestrians on roads, highways and intersections in the vicinity.
- (3) The proposed development will avoid, minimize and/or mitigate (listed in order of preference) undue adverse effects on significant natural resources and the environment.
- (4) The proposed development will:
  - (a) Not have undue adverse effects on the character of the area.
  - (b) Not substantially or permanently impair the lawful use or development of adjacent property.
  - (c) Be of a scale appropriate for a rural community.
  - (d) Fit within the character of the existing structures and uses in the applicable district and with the purpose of the applicable district as established in these regulations.
  - (e) Site buildings to minimize the appearance of strip development along roads. This may be accomplished through site designs that group buildings together, share access, and provide for interconnected roads and other design options.

## SECTION 7.06 BOUNDARY ADJUSTMENTS AND LOT MERGERS

7.06.A **Purpose.** The provisions of this section are intended to allow landowners to modify or eliminate the lot lines between existing, lawful parcels with no increase in the number of lots. This process is the only means to modify or eliminate lot lines shown on an approved plat lawfully filed in the town land records (filing a revised deed alone does not modify or eliminate lot lines or merge parcels for the purposes of these regulations).

7.06.B **Administrative Review.** The Zoning Administrator may act upon an application to realign, relocate or eliminate one or more boundary lines between abutting lots

following the same process established for zoning permit applications in SECTION 7.03 provided that the proposed change will not:

- (1) Result in an increase in the number of lots;
- (2) Create a new nonconforming lot or structure ;
- (3) Increase the degree of nonconformity of a pre-existing nonconforming lot or structure by more than 25%; or
- (4) Violate any conditions of a prior permit or approval.

7.06.C **Referral for Subdivision Review.** The Zoning Administrator may refer applications to the Development Review Board for review as a minor subdivision. The Development Review Board may approve lot line adjustments that will increase the degree of nonconformity of a pre-existing nonconforming lot or structure upon the applicant demonstrating that the proposed modification meets applicable criteria under SECTION 1.14.

7.06.D **Filing Requirements.** Within 180 days after the Zoning Administrator or Development Review Board approves an application, the applicant must file a final survey plat for recording in the town's land records under PARAGRAPH 7.09.D.

## SECTION 7.07 TWO-LOT SUBDIVISION

7.07.A **Administrative Review.** The Zoning Administrator may act on an application to subdivide a parcel into not more than two lots (creation of one additional parcel) following the same process established for zoning permit applications in SECTION 7.03 provided that:

- (1) The parcel being subdivided has not been subdivided or had any other change made to the location or configuration of its lot lines within the prior five years.
- (2) The subdivision does not require the creation of a road, including requiring a driveway to be upgraded to a road.
- (3) Both lots will conform to all dimensional and other requirements of the applicable zoning district.
- (4) The subdivision would not violate any conditions of a prior permit or approval.

7.07.B **Referral for Subdivision Review.** The Zoning Administrator may refer applications to the Development Review Board for review as a minor subdivision. The Development Review Board may approve lot line adjustments that will increase the degree of nonconformity of a pre-existing nonconforming lot or structure upon the applicant demonstrating that the proposed modification meets applicable criteria under SECTION 1.14.

7.07.C **Filing Requirements.** Within 180 days after the Zoning Administrator or Development Review Board approves an application, the applicant must file a final survey plat for recording in the town's land records under PARAGRAPH 7.09.D.

## SECTION 7.08 FOOTPRINT LOTS

7.08.A **Administrative Review.** The Zoning Administrator may act on an application to create one or more footprint lots on an existing parcel following the same process established for zoning permit applications in SECTION 7.03 provided that the application:

- (1) Conforms to state statute regulating the formation and governance of condominiums.
- (2) Does not violate any conditions of a prior permit or approval.

7.08.B **Filing Requirements.** Within 180 days after the Zoning Administrator or Development Review Board approves an application, the applicant must file a final survey plat for recording in the town's land records under PARAGRAPH 7.09.D.

7.08.C **Interpretation.** A footprint lot will not be considered a separate, legal lot for the purpose of administering these regulations.

## SECTION 7.09 SUBDIVISION AND PUD REVIEW PROCESS

7.09.A **Sketch Plan Review and Classification** (Step 1 for all subdivisions)

- (1) **Application.** The applicant must file a complete application and sketch plan for review by the Zoning Administrator. If any of the proposed lots (inclusive of the remainder of the parent parcel) exceed an area equal to five times the minimum lot size for the applicable zoning district, the applicant must also provide a master plan demonstrating that:

- (a) The configuration of the proposed subdivision would not result in land capable of future development being made inaccessible.
  - (b) Proposed roads and driveways could be upgraded, extended and/or interconnected to provide access to future development. Where physically practicable, future access to remaining undeveloped lands must be provided through the proposed subdivision rather than new access from public roads.
- (2) **Classification.** The Zoning Administrator will classify an application for a proposed subdivision as follows:
- (a) **Major Subdivision.** An applicant for a major subdivision approval must submit a preliminary and then a final plan for review and approval by the Development Review Board in accordance with the provisions of this article. A subdivision that includes any of the following will be a major subdivision:
    - (i) The creation of 5 or more lots from one or more contiguous parcels of land under common ownership in any 5-year period (inclusive of the parent parcel);
    - (ii) The re-subdivision of a lot within 5 years (will not be interpreted to include boundary line adjustments or lot mergers); or
    - (iii) The construction of a new, extended or upgraded road.
  - (b) **Minor Subdivision.** An applicant for a minor subdivision approval may skip the preliminary approval process and submit a final plan for review and approval by the Development Review Board in accordance with the provisions of this section. A subdivision that does not meet the definition of a major subdivision will be a minor subdivision.
- (3) **Written Response.** The Zoning Administrator must send the applicant a written response to a complete sketch plan application within 30 days of its filing that:
- (a) Indicates whether the subdivision as proposed generally conforms to the standards of these regulations;
  - (b) Makes recommendations to guide the applicant in preparation of more detailed plans;
  - (c) Specifies the application materials deemed necessary to determine compliance with these regulations; and

- (d) Classifies the proposed subdivision as either a major or minor subdivision in accordance with PARAGRAPH (2) above.
- (4) **Deadline to Act.** After the Zoning Administrator issues the written response, the applicant will have 180 days to file the materials required for the next step of the subdivision review process.
- (5) **Appeals.** The applicant or other interested person may appeal any of the Zoning Administrator's actions or decisions under this section to the Development Review Board. However, the Zoning Administrator's written response to the sketch plan application will not constitute a formal decision on the subdivision plan for the purposes of any subsequent appeal to the Environmental Division of the Vermont Superior Court.

**7.09.B Preliminary Plan Review** (Step 2 for major subdivisions only)

- (1) **Application.** An applicant for major subdivision approval must file a complete application and preliminary subdivision plan for consideration by the Development Review Board.
- (2) **Hearing and Notice.** The Development Review Board must hold a public hearing and act on a preliminary subdivision plan in accordance with these regulations.
- (3) **Written Response.** The Development Review Board must issue a written response to the preliminary plan that includes:
  - (a) Draft findings of fact that address each of the applicable criteria under PARAGRAPH 7.09.F;
  - (b) Draft conditions of approval to be placed on the final plan;
  - (c) Any specific changes requested in the final subdivision plan;
  - (d) The issues to be analyzed and addressed in the final subdivision plan review;
  - (e) Any modification or waiver of application requirements for final plan review.
- (4) **Deadline to Act.** Following the Development Review Board issuing a written response, the applicant will have 180 days to file the final subdivision plan.
- (5) **Appeals.** The written response to a preliminary subdivision plan is intended to provide direction to the applicant in preparing the final subdivision plan. It is

not a binding decision on the subdivision application and therefore cannot be appealed to the Environmental Division of the Vermont Superior Court.

**7.09.C Final Plan Review** (Step 2 for minor subdivisions, Step 3 for major subdivisions)

- (1) **Application.** The applicant must file a complete application and final subdivision plan for consideration by the Development Review Board.
- (2) **Purpose.** The purpose of final review is to evaluate the plan's conformance with the purposes and specific standards of these regulations and, for major subdivisions, to assure that the applicant has addressed the issues raised during the preliminary plan review.
- (3) **Hearing and Notice.** The Development Review Board must hold a public hearing and act on a final subdivision plan in accordance with these regulations. If a proposed subdivision will be located within 500 feet of the town line, a copy of the hearing notice must be sent to the clerk of the adjoining municipality.
- (4) **Acceptance of Improvements.** The Development Review Board's approval of a final plan will not constitute the town's acceptance of any road, easement, open space or other feature shown on the plan. Action by the Selectboard is required to accept any road, easement, open space or other feature.

**7.09.D Filing Requirements** (Step 3 for minor subdivisions, Step 4 for major subdivisions)

- (1) If the Development Review Board approves the final plan, the applicant will have 180 days to submit a final subdivision plat for recording in the town's land records. If the subdivision will be phased, the applicant must file a plat for the first phase within 180 days and for subsequent phases in accordance with any schedule or time period established in the conditions of approval.
- (2) The Zoning Administrator may grant a single 90-day extension to the filing deadline upon written request by the applicant if other local or state permits are still pending.
- (3) The final subdivision plat must meet all state requirements (see 27 V.S.A. § 1403).
- (4) The Zoning Administrator or the Chair of the Development Review Board must sign the final subdivision plat before it is recorded in the town land records.

- (5) No one must make any changes, erasures, modifications or revisions to a final plat after it has been signed.
- (6) Once lawfully filed, a final subdivision plat will not expire.
- (7) The applicant must also provide the Zoning Administrator with a digital copy of the final subdivision plat as an Adobe PDF or other file type approved by the Zoning Administrator.
- (8) Landowners are advised to file new or revised deeds in accordance with state law for all lots created or modified by a development approval when filing a plat to ensure the lots have clear, marketable titles.

**7.09.E Modification of Approved Subdivisions**

- (1) Except as specifically provided for in these regulations, the Development Review Board must review any request to amend an approved subdivision plat.
- (2) The process for applying for an amendment will be the same as for the original approval.
- (3) The process for reviewing and issuing a decision on an amendment will be the same as for the original approval except that the scope of the review will be limited to those aspects of the plat affected by the proposed amendment.
- (4) The applicant must file an approved, amended plat under PARAGRAPH 7.09.D.

**7.09.F Review Criteria.** The Development Review Board must find that the proposed subdivision meets all the following criteria:

- (1) The dimensional standards of the proposed development conform to the standards of the applicable zoning district.
- (2) The proposed development will provide safe and adequate access and circulation for motorists (including service vehicles), cyclists and pedestrians that conforms to the standards of these regulations.
- (3) The proposed development will provide road and sidewalk/path lighting where necessary for public safety and nighttime use that conforms to the standards of these regulations.
- (4) The proposed development will include landscaping, screening and buffers to add visual appeal, offer privacy and mitigate off-site impacts that conform to the standards of these regulations.

- (5) The proposed development will implement erosion control and stormwater management practices that conform to the standards of these regulations.
- (6) The proposed development will conform to town (or state, if applicable) specifications for construction of necessary improvements (roads, sidewalks, driveways, utilities, etc.), building codes, and standards for emergency access.
- (7) The demand for water supply, wastewater, educational, recreation, public safety, emergency response and other municipal services to serve the proposed development will be reasonable and will not create an undue adverse effect upon the capacity existing or planned community facilities or services.
- (8) The proposed development will be compatible with and will not have undue adverse effects on the character of the area and will not substantially or permanently impair the lawful use or development of adjacent property.
- (9) Traffic generated by the proposed development will not exceed the capacity of, unreasonably reduce the service level of, create congestion on, and/or contribute to unsafe conditions for motorists, bicyclists and pedestrians on roads, highways and intersections in the vicinity.
- (10) The proposed development will avoid, minimize and/or mitigate (listed in order of preference) undue adverse effects on ecological, agricultural and water resources.
- (11) The proposed development will logically extend existing settlement patterns and create interconnected road networks to the maximum extent feasible given the terrain and other characteristics of the land and adjoining development.
- (12) The proposed development will be designed and laid out to make efficient use of land and to minimize the amount of roads and other infrastructure necessary to serve the lots.

## **SECTION 7.10 COMBINED REVIEW**

- 7.10.A When proposed development requires more than one approval from the Development Review Board, a single hearing will be held for the purpose of reviewing and acting on the application unless the applicant requests separate hearings for each development approval.

- 7.10.B The Zoning Administrator must identify applications appropriate for combined review and assist applicants in preparing and submitting combined applications.
- 7.10.C The Development Review Board must hold a public hearing and act on combined applications in accordance with these regulations. In addition, the hearing notice must:
- (1) Include a statement that the hearing will be a combined review of the proposed development; and
  - (2) List each type of review the Development Review Board will conduct.
- 7.10.D The Development Review Board must find that the applicant has demonstrated that the proposed development meets the review criteria for each approval.

## SECTION 7.11 APPLICATIONS

- 7.11.A **Applicability.** The provisions of this section apply to applications for a development approval (site plan, conditional use, subdivision or PUD).
- 7.11.B **Pre-Application Conference.** A prospective applicant may request a pre-application conference with the Zoning Administrator prior to submitting a complete application. A pre-application conference is an informal meeting that provides the prospective applicant with an opportunity to consult with and receive advice in order to save time and expense in the preparation of the application. Any comments or recommendations made are intended to provide general direction to the prospective applicant and will not be deemed binding in the preparation or review of any subsequent application for development approval.
- 7.11.C **Zoning Administrator.** The Zoning Administrator must assist prospective applicants by:
- (1) Determining whether a project requires one or more development approvals under these regulations;
  - (2) Providing applicants with the necessary checklists and forms to apply for the required approvals;
  - (3) Notifying applicants of the fees or other charges that the town may charge in relation to the application or proposed development; and

- (4) Informing applicants that state permits may be required for the proposed development and recommending that applicants contact the state permit specialist at the Regional Office of the Vermont Department of Environmental Conservation.

7.11.D **Applicant.** The applicant must:

- (1) Submit all required forms, supporting materials and fees to the Zoning Administrator to apply for a development approval under these regulations;
- (2) Provide all the information necessary to demonstrate compliance with these regulations; and
- (3) Certify, by signing the application form, that all the information provided is complete and accurate to the best of their knowledge.

7.11.E **Determination of Completeness.** The Zoning Administrator must:

- (1) Determine whether an application is complete promptly and in no case more than 15 days after the applicant submits it; and
- (2) Inform the applicant of their determination. If the application is incomplete, the Zoning Administrator must inform the applicant in writing of what additional information is required.

7.11.F **Application Requirements.** The Zoning Administrator:

- (1) **General Waiver.** May waive an application requirement upon written request by the applicant and upon the applicant demonstrating that the information is not necessary to determine compliance with these regulations.
- (2) **Site Plan Drawings.** Will waive requirements for site plan drawings for minor site plan applications that do not involve physical changes to the exterior of a structure or to the site.
- (3) **Boundary Survey.** Will waive the requirement for a full boundary survey of a:
  - (a) Lot subject to a lot line adjustment or lot merger if the lot is larger than 10 acres.
  - (b) Parent parcel provided that the retained portion is larger than 10 acres and is not less than 70% of the total acreage before subdivision.

- (4) **Additional Information.** May require an applicant to provide additional information as necessary to determine compliance with these regulations.
- (5) **Recordkeeping.** Must keep written documentation of any application requirement waived or additional material requested as part of their office records and submit that information to the Development Review Board with the application. The Development Review Board may require an applicant to provide material previously waived or additional information.

7.11.G **Referral to Development Review Board.** Once the Zoning Administrator determines that an application is complete and the applicable fees have been paid, the Zoning Administrator must warn a public hearing on the application before the Development Review Board at their next available regularly scheduled meeting following the warning period.

7.11.H **Appeal of Administrative Actions.** The applicant or other interested person may appeal any of the Zoning Administrator's actions or decisions under this section to the Development Review Board.

7.11.I **Deemed Approval.** If the Zoning Administrator does not determine whether an application is complete and, if applicable, classify the application within 30 days, the applicant may file an appeal directly with the Environmental Division of the Vermont Superior Court to recognize that the Zoning Administrator's failure to act resulted in a "deemed approval" of the application.

## SECTION 7.12 PUBLIC NOTICE

7.12.A The Zoning Administrator must notify the public at least 15 days before a hearing for all conditional use, variance, appeal, and final subdivision or planned unit development applications by all of the following:

- (1) Publishing the date, place and purpose of the hearing in a newspaper of general circulation in Town of Fairfax.
- (2) Posting the date, place and purpose of the hearing at the Town Office, on the town website and at least one other public place within Town of Fairfax.

- (3) Providing the applicant with a sign with the date, place and purpose of the hearing to be posted within view from the public right-of-way most nearly adjacent to the subject property.
  - (a) It will be the applicant's responsibility to ensure that the notice remains posted for the entire warning period and to remove the sign within 2 days of the close of public hearing.
- (4) Notifying the owners of all properties adjoining the subject property (including those across the road) in writing.
  - (a) The notification must include a description of the proposed project and must clearly explain to the recipient where to obtain additional information and that participating in the hearing is a prerequisite to having the right to any subsequent appeal.

7.12.B The Zoning Administrator must notify the public at least 7 days before a hearing for site plan, waiver, preliminary subdivision and any other applications before the Development Review Board by all of the following:

- (1) Posting the date, place and purpose of the hearing at the Town Office, on the town website and at least two other public places within the Town of Fairfax.
- (2) Notifying the owners of all properties adjoining the subject property subject (including those across the road) in writing by standard mail or electronic service. The notification must:
  - (a) Include a description of the proposed project;
  - (b) Identify where the recipient can obtain additional information; and
  - (c) Explain that the recipient must participate in the hearing in order to have the right to any subsequent appeal.

7.12.C A defect in the form or substance of the public notice requirements does not invalidate any action or decision under these regulations when a reasonable effort has been made to provide adequate posting and notice.

**SECTION 7.13 PUBLIC HEARING**

- 7.13.A The Development Review Board must conduct public hearings, hear testimony and take evidence according to state statute, the provisions of this section and their adopted rules of procedures. All hearings must be recorded.
- 7.13.B The Development Review Board must open a public hearing within 60 days of the Zoning Administrator determining that an application is complete unless otherwise specified in these regulations or the applicant agrees to a later hearing date.
- 7.13.C All hearings must be open to the public as follows:
- (1) Any individual or group may appear and participate in a public hearing in person, through electronic means or by authorized representative or counsel, or may submit written testimony in advance of the hearing. All testimony must be made under oath or affirmation.
  - (2) The Development Review Board must give all those wishing to participate an opportunity to be heard as is relevant to the proceeding.
  - (3) The Development Review Board must give all those wishing to establish interested person status the opportunity to do so and must record the name, address and participation of each of those people. Only an interested person who has participated in a hearing by presenting oral or written testimony will have a right to appeal the resulting Development Review Board decision.
- 7.13.D In taking evidence during a hearing, the Development Review Board may:
- (1) Exclude irrelevant, immaterial, or unduly repetitious evidence;
  - (2) Receive evidence in written form, including copies and excerpts;
  - (3) Allow parties to conduct cross-examinations and compare copies of written evidence with the original; and
  - (4) Take notice of generally recognized facts.
- 7.13.E The applicant or an authorized representative must be present (in person or by electronic means) at any public hearing on their application. The Development Review Board may recess or continue its consideration of an application to its next regularly scheduled meeting if the applicant or an authorized representative is not present.

- 7.13.F Development Review Board members must not communicate directly or indirectly with any applicant, interested person or their representative regarding a matter that is under consideration except during a properly noticed hearing.
- 7.13.G It is the applicant's responsibility to demonstrate compliance with the applicable standards and review criteria. The Development Review Board may recess or continue a hearing and require an applicant to provide additional information as necessary to determine compliance with these regulations.
- 7.13.H If the Development Review Board recesses or continues a hearing to a specific time, date and location, the hearing will not have to be warned again when reconvened. In the case of a recess or continuation, the intervening days do not count as part of any time period within which the Development Review Board is required to act.
- 7.13.I The Development Review Board must close the hearing promptly, once all those wishing to give testimony have been heard and Development Review Board members have had an opportunity to ask questions of those who offered testimony.

## SECTION 7.14 DECISIONS

- 7.14.A **Deliberations.** If so requested by a Development Review Board member, the Development Review Board must deliberate and make a decision on an application in a closed deliberative session.
- 7.14.B **Time to Act.** Within 45 days of closing a hearing, the Development Review Board must issue a written decision to approve, approve with conditions or deny the application.
- 7.14.C **Deemed Approval.** If the Development Review Board does not issue a decision within 45 days of closing a hearing, the applicant may file an appeal directly with the Environmental Division of the Vermont Superior Court to recognize that the board's failure to act resulted in a "deemed approval" of the application.
- 7.14.D **Findings.** The written decision must include a statement of the facts upon which the Development Review Board is basing its decisions and a statement of

conclusions relating to the applicable review criteria and standards of these regulations.

**7.14.E Conditions of Approval.** The Development Review Board:

- (1) May attach any conditions it deems necessary to an approval to achieve the purposes of these regulations including, but not limited to:
  - (a) Specific performance standards such as limitations on hours of operation, noise, light or other off-site impacts;
  - (b) Specific mitigation measures such as screening or buffering;
  - (c) Required improvements to public facilities or infrastructure to serve the proposed development;
  - (d) Scheduling or phasing of development;
  - (e) Inspection or monitoring under PARAGRAPH 7.02.E; and/or
  - (f) Performance bonds or sureties under PARAGRAPH 7.02.D.
- (2) Unless necessary to comply with a non-discretionary standard of these regulations, may not condition approval of an application for residential development or for the housing portion of a mixed-use development to:
  - (a) Require a larger lot size than the minimum required in the applicable zoning district;
  - (b) Require more parking spaces than the minimum required under these regulations;
  - (c) Limit building size to less than allowed in the applicable district including reducing the building footprint or height;
  - (d) Limit the residential density below that allowed in the applicable district; or
  - (e) Otherwise disallow development that abides by the applicable standards of these regulations.
- (3) Must specifically describe any conditions or limitations in the written decision. Any conditions attached to the Development Review Board approval will be considered part of any subsequent zoning permit issued by the Zoning Administrator for the approved development.

**7.14.F Submittal of Revised Plans.** If the Development Review Board attaches conditions on an approval that require amendments to a plan, the applicant must submit an

amended plan that satisfies those conditions prior to Zoning Administrator issuing a zoning permit for the proposed development.

7.14.G **Notification and Filing.** The Development Review Board must:

- (1) Send a copy of the decision to applicant by certified mail unless the applicant agreed to electronic service;
- (2) Send a copy of the decision to all others who participated in the hearing by standard mail unless the person agreed to electronic service; and
- (3) File a copy of the decision with the Zoning Administrator.

7.14.H **Effect and Expiration.** If the approved development is:

- (1) Not substantially completed or commenced before the zoning permit expires as established in SECTION 7.03, the development approval will expire with the zoning permit, except that approved subdivision plats lawfully filed under PARAGRAPH 7.09.D will not expire.
- (2) Substantially completed or commenced before the zoning permit expires as established in SECTION 7.03, the development approval will remain in effect unless the use is discontinued as established under PARAGRAPH 1.13.E. Development approvals and any related conditions run with the land and remain in effect irrespective of whether the property changes ownership or tenancy.

## SECTION 7.15 APPEALS

7.15.A **Who May Appeal**

- (1) An applicant or other interested person may appeal an action taken or decision made under these regulations as specified in this chapter. For the purposes of these regulations, an interested person is:
  - (a) An applicant who alleges that these regulations impose unreasonable or inappropriate restrictions on the existing or future use of their property.
  - (b) The Town of Fairfax or any adjoining municipality.
  - (c) A person owning or occupying property in the immediate area of proposed development who can demonstrate:

- (i) A physical or environmental impact on the person's interests; and
  - (ii) That the action taken or decision made under these regulations is not in accord with the policies, purposes, or terms of these regulations or the Town Plan, as most recently adopted.
- (d) Any combination of at least 10 voters, residents or landowners in the Town of Fairfax who by signed petition allege that the relief an applicant is requesting under this chapter is not in accord with the policies, purposes, or terms of these regulations or the Town Plan, as most recently adopted.
- (2) Any department or administrative subdivision of the state that owns property or interest in property in the Town of Fairfax, and the Vermont Agency of Commerce and Community Development.

#### 7.15.B Appeals of the Zoning Administrator

- (1) An interested person may appeal any action or decision of the Zoning Administrator to the Development Review Board by filing two copies of a notice of appeal and any applicable fees with the Town Clerk within 15 days of the date of the Zoning Administrator's action or decision.
- (2) The Town Clerk must forward one copy of the notice of appeal to the Development Review Board and the other to the Zoning Administrator.
- (3) A notice of appeal must be in writing and must include all of the following information:
  - (a) The name and address of the appellant (the person filing the appeal);
  - (b) A statement that demonstrates that the appellant is an interested person under PARAGRAPH 7.15.A;
  - (c) A copy of the Zoning Administrator's decision or description of the action (if appealing a zoning permit, also include a copy of the permit application);
  - (d) A brief description of the subject property;
  - (e) A reference to the section(s) of these regulations that the appellant alleges the Zoning Administrator has not properly followed or applied; and
  - (f) A statement of the relief the appellant is requesting and why the appellant believes the requested relief to be appropriate under the circumstances.

- (4) If an appeal is filed by a group of interested persons, then the notice of appeal must designate one person to serve as a representative of the group regarding all matters related to the appeal.
- (5) The appellant may request a stay of enforcement as part of the notice of appeal by including a sworn statement that irreparable damage will directly result if the Development Review Board does not grant the stay.
- (6) Upon receipt of a notice of appeal, the Development Review Board must either:
  - (a) Schedule a public hearing within 60 days and act on the appeal under these regulations; or
  - (b) Reject the appeal without a hearing and render a decision within 10 days of the appellant filing the notice, if the Development Review Board determines that:
    - (i) It decided the issues in an earlier appeal;
    - (ii) The appellant failed to establish interested person status under 7.15.A; or
    - (iii) The notice of appeal does not meet the requirements of PARAGRAPH (3) above.
- (7) An appeal to the Development Review Board is the exclusive remedy for an interested person with respect to an action or decision of the Zoning Administrator.
- (8) If no interested person appeals the Zoning Administrator's action or decision to the Development Review Board within 15 days, the action or decision cannot be contested at a later time.

#### 7.15.C Appeals of the Development Review Board

- (1) Any interested person who participated in a hearing on a matter before the Development Review Board may appeal the board's action or decision to the Environmental Division of the Vermont Superior Court within 30 days of the date of the board's action or decision.
- (2) The appellant must send a notice of appeal to every interested person who participated in the hearing by certified mail. The Zoning Administrator must provide a prospective appellant with the interested person list upon request.

- (3) If the Zoning Administrator has issued a zoning permit based on a Development Review Board approval, the appeal of that approval will be considered an appeal of the zoning permit as well and the applicant must not commence any use or development authorized by the zoning permit until the appeal is resolved. An interested person cannot use the procedures of PARAGRAPH 7.15.B to appeal the Zoning Administrator's issuance of a zoning permit implementing a Development Review Board approval.
- (4) An appeal to the Environmental Division of the Vermont Superior Court is the exclusive remedy for an interested person with respect to an action or decision of the Development Review Board except as otherwise provided by state statute.
- (5) If no interested person appeals a Development Review Board action or decision to the Environmental Division of the Vermont Superior Court within 30 days, all interested persons will be bound by that action or decision and will not be able to contest it at a later time.

#### 7.15.D Waiver

- (1) The Development Review Board:
  - (a) May approve waivers as specifically authorized in these regulations;
  - (b) May approve waivers that authorize an adjustment of up to 50% to a dimensional standard (as established for the applicable zoning district) of these regulations for proposed development on a single- or two-unit residential property;
  - (c) Must not approve waivers within the Flood Hazard Overlay District;
  - (d) Must not approve waivers to reduce any riparian or wetland setback or buffer required under these regulations; and
  - (e) Must not approve a waiver to allow a prohibited use, an increase in residential density, or the subdivision of a lot that does not conform to the applicable provisions of these regulations.
- (2) The applicant must file a complete zoning permit application and a written request for a waiver with the Zoning Administrator that includes all of the following:
  - (a) A brief description of the subject property and proposed development;

- (b) A reference to the standard(s) of these regulations that the applicant is requesting a waiver from;
  - (c) The specific modification(s) that the applicant is requesting; and
  - (d) A response to each of the review criteria in PARAGRAPH (4) below.
- (3) The Development Review Board must hold a public hearing and act on the waiver request in accordance with these regulations. If the applicant is requesting a waiver from the required setback from a state highway, notice of the hearing must also be sent to the Vermont Secretary of Transportation.
- (4) To approve a waiver, the Development Review Board must find that:
- (a) The proposed development will not alter the essential character of the area in which the property is located.
  - (b) The proposed development will not substantially or permanently impair the lawful use or development of nearby property.
  - (c) The proposed development will not be detrimental to public health, safety or welfare.
  - (d) The proposed development is reasonable and similar to development on other properties in the area.
  - (e) The applicant is proposing adequate mitigation through design, screening or other remedy.

#### 7.15.E Variance

- (1) The Development Review Board:
- (a) May approve variances that authorize adjustments to the dimensional standards of these regulations under the specific circumstances described in this section.
  - (b) Must not approve a variance to allow a prohibited use, an increase in residential density, or the subdivision of a lot that does not conform to the applicable provisions of these regulations.
- (2) The applicant must file a complete zoning permit application and a written request for a variance with the Zoning Administrator that includes all of the following:
- (a) A brief description of the subject property and proposed development;

- (b) A reference to the specific provision(s) of these regulations that the applicant is requesting a variance from;
  - (c) The specific modification(s) that the applicant is requesting; and
  - (d) A response to each of the applicable review criteria in PARAGRAPHS (4)-(6) below.
- (3) The Development Review Board must hold a public hearing and act on the variance request in accordance with these regulations. If the applicant is requesting a variance from the required setback from a state highway, notice of the hearing must also be sent to the Vermont Secretary of Transportation.
- (4) To approve a variance, the Development Review Board must find that:
- (a) The proposed development will not alter the essential character of the area in which the property is located.
  - (b) The proposed development will not substantially or permanently impair the lawful use or development of adjacent property.
  - (c) The proposed development will not be detrimental to public health, safety or welfare.
  - (d) The applicant has not created the unnecessary hardship.
  - (e) The applicant is proposing the least deviation possible from these regulations that will afford relief.
  - (f) 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. These conditions, and not the circumstances or conditions generally created by the provisions of these regulations in the district in which the property is located, have created an unnecessary hardship for the applicant. These physical circumstances or conditions prevent the property from possibly being developed in strict conformity with these regulations and a variance is necessary to enable reasonable use of the property.
- (5) If the variance is for a renewable energy structure, PARAGRAPH (4)(F) will not be applied but the Development Review Board must find that:
- (a) It would be unusually difficult or unduly expensive for the applicant to build a renewable energy structure in conformance with these regulations.

- (b) The proposed development will not reduce access to renewable energy resources on adjacent property.
- (6) If the variance is for development within the Flood Hazard Overlay District, the Development Review Board must also find that the proposed land development meets all applicable federal and state rules for compliance with the National Flood Insurance Program including 44 C.F.R. § 60.6.

## **SECTION 7.16 ENFORCEMENT**

### **7.16.A Applicability**

- (1) The Zoning Administrator must enforce these regulations in accordance with state law and the provisions of this chapter. Violations of these regulations include, but are not limited to:
  - (a) Commencing land development for which zoning permit or development approval is required without first obtaining such permit or approval;
  - (b) Failing to comply with all requirements, representations and conditions of any permit or approval;
  - (c) Commencing or continuing land development if the permit or approval authorizing the work has expired;
  - (d) Commencing clearing, site preparation or other land development prior to subdivision approval; and
  - (e) Selling, transferring or offering to sell or transfer land unless an approved survey plat has been approved and filed.
- (2) A violation of these regulations constitutes a civil offense.
- (3) Nothing in this chapter prevents the Town of Fairfax from exercising its authority to abate or remove risks or hazards to public health, safety and welfare, or to respond to emergencies or disasters.

### **7.16.B Complaints, Investigation and Action**

- (1) **Complaints.** Complaints about alleged violations of these regulations must be made in writing (electronic service is acceptable). Complaints must include:
  - (a) The name and address of the complainant;
  - (b) The address of the property subject to the alleged violation;

- (c) A description of the alleged violation; and
  - (d) A reference to the specific provision(s) of these regulations and/or the conditions of a permit or development approval that the complainant alleges are being violated.
- (2) **Investigation.** The Zoning Administrator must investigate all written complaints.
- (3) **Inspection.** The Zoning Administrator may ask the landowner for permission to inspect the property. If the landowner refuses to grant permission to inspect the property, the Zoning Administrator:
- (a) May enter the public portions of any property in town (i.e., drive up driveway, walk to the door, etc.) and may use any observations made as evidence;
  - (b) May enter private portions of the property if invited by anyone who is lawfully on the premises (i.e., occupant, tenant, etc.) and may use any observations made as evidence; and
  - (c) May obtain a search warrant to enter the property.
- (4) **Burden of Proof.** The Zoning Administrator does not have to directly observe that a violation exists and may enforce these regulations as long as there is reason to believe a violation exists. Reasons may include, but are not limited to, a complaint from a neighbor, evidence of materials being hauled/delivered, observations made from adjacent property or the road, and/or refusal to allow inspection.
- (5) **Action.** Upon determining that a violation exists or is reasonably believed to exist, the Zoning Administrator must take appropriate action in an effort to enforce these regulations including, but not limited to any combination of the following:
- (a) Contacting the landowner to resolve the violation informally;
  - (b) Issuing a notice of violation;
  - (c) Issuing a stop-work order;
  - (d) Requiring the landowner to apply for a curative zoning permit;
  - (e) Requiring the immediate removal of a violating structure or cessation of a violating use;
  - (f) Denying a certificate of compliance; and/or

- (g) Imposing fines and penalties to the maximum extent allowed under state statute until the landowner remedies the violation.
- (6) **Limitations on Enforcement.** The Zoning Administrator must not enforce any violation:
  - (a) That has existed for more than 15 years; or
  - (b) Of a zoning permit that was issued after July 1, 1998 but was not filed in the town's land records.
- (7) **Liabilities and Penalties**
  - (a) The landowner will be held responsible for any violation and be subject to any penalties imposed under these regulations.
  - (b) Each day that a violation exists constitutes a separate offense.
  - (c) If any enforcement action results in the need for a new or amended zoning permit or development approval, the Town of Fairfax may impose penalties in addition to the standard permit fees.
- (8) **Notice of Violation**
  - (a) The Zoning Administrator may issue a notice of violation for any violation of these regulations. Prior to issuing a notice of violation, the Zoning Administrator may seek to resolve a violation informally.
  - (b) The Zoning Administrator must send a notice of violation to the landowner by certified mail that:

- (i) Describes the violation;
  - (ii) Identifies the specific provision(s) of these regulations being violated;
  - (iii) States the specific action required to cure the violation;
  - (iv) States that if the landowner has 7 days to cure the violation, after which time the town may institute court proceedings to obtain a court order directing compliance with these regulations and awarding fines up to the maximum amount allowed under state statute for each day that the violation continues from the date of the notice;
  - (v) States that further enforcement may occur without notice and an opportunity to cure if the violation occurs again within the next 12 months; and
  - (vi) States that the notice of violation may be appealed under these regulations.
- (c) The Zoning Administrator must deliver a copy of a notice of violation to the Town Clerk for recording in the town land records.
  - (d) Upon failure of the landowner to cure a violation of these regulations, the Town of Fairfax may institute appropriate court action.
  - (e) A notice of violation issued under this section is punishable by a fine of up to \$200 for each offense (each day a violation continues to exist beyond the 7-day notice period counts as a separate offense).

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**ARTICLE 8. DEFINITIONS**

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**SECTION 8.01 INTERPRETATION**

- 8.01.A The words used in these regulations have their normal dictionary meaning unless they are specifically defined in these regulations. The Zoning Administrator or Development Review Board, as applicable, will interpret the meaning of any term used in these regulations.
- 8.01.B The words defined in these regulations have the specified meaning stated unless the context clearly indicates that they have another meaning.
- 8.01.C The definitions identified as being from state statute are intended to be consistent with that statute as most recently amended.
- 8.01.D These regulations use:
- (1) "Must" and "will" to express that something is required;
  - (2) "Must not" and "will not" to express that something is prohibited;
  - (3) "May" and "may not" for discretionary actions; and
  - (4) "Should" and "should not" when something is encouraged or discouraged.
- 8.01.E These regulations use:
- (1) "Parcel" and "lot" interchangeably to refer to areas of land delineated in a recorded subdivision plat or, if no recorded plat, in a deed;
  - (2) "Site" or "property" to refer to an area of land subject to a development project, regardless of whether it is an entire parcel, a portion of a parcel, or multiple parcels;
  - (3) "Property owner", "landowner", "applicant", "subdivider" or "developer" to refer to the party responsible or authorized to act under these regulations and those terms may include any individual designated to act on behalf of the responsible party;
  - (4) "Business" to refer generally to any nonresidential land use, regardless of whether it is a for-profit or non-profit enterprise; and

- (5) "Home", "residence" or "dwelling" to refer to a dwelling unit that is intended for occupancy by a single household regardless of structure type or tenure (owned or rented).

8.01.F Any illustrations in these regulations are intended to provide guidance to readers. In the case of a conflict between an illustration (including any associated descriptive text) and a written provision of these regulations, the written provision will take precedence.

8.01.G Unless specifically stated otherwise, the calculation of time periods defined these regulations:

- (1) As a specific number of days will be based on calendar days;
- (2) As a specific number of months will be based on calendar months (ex. January 1 to July 1 is 6 months);
- (3) As a specific number of years will be based on calendar years (ex. January 1 to January 1 is one year); and
- (4) Will not include the first day (i.e., the day an application was submitted or a permit issued) but will count the final day (i.e., the day a hearing was held or a permit took effect).

## SECTION 8.02 TERMS

8.02.A

- (1) **Accessory On-Farm Business:** The accessory use of a farm for agri-tourism, or for retailing or adding value to locally-produced farm or forest products that conforms to state statute and rules as determined by the Vermont Agency of Agriculture, Food and Markets.
- (2) **Agribusiness:** Any individual, partnership, corporation, or organization primarily supplying services or goods (such as equipment, feeds, or supplies) to producers of marketable agricultural products.
- (3) **Animal Services:** An establishment in which dogs or other domesticated animals are medically treated, housed, groomed, bred, boarded, trained, or sold, for fee or compensation.

- (4) **Area:** Area will be calculated from dimensions taken on a horizontal plane at the average grade level.

#### 8.02.B

- (1) **Bed and Breakfast:** The accessory use of a single unit dwelling to provide accommodations to up to 10 transient guests. A B&B must have a state lodging establishment license. Guest accommodations must be within the primary dwelling and may not be within an accessory building.. A bed and breakfast will be considered to be a home business, home industry, or home occupation if it meets the criteria of that classification, and will be regulated accordingly.
- (2) **Boundary Adjustment:** Adjustment of property lines between adjacent lots that does not create any new lots, does not create any non-conforming lots, and does not impact access to any parcel.
- (3) **Building:** A structure designed, built or used as a shelter for persons, animals or property. Buildings shall include lunch wagons, travel trailers and manufactured homes when sited in such a manner that they are not readily moveable.
- (4) **Building Envelope:** The location(s) on a lot within which a structure may be permitted to be built, the area outside of which may not be built upon because of these or other regulations.

#### 8.02.C

- (1) **Campground:** A place or business providing tenting or travel trailer access and accommodations for camping purposes where money or other valuable consideration is exchanged for such use.
- (2) **Casual Sale:** The occasional (not more than 6 days per year) sale of goods on one's own residential property. Casual sale includes garage sales, yard sales, lemonade stands, and the like.
- (3) **Childcare Home:** A business providing childcare service within the provider's place of residence to not more than 10 children on a regular or continual basis for a fee. Family childcare Homes serving 6 or fewer children do not require a zoning permit.
- (4) **Club:** A building or use catering exclusively to members and their guests for recreational, educational, civic, religious, fraternal, or other social purposes.

- (5) **Commercial:** An activity involving the provision of facilities, goods or services (other than by municipal, state or federal governments) to others in exchange for payment of a purchase price, fee, contribution or other object or consideration having value.
- (6) **Community Care Facility:** A facility licensed by the state which provides primarily non-medical residential care services to 9 or more individuals in need of personal assistance essential for sustaining the activities of daily living, or for the protection of the individual, excluding members of the resident household or persons employed by the facility, on a 24-hour a day basis.
- (7) **Community Center:** A non-profit or government owned facility used for recreational, social, educational, or cultural activities for the benefit of the community.
- (8) **Construction:** Exterior substantial improvements or new assembly or placement of a structure on a site, including site preparations, excavation and grading related thereto.

#### 8.02.D

- (1) **Daycare Center:** Any establishment, whether providing services in-home or in a separate non-residential facility, providing childcare service on a regular or continual basis for a fee and which does not meet the definition of a childcare home.
- (2) **Dwelling Unit:** A structure or part of a structure intended for habitation by one household that provides complete independent living facilities including permanent provisions for living, sleeping, eating, cooking and sanitation.
  - (a) **Dwelling, Accessory:** A secondary dwelling unit established in conjunction with and clearly subordinate to a primary dwelling unit, whether a part of the same structure as the primary dwelling unit or within an accessory structure on the same lot. See PARAGRAPH 1.12.C(1).
  - (b) **Dwelling, Single-Unit:** A detached structure containing one primary dwelling unit.
  - (c) **Dwelling, Two-Unit:** A structure containing two primary dwelling units that have at least one common wall that is not less than 20 feet in length or that are located one above each other. Commonly referred to as a duplex.

- (d) **Dwelling, Three- or Four-Unit:** A structure containing three or four primary dwelling units that share common walls and/or are located one above each other.
- (e) **Dwelling, Multi-Unit:** A structure five or more primary dwelling units that share common walls and/or located one above each other; or any number of primary dwelling units located in a mixed use building..
- (f) **Dwelling, Attached:** A structure containing three or more primary dwelling units that share common walls with each unit having at least two exterior walls. Commonly referred to as a townhouse.

#### 8.02.E

- (1) **Earth Resource Extraction:** The extraction of minerals, including solids such as sand and gravel, liquids such as water, and gases such as natural gas. This use may also include preparation activities such as crushing and washing customarily part of the mining/quarrying activity.

#### 8.02.F

- (1) **Farm Market:** A market held in an open area or in a structure where groups of individual sellers offer agricultural and related products for sale to the public. Products typically include fresh produce, seasonal fruits and flowers, arts & craft items, food & beverages.
- (2) **Farm Stand:** A temporary or seasonally used structure for the display and sale of locally grown agricultural products.
- (3) **Farm Structure:** According to the Vermont Accepted Agricultural Practice Regulations [6 V.S.A. §4810, 10 V.S.A. §1021(f), and 10V.S.A. §1259(f) and (i), a structure that is used by a person for agricultural production that meets one or more of the following:
  - (a) is used in connection with the sale of \$1,000 or more of agricultural products in a normal year; or
  - (b) is used in connection with the raising, feeding, and management of at least the following number of adult animals: four equines; five cattle or American bison; fifteen swine; fifteen goats; fifteen sheep; fifteen fallow deer; fifteen red deer; fifty turkeys; fifty geese; one-hundred laying hens; two-hundred and fifty broilers, pheasants, Chukar partridge, or Coturnix

- quail; three camelids; four ratites (ostriches, rheas, and emus); thirty rabbits; one hundred ducks; or one thousand pounds of cultured trout; or
- (c) is used by a farmer filing with the Internal Revenue Service a 1040(F) income tax statement in at least one of the past two years; or is on a farm with a business and farm management plan approved by the VT Secretary of Agriculture; or
  - (d) is on a farm with a business and farm management plan approved by the VT Secretary of Agriculture.
- (4) **Farming:** The cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; or the raising, feeding or management of livestock, poultry, fish or bees; or the operation of greenhouses; or the production of maple syrup; or the on-site storage, preparation and sale of agricultural products principally produced on the farm; the on-site production of fuel or power from agricultural products or wastes produced on the farm; the raising, feeding, or management of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training, and the management of equines.
- (5) **Fuel/Service Stations:** Any building or land area used for the retail dispensing or sales of vehicular fuels. Fuel/service stations may have as an accessory use the sale of convenience food items and the repair of vehicles as described under motor vehicle repair and/or service.

#### 8.02.G

- (1) **Gross Floor Area/Gross Sales Area:** Total floor area, including basements, ground floor, and upper floors designed or occupied for the principal use of a building (e.g. for an office building, the office and reception areas or for a retail store, the sales area).

#### 8.02.H

- (1) **Home Business:** Use of an accessory building or portion of a dwelling for a business which exhibits no apparent indications that a business exists. Uses otherwise listed in PARAGRAPH 2.08.B may qualify as a home business under PARAGRAPH 1.11.C(14).

- (2) **Home Industry:** Use of a portion of a residential lot by a resident for an occupational business with not more than three full time equivalent employees who are not members of the residential household, and which could normally be expected to be customarily located in the area and that will not change the character of the neighborhood. Uses otherwise listed in PARAGRAPH 2.08.B may qualify as a home industry under SECTION 4.05.
- (3) **Home Occupation:** Use of residential property for a small business operated by someone residing on that property under PARAGRAPH 1.12.C(3).
- (4) **Household:** One or more persons occupying a single dwelling unit, but not including individuals or groups occupying rooming and boarding houses, clubs, lodging establishments and bed & breakfasts.

## 8.02.I

- (1) **Industry, Light:** A warehouse, wholesale, research, material and equipment storage, or light manufacturing facility customary in a small rural community which does not generate more than a yearly average traffic of 50 vehicles per day. Industry, Light includes sawmills, slaughterhouses, lumber yards, and other similar uses customary in a small rural community.

## 8.02.J

## 8.02.K

## 8.02.L

- (1) **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; any mining or earth resource extraction; and any change in the use of any building or other structure, or land, or extension of use of land.
- (2) **Landscaping:** The enhancement of an expanse of natural land, which may take the form of lawns, trees, plants, and other natural materials such as rock, wood chips, and decorative features.
- (3) **Lodging Establishment:** One or more structures operated under a state lodging establishment license that are used to provide accommodations for transient guests or to provide publicly-funded housing.

- (4) **Lot:** A designated parcel, tract, or area of land established by plat, subdivision, or as otherwise allowed by law, to be separately owned, used, developed, or built upon.
- (5) **Lot, Corner:** A parcel of land abutting upon two or more road at their intersection.
- (6) **Lot Frontage:** A boundary of a parcel on a public or private road.

#### 8.02.M

- (1) **Manufactured Home:** A building that is transportable in one or more sections, is built on a permanent chassis, is designed to be used as a dwelling with or without a permanent foundation when attached to the required utilities, and conforms to the National Manufactured Home Construction and Safety Standards. This definition specifically excludes recreational vehicles.
- (2) **Manufactured Home Park:** Any parcel of land under single or common ownership or control which is used to accommodate more than two manufactured homes, but not including a premises used solely for the display or sales of manufactured homes.
- (3) **Modular (or Prefabricated) Housing:** Dwelling units constructed on-site and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation.
- (4) **Motor Vehicle Repair, Small:** An enclosed establishment of 3,000 square feet or less whose primary purpose is the repair and/or servicing of motor vehicles, farm, and/or construction equipment, including body shops, vehicle electrical and mechanical repair shops and the like.
- (5) **Motor Vehicle Repair and/or Service:** An enclosed establishment that is more than 3,000 square feet whose primary purpose is the major repair and servicing of motor vehicles, farm and/or construction equipment, including body shops, vehicle electrical and mechanical repair shops and the like. Sale of retail items incidental to the operation are allowed. Sale of motor vehicles may be allowed as an accessory use.
- (6) **Motor Vehicle Sales:** The use of any buildings, land area, or other premise for the display and sale of new or used motor vehicles, which may include any vehicle preparation or repair work as an accessory use.

## 8.02.N

## 8.02.O

## 8.02.P

- (1) **Park:** A tract of land designated and used by the public for active and/or passive recreation.
- (2) **Parking Space:** An off-street area other than a loading space to be used exclusively as a temporary storage space for one motor vehicle at a time.
- (3) **Personal or Professional Service:** Establishments engaged in providing services involving the care of a person, personal goods or providing services based on a recognized profession. Including but not limited to: barbershop, beauty parlor, laundry, photographic studio, doctor, dentist, lawyer, engineer, certified public accountant, consulting firm, real estate broker or appraiser, chiropractor, planner, architect, funeral home, bank, daycare center and similar professions.
- (4) **Places of Worship:** A building wherein persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose. Includes: synagogue, temple, mosque, or other such place for worship and religious activities.
- (5) **Primitive Camp:** Use of a structure without complete interior plumbing for short-term occupancy by people who are vacationing or recreating and who have a principal residence elsewhere.
- (6) **Public Facility:** Those facilities provided for and/or available to the residents of the town, including sewage disposal, fire protection, town equipment garages, police protection, public and private hospitals, educational facilities, governmental administration buildings, sewage and water facilities, fire facilities, postal services, public parking garages and like facilities.

## 8.02.Q

## 8.02.R

- (1) **Recreation, Indoor:** An enclosed structure designed and equipped for the conduct of sports and leisure time activities as a commercial establishment.

Includes indoor bowling alleys, theaters, table tennis and pool halls, skating rinks, gymnasiums, swimming pools, hobby workshops, and similar places of indoor commercial recreation.

- (2) **Recreation, Outdoor:** An area of land designed and equipped for the conduct of sports and leisure time activities. Includes golf course, golf driving range, trap, skeet, and archery range, swimming pool, skating rink, tennis court, riding stable, park, beach, recreation stadium, skiing and similar places of outdoor commercial recreation.
- (3) **Recreation, Public:** Includes all recreational facilities supported/promoted or developed by the town or school district that provide recreational opportunities to town residents and visitors.
- (4) **Recreational Vehicle.** A registered motor vehicle or trailer designed and used for recreational travel and camping that can be legally driven or towed without a commercial driver's license or a special permit for an oversize or overweight vehicle, and that is maintained in a condition that allows it to be legally and readily driven or towed off the site. This definition includes but is not limited to motor homes, converted buses, camper vans, truck campers, fifth wheels, pop-up campers and travel trailers.
- (5) **Residential Care Home:** A single-unit dwelling used to provide room, board and personal care to not more than 8 people with a disability who are unrelated to the home operator. The home must either be licensed under 33 V.S.A. Chapter 71 or be a certified recovery residence under 24 V.S.A. § 4412..
- (6) **Restaurant or Drinking Establishment:** An establishment where food and/or drink are prepared and served on-site and may be consumed on or off-site.
- (7) **Retail Sales:** Establishments engaged in selling goods or merchandise to the general public and customary auxiliary uses and services incidental to the sale of such goods. Retail sales uses shall have buildings with retail space no greater than 7,500 square feet. For-profit sales operations, exceeding six days per year, shall be considered retail. Retail sales include but are not limited to: department stores, art galleries, grocery stores, drug stores, stationary stores, antique shops; and shops and stores for the sale of retail goods, agricultural products, forestry products, crafts, and the like.
- (8) **Rooming and Boarding House:** A single unit dwelling used to provide more than two private rooms for living and sleeping to tenants for periods of not less

than 30 days. Rental rooms may include private bathrooms, but must not include private kitchens. Not more than two unrelated adults may be housed per rental room.

#### 8.02.S

- (1) **Screening:** Shields or obscures one abutting or nearby structure or use from another or from a road. It may take the form of landscaping, or other site modifications such as berms, fences, and stone walls.
- (2) **Setback:** The nearest distance allowed between any structure and the side or rear lot line or the centerline of a public or private road.
- (3) **Setback, Front:** Along a parcel's lot frontage, the nearest distance allowed between a structure and the centerline of a public or private road. The minimum front setback requirement shall apply to both frontages on a corner lot.
- (4) **Setback, Yard:** The nearest distance allowed between a structure and the side or rear lot line.
- (5) **Sign:** Any object, device, display, or structure or part thereof, situated outdoors or indoors, which is used to advertise, identify, display, direct, or attract attention to an object, person, institution, organization, business, product, service, event, or location by any means, including words, letters, figures, design, symbols, fixtures, colors, illumination, or projected images.
- (6) **Small Off-Grid Wind Energy System:** A wind energy conversion system consisting of a wind turbine, a tower, and associated control or conversion electronics, which has a rated capacity of not more than 100 kW and that is not connected to the electric utility system grid and therefore not a net-metered system. Wind energy conversion systems which are regulated by the Public Service Board are not considered small off-grid wind energy systems for the purpose of these regulations.
- (7) **Storage Facilities:** A structure containing self-service separate, individual and private storage spaces of varying sizes leased or rented on individual leases for varying periods of time.
- (8) **Street Line:** The line dividing the street and a lot. Where the width of a street is not established, or cannot be determined the street line shall be considered to be 25 feet from the center of the street.

- (9) **Structural Alteration:** The expansion, reconstruction, enclosure, renovation or replacement of an existing structure which results in new floor space or footprint area or changes (repurposes) an existing floor space or footprint area to a new use.
- (10) **Structure:** Anything constructed, erected or placed and which requires a fixed location on, above, or below the ground in order to be used. A structure includes but is not limited to buildings, carports, swimming pools, freestanding solar arrays, and any other building features. Not included are sidewalks, driveways, fences, patios, and landscaping.
- (11) **Structure, Accessory:** A structure which is incidental and subordinate to the principal structure and is located on the same lot. Accessory structures include those that are accessory to residential principal structures and those that are accessory to commercial or other principal structures, such as in-ground swimming pools, garages, sheds, barns, and other out buildings.
- (12) **Structure, Principal:** A building or structure in which is conducted the main or principal use of the lot on which said building is located.
- (13) **Structure Height:** The vertical distance measured from the average grade at the base of the structure to the ridge or deck line of the roof.
- (14) **Subdivision:** Any land, vacant or improved, which is divided or proposed to be divided into two or more lots, parcels, sites, units, plots, or interests for the purpose of offer, sale, lease, or development.
- (15) **Survey Plat:** A map drawn to scale by a licensed land surveyor on mylar for filing in the town's land records. It shall clearly depict one or more parcels, tracts or subdivisions of land, showing, but not limited to, boundaries, corners, markers, monuments, easements and other rights. Survey plats must be prepared and filed according to PARAGRAPH 7.09.D and 27 V.S.A. Section 17.

#### 8.02.T

- (1) **Travel Trailer:** Means travel trailer, tent trailer, camper trailer, truck camper, or any other device or conveyance so constructed as to permit its ready transport on public highways, and designed as temporary living/sleeping quarters.

#### 8.02.U

- (1) **Use:** The specific purpose for which land or a building is arranged, designed, intended, or engaged; or for which either land or a building is or is intended to be occupied.
- (2) **Use, Accessory:** A use incidental and subordinate to the principal use of the property and is located on the same lot. Accessory uses are either residential accessory uses or other accessory uses as defined below.
- (3) **Use, Accessory Other:** A use incidental and subordinate to a non-residential principal use of property and located on the same lot.
- (4) **Use, Accessory Residential:** A use incidental and subordinate to the principal residential use of the property and is located on the same lot. Accessory residential uses include but are not limited to accessory dwellings, home businesses, home occupations, and home industries, home childcare, bed and breakfasts, casual sales, and rooming and boarding houses.
- (5) **Use, Principal:** A use directly involved with the primary purpose of ownership on a particular lot. Each residential use listed in PARAGRAPH 2.08.B is considered one principal use regardless of the number of dwelling units.

8.02.V

8.02.W

- (1) **Wireless Telecommunication Facility:** A tower or other support structure, including antennae, related equipment, and base structures, which will extend 20 or more feet vertically, and be used primarily for communication or broadcast purposes to transmit or receive, communicate on or broadcast signals.

# ZONING MAP

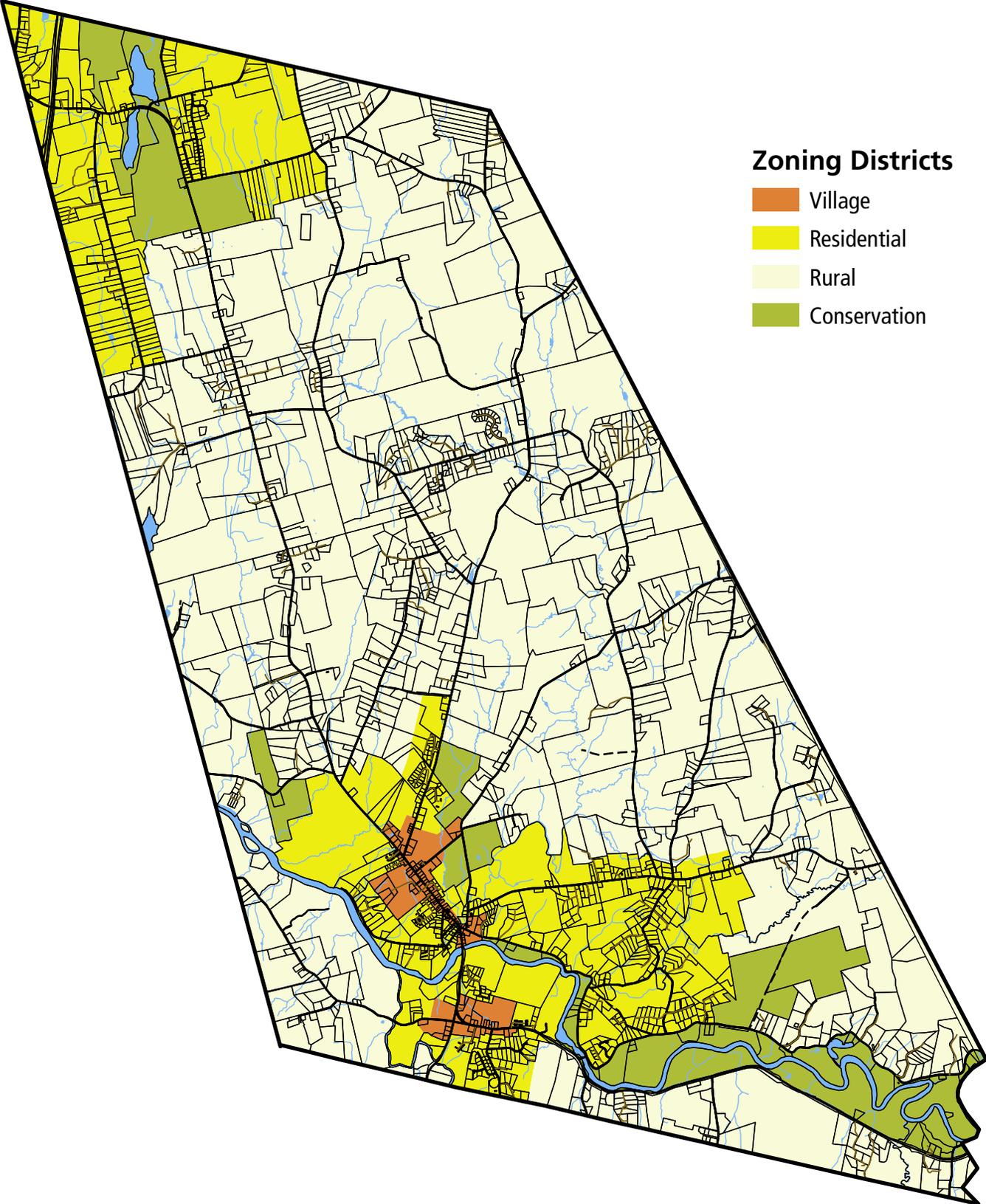
## TOWN OF FAIRFAX, VT

ADOPTED 21 MAY 2024

EFFECTIVE 10 JUNE 2024

### Zoning Districts

-  Village
-  Residential
-  Rural
-  Conservation



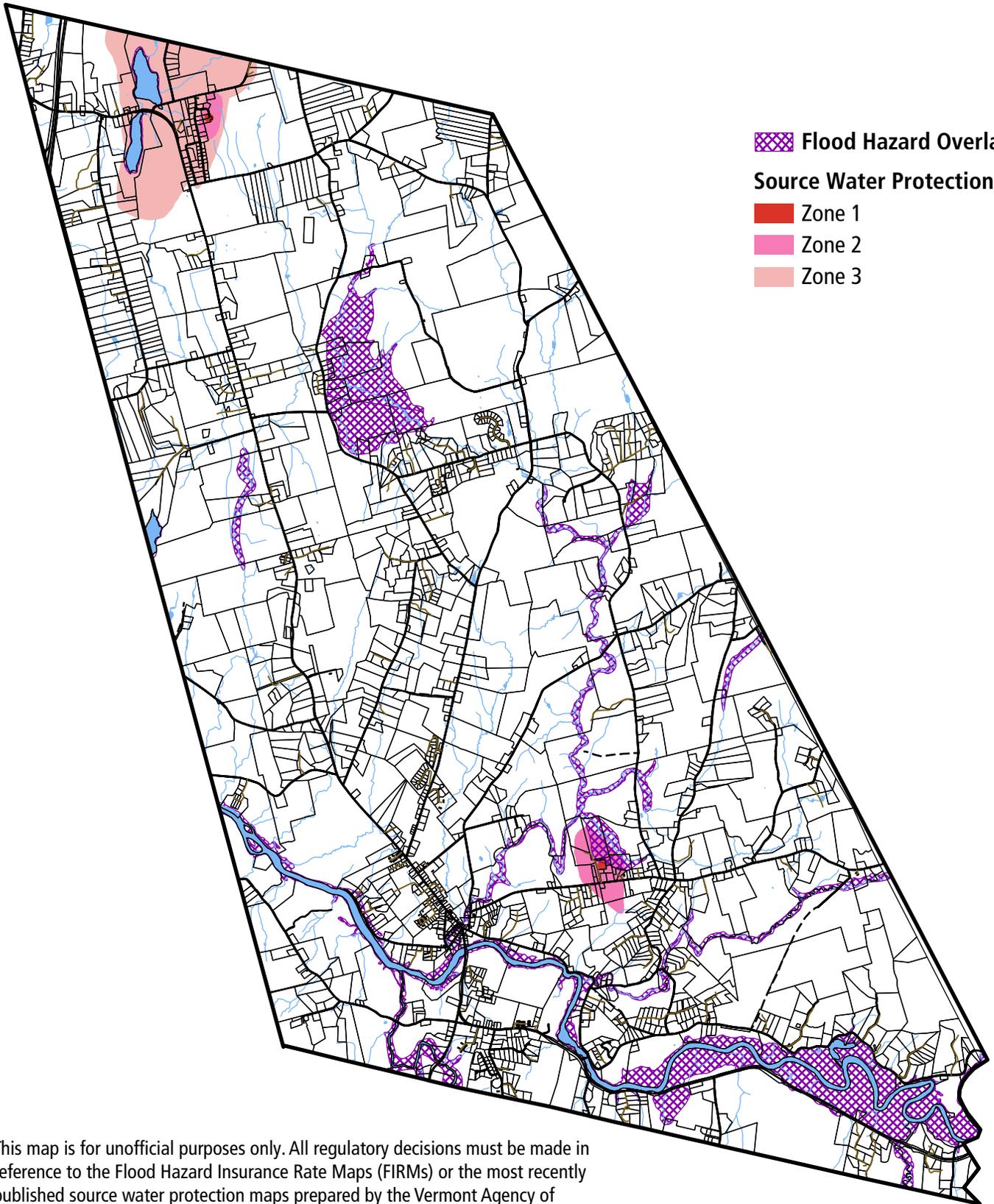
# OVERLAY MAP

## TOWN OF FAIRFAX, VT

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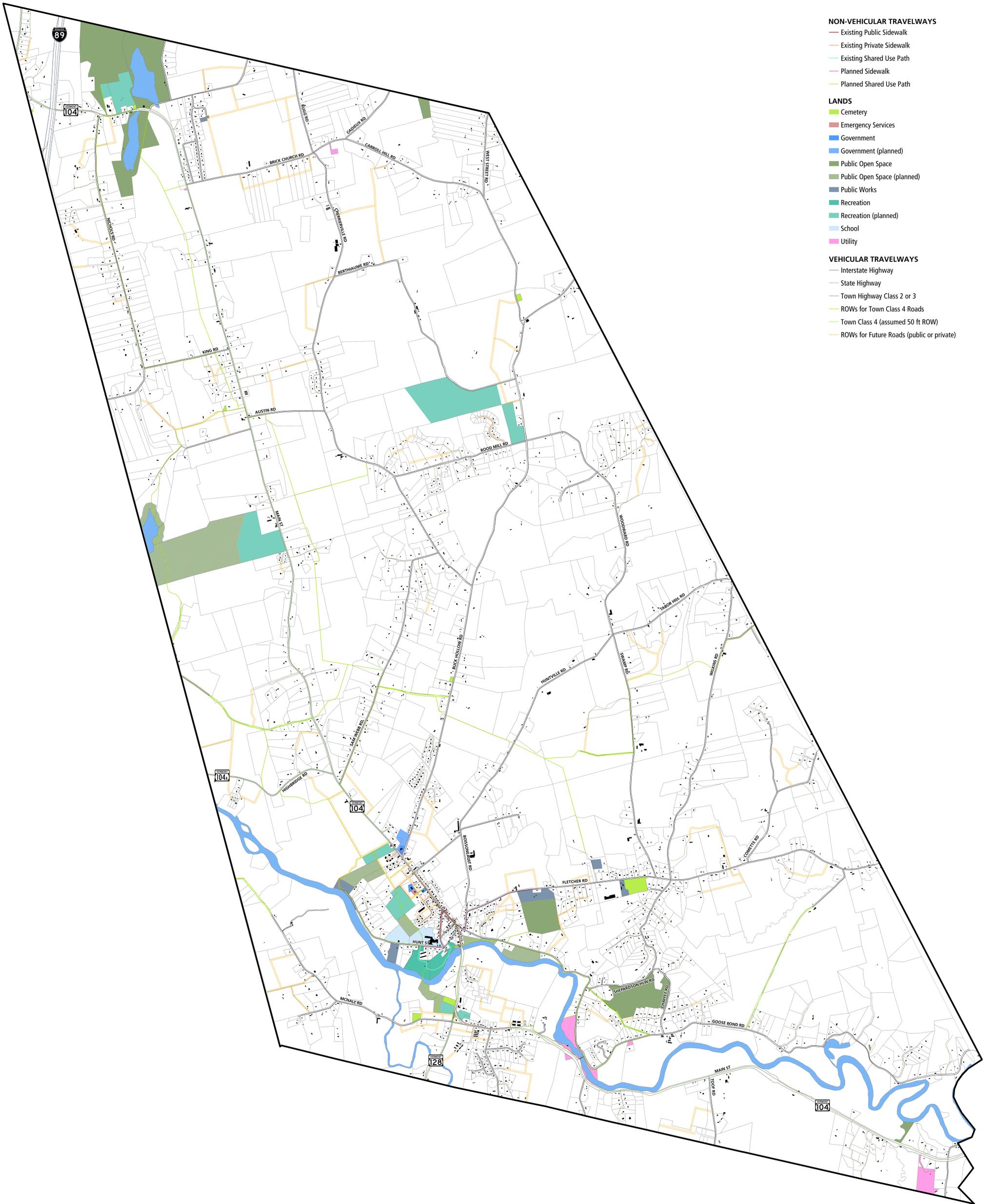
-  Flood Hazard Overlay
- Source Water Protection Overlay**
  -  Zone 1
  -  Zone 2
  -  Zone 3



This map is for unofficial purposes only. All regulatory decisions must be made in reference to the Flood Hazard Insurance Rate Maps (FIRMs) or the most recently published source water protection maps prepared by the Vermont Agency of Natural Resources on file in the Town Office.

# OFFICIAL MAP TOWN OF FAIRFAX, VT

ADOPTED BY THE SELECTBOARD ON 21 MAY 2024 | EFFECTIVE ON 10 JUNE 2024  
THIS IS THE TOWN OF FAIRFAX OFFICIAL MAP AS ESTABLISHED UNDER 24 V.S.A. § 4421.



### NON-VEHICULAR TRAVELWAYS

- Existing Public Sidewalk
- Existing Private Sidewalk
- Existing Shared Use Path
- Planned Sidewalk
- Planned Shared Use Path

### LANDS

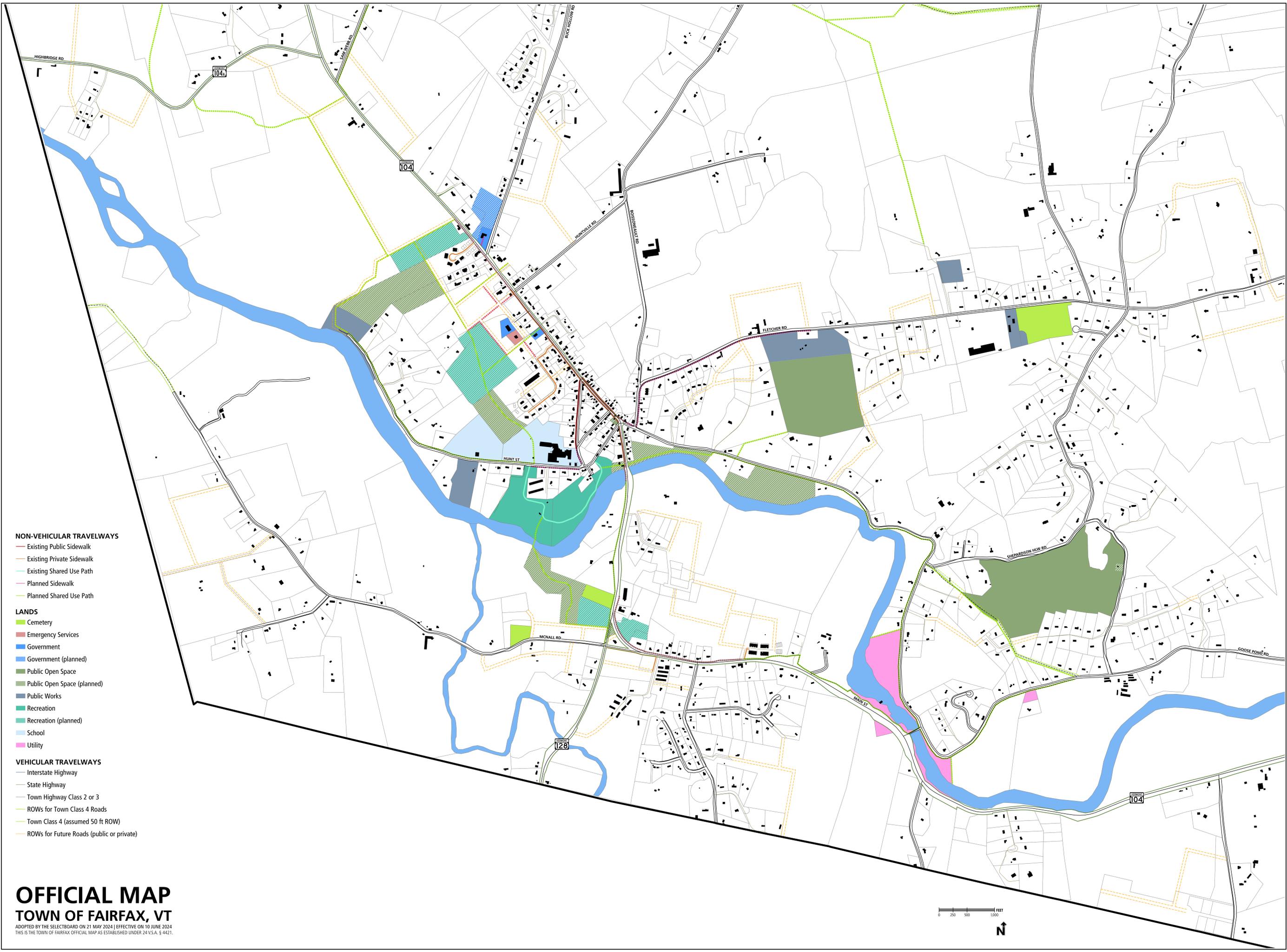
- Cemetery
- Emergency Services
- Government
- Government (planned)
- Public Open Space
- Public Open Space (planned)
- Public Works
- Recreation
- Recreation (planned)
- School
- Utility

### VEHICULAR TRAVELWAYS

- Interstate Highway
- State Highway
- Town Highway Class 2 or 3
- ROWS for Town Class 4 Roads
- Town Class 4 (assumed 50 ft ROW)
- ROWS for Future Roads (public or private)

0 500 1000 2500 FEET





**NON-VEHICULAR TRAVELWAYS**

- Existing Public Sidewalk
- Existing Private Sidewalk
- Existing Shared Use Path
- Planned Sidewalk
- Planned Shared Use Path

**LANDS**

- Cemetery
- Emergency Services
- Government
- Government (planned)
- Public Open Space
- Public Open Space (planned)
- Public Works
- Recreation
- Recreation (planned)
- School
- Utility

**VEHICULAR TRAVELWAYS**

- Interstate Highway
- State Highway
- Town Highway Class 2 or 3
- ROWs for Town Class 4 Roads
- Town Class 4 (assumed 50 ft ROW)
- ROWs for Future Roads (public or private)

**OFFICIAL MAP  
TOWN OF FAIRFAX, VT**

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