

Middlebury Zoning and Subdivision Regulations

Adopted Effective December 8, 2008 And As Amended Through February 28, 2018

# **Middlebury, VT Zoning and Subdivision Regulations**



**Adopted February 28, 2018  
Effective March 21, 2018**

# Middlebury Zoning and Subdivision Regulations

## Adopted Effective December 8, 2008 And As Amended Through February 28, 2018

### Clerk's Certificates

**TOWN OF MIDDLEBURY**  
**2008 ZONING AND SUBDIVISION REGULATIONS**

**ADOPTION PROCESS**  
Proposed regulations approved by Middlebury Planning Commission on December 21, 2007. Planning Commission Public Hearing held on January 7, 2008. Adopted on February 4, 2008 for submission to the Select Board.

Select Board changes considered on May 13<sup>th</sup> and June 10<sup>th</sup>, 2008.

Select Board's Public Hearings held on August 12, 2008 and October 28, 2008. Adopted by the Middlebury Select Board on November 18, 2008.

**RESOLUTION OF ADOPTION**  
The Select Board of the Town of Middlebury hereby adopts the 2008 Zoning and Subdivision Regulations as approved following the final public hearing, to take effect on December 9, 2008, pursuant to 24 VSA §4442(c)(1).

**MIDDLEBURY SELECT BOARD**

John Young, Chair

Willard Perkins

Victor Nauro

Donald Keeler, Jr.

Anne Ashley

**CLERK'S CERTIFICATE**  
Pursuant to 24 VSA §4447 the undersigned hereby certify that the Middlebury 2008 Zoning and Subdivision Regulations were prepared, published, posted, considered and adopted in accordance with the procedures and requirements set forth in 24 VSA §4441 and 4442.

Fred S. Dunham, Town Planner  
Clerk/Secretary, Ex-Officio  
Middlebury Planning Commission

Ann Webster, Middlebury Town Clerk

**TOWN OF MIDDLEBURY**  
**December 11, 2012 INTERIM ZONING**  
**Town Plan Land Use District Maps adopted as the Zoning District Maps**

**ADOPTION PROCESS**  
Public Notice posted and published on November 19, 2012.  
Middlebury Select Board public hearing held on December 11, 2012.

**RESOLUTION OF ADOPTION**  
The Select Board of the Town of Middlebury hereby adopts the Town Plan Land Use District Maps as the Zoning District Maps, effective December 11, 2012.

**MIDDLEBURY SELECT BOARD**

Dean George, Chair

Victor Nauro, Vice-Chair

Gary Baker

Travis Forbes

Nick Arino

Chris Hughes

Susan Shashok

**CLERK'S CERTIFICATE**  
Pursuant to 24 VSA § 4447, the undersigned hereby certify that the December 11, 2012 Interim Zoning - adoption of the Town Plan Land Use District Maps as the Zoning District Maps - was prepared, published, posted, considered and adopted in accordance with the procedures and requirements set forth in 24 VSA § 4441.

Fred S. Dunham, Town Planner  
Clerk, Ex-Officio  
Middlebury Planning Commission

Ann Webster, Middlebury Town Clerk

**TOWN OF MIDDLEBURY**  
**National Flood Insurance Program (NFIP) and Flood Emission Hazard (FEH) Amendments to the 2008 Zoning and Subdivision Regulations**  
**2012 and 2014 Zoning Amendments**

**ADOPTION PROCESS**  
Planning Commission public hearings held on June 6, 2011 and April 16, 2012.  
Adopted by the Middlebury Planning Commission on May 7, 2012 for submission to the Select Board.  
Select Board's first public hearing held on August 28, 2012.  
Select Board's final public hearing held on December 11, 2012.  
Adopted by the Middlebury Select Board on December 18, 2012.

**RESOLUTION OF ADOPTION**  
The Select Board of the Town of Middlebury hereby adopts the NFIP and FEH Zoning Amendments in accordance with 24 VSA 4442 (c)(1) effective on January 9, 2013.

**MIDDLEBURY SELECT BOARD**

Dean George, Chair

Victor Nauro, Vice-Chair

Gary Baker

Travis Forbes

Nick Arino

Chris Hughes

Susan Shashok

**CLERK'S CERTIFICATE**  
Pursuant to 24 VSA § 4447, the undersigned hereby certify that the NFIP and FEH Zoning Amendments were prepared, published, posted, considered and adopted in accordance with the procedures and requirements set forth in 24 VSA § 4441 and 4442.

Fred S. Dunham, Town Planner  
Clerk, Ex-Officio  
Middlebury Planning Commission

Ann Webster, Middlebury Town Clerk

**TOWN OF MIDDLEBURY**  
**Amendments to the January 9, 2013 Middlebury Zoning and Subdivision Regulations**

**ADOPTION PROCESS**  
Planning Commission Public Hearing held on May 19, 2014.  
Adopted by the Middlebury Planning Commission on June 2, 2014 for submission to Select Board.  
Select Board Public Hearings held on July 22, 2014 and July 29, 2014.  
Adopted by the Middlebury Select Board on July 29, 2014, following final public hearing.

**RESOLUTION OF ADOPTION**  
The Select Board of the Town of Middlebury hereby adopts the amendments to the January 9, 2013 Zoning and Subdivision Regulations as approved following the final public hearing, to take effect on August 19, 2014, pursuant to 24 VSA §442(c)(1).

**MIDDLEBURY SELECT BOARD**

Dean George, Chair

Nick Arino

Gary Baker

Travis Forbes

Chris Hughes

Susan Shashok

**CLERK'S CERTIFICATE**  
Pursuant to 24 VSA 4447 the undersigned hereby certify that the Middlebury 2014 Zoning and Subdivision Regulations were prepared, published, posted, considered, and adopted in accordance with the procedures and requirements set forth in 24 VSA 4441 and 4442.

Eric Blais, Town Planner  
Clerk/Secretary, Ex-Officio  
Middlebury Planning Commission

Ann Webster, Middlebury Town Clerk

**Town of Middlebury**  
**Amendments to the August 19, 2014 Middlebury Zoning and Subdivision Regulations**

**ADOPTION PROCESS**  
Planning Commission Public Hearing held on September 7, 2017.  
Adopted by the Middlebury Planning Commission for submission to Select Board on December 21, 2017.  
Select Board Public Hearing held on February 28, 2018.  
Adopted by the Middlebury Select Board on February 28, 2018, following public hearing.

**RESOLUTION OF ADOPTION**  
The Select Board of the Town of Middlebury hereby adopts the amendments to the August 19, 2014 Zoning and Subdivision Regulations as approved following the public hearing on February 28, 2018, to take effect on March 21, 2018, pursuant to 24 VSA §442(c)(1):

**Middlebury Select Board**

Brian Carpenter, Chair

**TOWN CLERK'S CERTIFICATE OF MUNICIPAL BYLAW AMENDMENT**

I, Ann Webster, Middlebury Town Clerk, State of Vermont, do hereby certify pursuant to 24 VSA, § 4447 that the amendments to the Town of Middlebury 2018 Zoning and Subdivision Regulations were adopted in accordance with the procedures and requirements set forth in 24 VSA § 4441, 4442, 4444, of which the attached is a true copy.

Ann Webster

Date: March 21, 2018

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### **ARTICLE I - TITLE**

These regulations shall be known and referred to as the "Middlebury Zoning and Subdivision Regulations". This is a unified bylaw pursuant to 24 VSA §4419 that includes zoning regulations, subdivision regulations and official map bylaws.

## Middlebury Zoning and Subdivision Regulations

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### **ARTICLE II - PURPOSE**

These regulations are adopted pursuant to the Vermont Planning and Development Act, 24 VSA Chapter 117 for the purposes and goals set forth in 24 VSA Section 4302, which are hereby adopted by reference.

The specific purpose of these regulations is the implementation of the Middlebury Town Plan including the general goals of smart growth\*, appropriate siting, size, scale and design; protection of natural and historic resources; coordinating developments and related infrastructure; avoiding and mitigating fiscal impacts; promoting a strong Middlebury downtown and East Middlebury village center and adjacent growth areas; providing for alternative energy, efficiency and reducing greenhouse gas emissions; and promoting the health, safety and welfare of the community as described in the Plan. These regulations establish standards by which the Town maintains and enhances the character of the community and its individual neighborhoods. These regulations shall be applied in conformance with the Town Plan and to protect and improve the quality of life in Middlebury.

\* “Smart growth” principles are defined in statutes 24 VSA 2791(13). These Regulations are also enacted to qualify Middlebury for the Vermont Neighborhoods Program under 24 VSA 2791 (15).

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### ARTICLE III - DEFINITIONS

#### Section 310 - General Interpretations

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Except where specifically defined herein all words, phrases and terms used in these regulations shall carry their usual and customary meanings. Words used in the present tense include the future, and the singular includes the plural; the word "shall" is mandatory; the word "should" means encouraged but not mandated; the word "may" means optional or possible (not mandatory); "including" means including but not limited to; "occupied" or "used" shall be considered as though followed by "or intended, arranged or designed to be used or occupied". Guidance on interpretations shall consider similar terms in 24 VSA Chapter 117 and Act 250 and related Vermont Statutes and land use regulations. Interpretations shall be applied to achieve reasonable and effective implementation of this ordinance.

#### Section 320 - Definitions

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**Note:** Terms used in only one section of the ordinance are typically defined in that section – Section 320 is for terms used throughout the ordinance.

**Abandoned** – a structure is deemed to be abandoned if the DRB determines, after notice and hearing pursuant to Section 753 (II), that it meets the criteria for abandonment set forth in Section 753 (II). Abandonment is a distinct concept from discontinuance (see definition below and Section 830).

**Accessory Apartment** – a dwelling unit that is clearly subordinate to a single-family dwelling and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation.

**Accessory use or structure** – on a non-residential property, an accessory use or structure is a use or structure that is customarily incidental, subordinate and reasonably necessary to the conduct of the principal building or use and located on the same lot. On a residential property, an accessory use or structure is a use or structure that is incidental and subordinate to the residential use, and which is of a scale, design and nature that will not have an undue adverse impact upon the character of the neighborhood. (Example: a garage may be considered an accessory use to a one family dwelling). Accessory apartment units are further defined by and subject to the provisions of Section 736. Accessory agricultural uses are further defined by and subject to the provisions of Section 780 (I) (C).

**Agriculture** - the cultivation of soil, production of crops, raising of livestock or dairying in accordance with accepted agricultural practices as defined by the Secretary of the VT Agency of

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Agriculture. (see Section 780).

**Alteration** - in a building or structure, a change or rearrangement of the structural parts of existing facilities, or an enlargement, whether by extending on a side, increasing in height, or moving to a new location.

**Bed and Breakfast House** - a lodging business in a residence that is operated by the owner or by an owner's immediate family member living on the premises, having rooms and accommodations for ten or fewer overnight guests. Food and beverages may be served only to overnight guests.

**Building** - a structure designed, built, occupied or used as a shelter or roofed enclosure for persons, animals, vehicles, equipment, or property, including but not limited to a house, garage, shed or barn. Tents, lunch wagons, trailers, or any other roofed structure on wheels, or other supports, regardless of temporary siting, shall be considered to be buildings when they are used for the purposes stated above.

**Building Coverage** - the maximum percentage or square footage of the lot area which may be covered by the footprint (ground floor level) of buildings and other structures.

**Building Front** - the store front or wall of a building abutting or along a public right-of-way.

**Business Frontage** - a continuous length of building front (storefront) for one or more businesses owned or controlled by the same person.

**Camp** - a building no larger than 500 square feet used for residential purposes and occupied not more than 90 days in any calendar year.

**Club** - any place of assembly or regular meetings of groups (such as the VFW and American Legion) operated for social/recreational purposes that is open only to members and not to the general public.

**Commencement of Land Development** - includes tree cutting, vegetation removal or site excavation, filling or grading activities, where these are conducted in preparation for Land Development as defined herein.

**Commercial School** - a school not certified by the Vermont Department of Education as a public or private school; includes, but is not limited to, schools of business, barbering, beauty, culture, music, art, dancing and driving.

**Constructed Wetland** - a man-made system, designed and constructed to treat wastewater using

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the natural processes typical of natural wetlands.

**Conceptual Approval** – a determination by the Development Review Board in which a conditional use application meets one or more of the criteria in Section 540. Such approval may be in written form to include findings of fact and conclusions of law to provide guidance to an applicant but should not be, in any way, interpreted as a final approval for a project.

**Conditional Uses** – as opposed to “Permitted Uses” which are reviewed and permitted in a ministerial manner by an administrative officer, a “Conditional Use” are reviewed under the standards in Section 540, usually requiring a public hearing review by the DRB (non-substantial changes, ie: not having any undue adverse effect under the Section 540 standards, may be approved by administrative officer review and waiver of hearing). Usually conditions are attached to any approval (hence the name “conditional use”). Actually, however, any type of approved project may be conditioned by the Administrative Officer or by the DRB.

**Corner Lot** - a lot abutting two or more intersecting streets which have an interior angle of less than 135 degrees at that intersection. A lot abutting a curved street shall be considered a corner lot if the tangents to the curve at the points of intersections of the side lot lines with the street, intersect at an interior angle of less than 135 degrees.

**Directory Panel** - a flat sign located by a building's entrance listing two or more on-premises businesses or occupants.

**Directory Sign** - a free-standing sign (not primarily supported by a building), listing one or more on-premises businesses.

**Discontinued use** - a use is considered discontinued if the use ceases for a period of at least one (1) year, regardless of any intent to resume the use. The date of discontinuance shall be one (1) year from the date on which the use last occurred, or the effective date of this regulation, whichever is later. Resuming a conforming use requires a new zoning permit and is subject to review as a change of use, and resumption of discontinued nonconforming uses is governed by Section 830. Discontinuance is a distinct concept from abandonment (see definition above and Section 753 (II)).

**DRB** - the Middlebury Development Review Board

**Dwelling** - a building, other than a camp, designed for or used as the living quarters for one or more households. Related definitions:

**Dwelling unit** - one or more rooms in a building, occupied by a single household that includes a kitchen/kitchenette, bathroom and sleeping/living quarters. This is distinct from a Rooming

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House and other types of housing (see below).

- **One family dwelling** - a building occupied by a single household in a single dwelling unit.
- **Two family dwelling** - a building occupied by two households in two separate dwelling units, such as a duplex or a house with an apartment.
- **Multiple family dwelling** - a building occupied by three or more households, in separate dwelling units, including, but not limited to, apartments, flats, and condominiums.

**False Building Front** - a non-structural extension of a business front wall.

**Flat Sign** - a sign attached to, printed on or otherwise affixed to a building, the readable surface of which is parallel to the building front to which it is attached, which is primarily supported by the building and no part of which projects over 8" from the face of the building.

**Forestry** – the use and management of timber land for purposes of conservation, wood production, and/or timber harvesting in accordance with accepted management practices as currently defined by the Commissioner of the Vermont Department of Forests, Parks and Recreation, including the use of equipment temporarily required for tree harvesting on the same site. “Forestry” does not include firewood processing machines involving trees from other sites, sawmills, lumber yards, and similar facilities used for the processing and/or manufacture of wood or wood products; these are separate classifications of use or may be considered as industrial uses.

**Front Lot Line** - any lot line separating a lot from an existing or proposed public street or highway or private right of way serving more than one parcel. This line coincides with the street property line or right-of-way line.

**Front Yard Setback** - the required setback of a building or above ground structure from the centerline of the traveled portion of a public street or highway, except that this setback shall be measured from the Front Lot Line or other features where expressly indicated in the Ordinance.

**Governmental Use** - a use operated directly by the State or a municipality as defined in 1 V.S.A. 126. Governmental use shall include an Agency of the Federal Government.

**Habitable Floor Area** – as defined and used in the assessment process adopted through the Town Lister’s Office.

**Household** - one or more persons, but not more than three unrelated persons, living on the same premises as a single housekeeping unit. Unrelated persons means people who are not relatives by blood or marriage or civil union or adopted or foster children. This definition shall not be interpreted to prevent customary visitors or guests. Group homes and child care homes (Section

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739), Social Service Facilities, college student housing and rooming houses (Section 320) fall under separate classifications of use.

**Hotel/Inn** - a lodging facility that provides accommodations for compensation on a short-term basis (less than one month in duration) and may also provide meals and meeting/conference facilities. An inn differs from a bed and breakfast and rooming house and cannot be used as student housing.

**Indoor Recreation** – bowling alley, theater, table tennis or pool (game) hall, indoor tennis center, skating rink, gymnasium, fitness center, swimming pool, hobby or crafts workshop, and similar places of indoor recreation.

**Industrial uses** – the manufacture, production, processing, assembling and/or renovation or testing of materials, goods or equipment.

**Junk/Salvage Yard** - any place of outdoor storage or deposit that is maintained, operated or used in connection with a business for storing, keeping, processing, buying or selling junk or as a scrap procession facility. Also, any place of outdoor storage or deposit, not in connection with a business, which is maintained or used for the storing or keeping of junk, or materials that are customarily discarded.

**Kennel** - breeding and/or boarding or grooming of pets as a commercial or professional enterprise.

**Kiosk** - a multisided structure to which temporary flyers, notices or similar signs are attached.

**Land Development** - the division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining, excavation or landfill, and any change in the use of any building or other structure, or land, or extension of use of land 24 VSA 4303(3).

**Library** - a quiet place (room or building) where a collection of books or other media are kept for reference by the public.

**Lot** – lands occupied or capable of being occupied by a principal building and its accessory buildings, together with the required yards, parking and other open spaces required by these regulations, having not less than the minimum lot area required for the proposed use or principal building in the district which such land is located.

**Lot Area** - total contiguous area within the lot lines, calculated by horizontal measurements, not including public rights of way. Lot area on one side of a public highway shall not be added to lot

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area on the other side of such highway in calculating lot area.

**Lot Depth** - the mean distance between the front and the rear lot lines, measured at right angles to a front lot line.

**Lot Frontage or Width** - length of a front lot line (frontage), or the width of the lot at the building front line (note: The minimum frontage or lot width requirement is not intended to require that the entire lot be that minimum width).

**Major Subdivision** – the division of a lot, tract or parcel of land into two or more lots, tracts, sites, or other divisions of land for the purpose of sale, conveyance, lease, or development that involves newly created infrastructure including, but not limited to, roads, sidewalks, water mains, sewer mains, and stormwater facilities.

**Minor Subdivision** – the division of a lot, tract or parcel of land into two or more lots, tracts, sites, or other divisions of land for the purpose of sale, conveyance, lease, or development that does not involve newly created infrastructure including roads, sidewalks, water mains, sewer mains, and stormwater facilities.

**Mobile Home Park** - a parcel or lot under single or common ownership or control which contains or is designed, laid out or adapted to accommodate more than two mobile homes for occupancy. Condominiums and cooperatives involving mobile homes are deemed Mobile Home Parks.

**Motel** - a building or group of buildings providing sleeping accommodations primarily for transient occupancy on a daily or weekly basis for compensation, with the exception of the manager's or caretaker's unit, and has convenient access to parking spaces for the use of the motel's occupants by way of separate entrances or groups of separate entrances, outside the main building, into the individual units.

**Motor Vehicle Sales and/or Service** - the leasing or sale of motor vehicles or the repair of motor vehicles where sales or leasing activity constitutes a principal use.

**Motor Vehicle Service Station** - a use of land or buildings for the sale of any motor vehicle fuel or lubricant, or for lubricating or washing motor vehicles, or for servicing and performing minor repairs of motor vehicles. Convenience stores do not qualify – these are included under Retail Store.

**Natural Functions** – features within an undeveloped environment that function without civilized human intervention including, but not limited to, vegetation, soil, wetlands, wildlife corridors, etc.

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**Neighborhood Retail Shop** - means a retail shop or store or retail personal service business, operated by the owner, within a residence or within an accessory building in a scale appropriate to the neighborhood. This is similar to a Home Occupation (See Section 730) but is evaluated by the DRB on a conditional use basis. It does not include a service station.

**Nonconforming structure** – a structure or part of a structure that does not conform to the present bylaws but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a structure improperly authorized as a result of error by the Administrative Officer.

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

**Nursery / Garden Center** - a business that primarily grows and/or sells plants, trees and shrubs, and garden supplies, such as soils, fertilizers, garden tools, and landscaping materials.

**Nursing Home/Assisted Living (senior living facility)** - an establishment where one or more levels of maintenance and personal or nursing care are provided for the aged or the chronically ill. Included are congregate housing and assisted living facilities and continuing care/retirement communities.

**Off-Premises Sign** - a sign which directs attention to a business, profession, commodity, service or entertainment which is not carried on, sold, or offered on the same site or premises.

**Outdoor Advertising** - any exterior sign, awning, banner, vehicle or other object or painting of a building in a franchise color scheme or unusual colors, or high –intensity lighting, which advertises, calls attention to or directs a person to a business, association, profession, commodity, product, institution, service entertainment, person, place, thing or activity of any kind whatsoever, and is visible from a highway or other public right-of-way.

**Outdoor Recreation** - the following business or non-profit enterprises: golf course, golf driving range, miniature golf course, canoe club, trap, skeet, archery or shooting range, horseshoe pits, swimming pool, skating rink, riding stable, youth camp, tennis club, concert or other recreation stadium, cross-country skiing areas, riding, hiking or mountain biking trails and similar facilities. This definition specifically excludes any campground or recreational vehicle park, any carnival-type amusement park, racetrack, speedway, dragstrip, go-cart track, motocross, demolition derby or similar activity for motor vehicles, or any uses of a similar nature.

**Overhanging Sign** - a projecting sign attached or affixed to a building, the readable surface of

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which is not parallel to the building face to which it is attached or which projects over 8" from the face of the building.

**Parcel** - contiguous lands owned by the same person, and lands contiguous thereto under that person's control.

**Parking Space** - a defined space at least 20 feet long, and 9 feet wide, accessible to the street with not more than one backing/turning movement, and without requiring other cars to be moved, with a sufficient gravel or pavement surface to permit year round use.

**Permitted Use** – a use in Section 610 reviewed and permitted by an administrative officer, as opposed to “Conditional Uses” which are reviewed and permitted under the standards in Section 540, usually requiring a public hearing review by the DRB (non-substantial changes, ie: not having any undue adverse effect under the Section 540 standards, may be approved by an administrative officer review and waiver of hearing). Any type of approved project may be conditioned by the Administrative Officer or by the DRB.

**Planned Unit Development (PUD)** - a clustering and/or different mixture of principal uses, arrangements of principal buildings and land use densities, than is conventionally provided in the standard subdivision and zoning scheme where each principal building or use is located on an individual lot and setback in a standard fashion from other such buildings and uses. Examples of PUD's include cluster housing, condominiums, shopping centers, multiple unit commercial complexes, Porter Medical Center, Middlebury College and similar institutional complexes and industrial or business parks. See Section 550.

**Plat** – a map or plan, drawn to scale, showing the divisions of a piece of land. A plat shall also show rights of way, easements, utilities and other requirements of the DRB.

**Principal Building** - a building in which the main, primary or principal use of the property is conducted. Attached garages, porches or carports are part of the principal building. Garages, sheds etc. are considered accessory buildings.

**Public or Private School** - any school certified or approved by the Vermont Department of Education; includes K-12 parochial, private, and public schools, and the Community College of Vermont. (Middlebury College uses, child care homes and pre-kindergarten nursery schools are not included under this classification.)

**Required Yard** - the area which constitutes the front, rear and side yard minimum setbacks. Buildings and structures are prohibited in this lot space (except where expressly provided in these regulations).

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**Residential Directional Sign** - a sign erected and maintained by an individual to indicate the location of his residence.

**Restaurant and/or Bar** - a business or portion of a business or other place where food and/or beverages can be bought and where table service or other accommodations are made to enable consumption of these on the premises.

**Retail Store/Services** – a shop, store, stand or vehicle for the sale of retail goods, including antiques, gifts, or food, and a personal service shop, a department store or convenience store. Retail store does not include: any motor vehicle sales and service, motor vehicle service station, or the sale or servicing of travel trailers or mobile homes.

**Rooming/Boarding House** - any building where individual rooms are offered for rent on a weekly or monthly basis, with or without meals. Off-campus houses occupied by more than three unrelated persons shall be deemed Rooming Houses.

**Setback** - the required distance which a building or other structure must be from lot lines or other features specified in the ordinance. The rear setback requirement also applies from structures to any streams and shall be preserved with existing natural vegetative growth (see Sections 660 and 750).

**Sign** - any card, fabric, paper, metal, glass, wooden, plaster, plastic, stone or other sign or outdoor advertising device of any kind which displays or includes any letter, word, model, banner, flag, pennant, insignia, device or representation that is used or placed as an announcement, direction or advertisement. The work "placed" as herein used shall include erected, constructed, pasted, painted, tacked, nailed, glued, stuck, carved, regularly parked or otherwise fastened, affixed, or made visible in any manner whatsoever.

**Sign Area** - the area of a flat sign shall be the area within the smallest rectangle (or circle, for circular signs) which can be drawn to encompass all letters, designs, tubing, panels and frames which are part of the sign. The area of an overhanging or directory sign shall be the total surface area of the sign on all sides, including all letters, design, panels and frames, and the supporting structure if any part of the structure is more than 6" wide, or if any part of the structure is more than 6" from an edge of the sign. In either of the latter cases, the whole visible surface of the supporting structure and any space between the structure and the sign shall be included as sign area. A false building front or awning or gas station canopy may be included in calculating sign area.

**Sign Height** - the maximum height of a sign is the vertical distance measured from the average elevation of the finished grade between the front line of the building and the center line of the roadway to the highest point of the sign or supporting structure. The minimum height of a sign

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is the vertical distance measured from the average elevation of the finished lot grade between the front line of the building and the centerline of the roadway to the lowest part of the sign.

**Social Service Facilities** - buildings or other facilities within which social services are provided to clients or targeted classes having social needs as defined by grant funding, and operated by non profit organizations such as the Counseling Service of Addison County, Addison County Community Action, Addison County Parent Child Center and similar health or social service agencies. (Examples of programs that fall in this classification: Elderly Services Inc, CSAC's Evergreen House, ACCAG's transitional housing, shelters, etc.)

**Structure** - means an assembly of materials for occupancy or use, including but not limited to: a building, mobile home or trailer, billboard, sign, wall or fence.

**Subdivision** - the division of a lot, tract or parcel of land into two or more lots, tracts, sites, or other divisions of land for the purpose of sale, conveyance, lease, or development. It includes resubdivision, condominium conversion and the division of a lot or parcel held in common ownership and subsequently divided into parts among the owners. See Sec 560.

**Traffic Control Sign or Device** - an official route marker, guide sign, warning sign, or sign directing traffic to or from a bridge, ferry, or airport, or a sign regulating traffic, which has been erected by authorization of the Select Board or by the Vt. Agency of Transportation in the case of State Highways.

**Use** - the specific purposes for which land or a structure is designed, designated, arranged, occupied, used or maintained.

**Warehouse** – a building or portion thereof primarily used for storage and/or distribution of products, equipment, materials, or commodities.

**Wetland** - means Class I, II and III wetlands as defined by the State of Vermont.

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### **ARTICLE IV - DISTRICTS**

#### **Section 410 - Establishment of Zoning Districts**

The Town of Middlebury is hereby divided into the following Zoning Districts, in conformance with the Town Plan as follows:

<u>District Name</u>	<u>Abbreviated Designation</u>
Forest District	FOR
Institutional District	INS
Agricultural/Rural District	AR
Medium Density Residential District	MDR
High Density Residential District	HDR
Village Residential/Commercial District	VRC
Office/Apartment District	OFA
Central Business District	CBD
General Commercial District	GC
Airport District	AIR
Industrial District	IND
Protected Highway District	PHD
Flood Hazard Areas	FLD

**Note:** There are overlay districts also established in these regulations, including areas of limitations along principal highways, farmland and scenic preservation overlay regulations, shoreland and riparian areas, fluvial erosion hazard areas, wetlands, aquifer/wellhead protection areas, historic sites, etc. as defined and referenced in these sections.

#### **Section 420 - Official Zoning Maps**

The GIS maps in the Town Plan adopted December 11, 2012, specifically the Land Use Districts and Maps, are adopted by reference and shall be used as the Official Zoning Maps of the Town of Middlebury. The Official Zoning Maps shall be kept on file with the adopted Zoning and Subdivision Regulations in the Middlebury Town Clerk's Office, and GIS copies shall also be kept for public viewing in the Listers and Zoning Offices, Addison County Regional Planning Commission and posted on the Town web site.

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### **Section 430 - Interpretation of District Boundaries**

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Zoning District boundaries shall be interpreted by the Administrative Officer in conformance with the purposes of the Zoning Ordinance and the Town Plan and the following:

1. Boundaries indicated as approximately following streets, highways, roads, railroads or utility lines shall be construed as following the center lines of the rights of way.
2. Boundaries indicated as following significant topographic features such as the contours of steep embankments, or ridges, rivers, streams or other drainage courses shall be construed to follow such features as they physically exist rather than scaling from the map.
3. Boundaries indicated as following contour lines shall be construed to follow the line of the elevation indicated as determined on the ground rather than scaling the map.
4. Boundaries indicated as following property lines or platted lot lines shall be construed as following such lines as they exist on the effective date of these regulations.
5. Boundaries indicated as approximately following Town limits or tax district boundaries shall be construed as following the legal limits or boundaries as of their effective date.
6. Boundaries indicated as being parallel to or extensions of lines or features described in the subsections above shall be construed as parallel to or extensions of such lines or features.
7. Boundaries indicated as lines perpendicular to lines or features described above shall be construed to proceed at right angles from such lines or features.
8. The abandonment or relocation of a right-of-way or roadway, or the change in a line or feature which references a district boundary line, after the effective date of these regulations, shall not affect the location of the Zoning District boundary line.
9. When a lot is partly in the Town of Middlebury and partly in an adjacent town, the regulations and restrictions of this Ordinance shall be applied to that portion of such lot within the Town of Middlebury in the same manner as if the entire lot were situated therein.
10. Where a boundary line between districts divides a lot or parcel of land, the regulations of the given district shall apply to that portion of the lot.
11. Divisions of land and subdivision boundaries shall, wherever possible, result in lot lines that coincide with Zoning District boundaries.

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12. Any interpretation of district boundaries by the Administrative Officer may be appealed to the DRB as provided in Article X.

## **ARTICLE V - PERMIT REQUIREMENTS AND REVIEW PROCEDURES**

### **Section 510 - What Requires a Permit?**

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- I. Permit Requirement - There shall be no land development except in conformance with these regulations herein specified for the district in which it is located. No person shall commence any land development without a permit issued by the Administrative Officer.
  - A. Land Development - the division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining, excavation or landfill, and any change in the use of any building or other structure, or land, or extension of use of land 24 VSA 4303(10).
  - B. Building - a structure designed, built, occupied or used as a shelter or roofed enclosure for persons, animals, vehicles, equipment, or property, including but not limited to a house, garage, shed or barn. Tents, lunch wagons, trailers, or any other roofed structure on wheels, or other supports, regardless of temporary siting, shall be considered to be buildings when they are used for the purposes stated above.
  - C. Structure - an assembly of materials for occupancy or use, including but not limited to building, mobile home or trailer, billboard, sign, wall or fence.
  - D. Alteration - in a building or structure, a change or rearrangement of the structural parts of existing facilities, or an enlargement, whether by extending on a side, increasing in height, or moving to a new location.
  - E. Use - the specific purposes for which land or a structure is designed, designated, arranged, occupied, used or maintained.
  - F. Commencement of Land Development includes tree cutting, vegetation removal or site excavation, filling or grading activities, where these are conducted in preparation for Land Development as defined herein.

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Examples of things which require a zoning permit include, but are not limited to:

- construction or erection of a:
  - dwelling, garage or shed
  - commercial, institutional or industrial structure
  - radio or satellite antenna [except as exempted by 24 VSA 4412 (8) and (9)]
  - swimming pool
  - Non grid-tied, ground mounted solar panels
- an addition to a building or structure
- division of land:
  - to alter a property line
  - to create a building lot (subdivision)
  - to establish or alter an access right of way or easement
- alteration of a structure:
  - interior remodeling to create an apartment
  - a roof over a patio or deck
  - change to any exterior essential historic feature of an historic structure (see Section 690)
- demolition or removal of any building
- change of use
  - increase in the number of apartments or dwelling units
  - change from dwelling to office or retail shop
  - change from office to retail shop or restaurant
  - retail sales from a vehicle or stand, whether temporary or ongoing
- exterior lighting changes
- driveway or parking lot construction or changes
- excavation or land filling:
  - which would change any water course or affect drainage on any neighboring property
  - for site preparation for land use changes, building or commercial, institutional or industrial development
  - topsoil, sand or gravel removal, or quarrying
  - ANY excavation or land filling in the Flood Hazard Area, or Fluvial Erosion Hazard (FEH) Districts – including maintenance /reconstruction of floodwalls - - See Sections 660 and 670.
  - In the Special Flood Hazard Area, ANY human-made change to improved or unimproved real estate that could be susceptible to damage from floods – or flood caused erosion - - or which could become floating matter that causes damage downstream including any structures, tanks, storage of materials, RV's or campers. See Section 670.
- use or placement of trailers or other enclosures for residential, construction, storage,

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business, institutional or recreational purposes.

- erection of any sign, awning, outside displays, change of structure exterior to franchise commercial colors/materials or other outdoor advertising changes.
- changes to previously approved projects, in reference to findings or conditions of any DRB or prior Planning Commission or Zoning Board approval.

Exemptions - No zoning permit is required nor are setbacks applicable for the following:

(Note: exemptions do not apply in the Special Flood Hazard Area. See Section 670).

- a. A residential fence or wall or landscaping which does not interfere with corner visibility (see Section 710 V). *[However, changes to PC or Zoning Board or DRB-required landscaping shall require a permit approval].*
- b. A residential terrace or patio, steps or handicap ramp, unroofed porch or deck at the ground floor or main floor level (commercial steps or ramps or decks which are over three (3) feet above the level of the ground, or having roofed storage underneath, do require a permit).
- c. Roof mounted residential solar panels, customary residential firewood sheds or racks, bay windows, dormers and awnings (for changes to historic houses, a permit is required. (See Section 690).
- d. A dog house, or child's play house or tree house, or a shed or similar structure with a floor area of not more than 100 square feet and a height of not more than 10 feet which may be located within any required yard, except the front yard, but not closer than 5 feet from any property line. Only one such shed per property shall be deemed exempt.
- e. An accessory building in the Agricultural/Rural (AR) district not exceeding four hundred (400) square feet in floor area, not over fifteen (15) feet high, and not within seventy-five (75) feet of a property line. Barns, silos and certain other farm structures may be exempt from permit requirements, but notification to the Zoning Office is required pursuant to 24 VSA § 4413(d). (see Section 780).
- f. Accepted agricultural and silvicultural practices are not subject to these regulations, pursuant to 24 VSA § 4413(d). (see Section 780.)
- g. Any sign erected by the State of Vermont or the Town of Middlebury for directional, information or traffic control purposes.
- h. A pond, provided that the pond does not affect drainage on other properties.
- i. Small residential swimming pools, above or below ground that contain less than three feet of water at the deepest.

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- j. A garage sale or yard sale, or a similar type of sale from a retail stand or vehicle, or an auction, in no case for a period exceeding three (3) consecutive days, nor more than six days per calendar year (a sale of longer duration or sales of greater frequency, shall be deemed a commercial retail use). The event shall be managed so as not to cause unsafe traffic conditions or parking problems or other nuisance to neighbors. See Section 772 IV(C)(13).
- k. Rental of two or fewer rooms within an owner-occupied single-family home. For example: Airbnb, house shares.

### **Section 520 - Application and Administrative Review Process**

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#### I. How To Apply For A Permit -

Applications must be filed at the Planning and Zoning Office in the Town Offices, 94 Main St., Middlebury, VT, 05753.

Applicants may visit the office or the Town web site [townofmiddlebury.org](http://townofmiddlebury.org) to view and download an application form. Town regulations and the Town Plan are also posted on the web site. Applicants may call the office at (802) 388-8100 x 210 or x 208 to obtain assistance.

A complete application shall consist of:

- 1. the Town Permit Application form with applicant contact information and original signatures;
- 2. application signed by the property owner(s) stating the type and intensity of use(s), existing and intended, of the property and all structures and portions thereof; and
- 3. such information as may be reasonably required by the Administrative Officer to insure the provisions of Town Ordinances will be complied with. This may include, but is not limited to: a sketch or plan indicating the shape, size, height and location in exact relation to all property lines and to street or road lines of any structure to be erected, altered, extended or moved, accompanied by satisfactory evidence that the line of the bounding street or road has been accurately located and staked on the ground.
- 4. payment of the full application fee. (See appendix for fee schedule).

#### II. Administrative Procedures –

The Administrative Officer shall act promptly on any complete application. Action shall be taken within 30 days, in accordance with the procedures in Article IX, to either:

- approve the application, or approve it with appropriate conditions; or
- deny the application; or

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- schedule the application for review by the Design Advisory Committee and by the DRB, if required.

A denial or any other administrative action may be appealed as provided in Sections 1040 and 1050.

- III. The burden of proof is on the applicant to demonstrate that their proposal meets the requirements of this bylaw, up to and including considerations regarding health, safety, impacts to the town services, and potential violations of the performance standards, such as noise and odors. The Planning Department will review the application for each proposed project and may require additional information before an application is considered complete.
- IV. At the discretion of the Administrative Officer, any administrative application may be referred to the Design Advisory Committee or Conservation Commission for their opinion, or referred to the Development Review Board for their decision.

## **Section 530 - Design Advisory Process**

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### I. Applicability

The Design Advisory review process is required for conditional uses, planned unit developments, and certain other situations specified by these regulations. The purpose of Design Advisory Review is to assist applicants and the DRB with matters of siting, architectural design, historic preservation, landscape design, conservation and aesthetics. (See also Article XI).

For projects in which the Administrative Officer or DRB have indicated a fundamental question of conformance with the Town Plan, or other basic issues as described in II (C) below, these issues shall be reviewed by the DRB prior to Design Advisory Review.

Waiver - If the Administrative Officer or DRB determines that a project or change will have no undue adverse impact under the standards in these Regulations, the Design Advisory review procedure may be waived. The waiver may be granted after notice to the Design Advisory Committee and subject to conditions to achieve the purposes and effects of these Regulations.

### II. Process

- A. The Design Advisory Process starts with a meeting with the Administrative Officer prior to preparation of plans filed with a permit application. The purpose of this meeting is to review the project, applicable standards and procedures, and to schedule Design Advisory Committee or DRB reviews, as required.

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- B. The Design Advisory Committee shall meet with permit applicants on an informal working basis, on-site if requested or directed by the Administrative Officer.
- C. Depending upon the nature of the project and the issues involved, the Administrative Officer or DRB may direct that the applicant meet with the DRB or other boards or agencies having jurisdiction to obtain preliminary or conceptual approval prior to preparing final plans. The Administrative Officer and DRB shall clearly establish the review process including early public notice and opportunity for hearing interested parties on basic issues of conformance with the Town Plan and key zoning or subdivision criteria, scale and nature of uses, municipal or school impact, natural resources and historic preservation issues, preliminary layout of access, siting of buildings, traffic or engineering studies, etc. In such cases, the project and design development may be required to return to reviews by department heads or agencies and to review by the Design Advisory Committee as the Administrative Officer or DRB may direct.
- D. The Administrative Officer and the Design Advisory Committee may reasonably require any or all of the information listed in Section 540 II(B) and Section 550 III(e) (for planned unit developments) as it deems necessary to properly make recommendations on. Plans prepared by design professionals may be required where appropriate. For larger projects it is customary to submit preliminary plans at appropriate stages, ie: at the conceptual, preliminary engineering and at the final approval stage.
- E. Within 7 days of meeting with the applicant, the Administrative Officer shall transmit the comments and recommendations of the Committee, or a separate report from the Committee, to the applicant, and to the DRB. The Design Advisory recommendations may be included in draft findings which the Administrative Officer will prepare for the DRB. The Design Advisory Committee or any member may appear at any DRB meeting to explain their recommendations.

### III. Basis for Design Recommendations

- A. The Design Advisory Committee, DRB, and Administrative Officer shall be generally guided by customary professional practice, and published codes and design standards, and Middlebury vernacular architectural design. In Middlebury, the following are also to be used as design guidelines, where appropriate:
  - 1. The Town Plan. This provides guidance and standards regarding growth areas and mixed uses, neighborhood plans, natural and cultural resources,

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human scale and public services and facilities.

2. Middlebury Industrial Park Architectural Guidelines adopted February 24, 1975. These were amended 3/5/97 for the Industrial Park Expansion and should be used for other Industrial Zone, or General Commercial developments.
3. The Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Revised 1983). These standards are the same as would qualify a project for the Federal Preservation Tax Incentives Program, and would apply to the Middlebury Historic District or to other places on the State of Vermont Historic Register. These are to be used for applications involving historic sites (See Section 690).
4. The Downtown Capital Improvements Plan, as amended.
5. Institute of Transportation Engineers (ITE) traffic generation data, Urban land Institute (ULI) and ITE parking standards, design guidelines in the ITE book Transportation and Land Development, and the Vermont Agency of Transportation Vermont Design Standards, as amended. These standards particularly apply to the design of vehicular, pedestrian and bicycle facilities.
6. The Lincoln Institute of Land Policy Design Manual entitled "Dealing With Change in the Connecticut River Valley", published September, 1988., by Robert Yaro and Randall Arendt et al. These standards apply to siting and clustering of rural subdivisions and development under Section 650.
7. Local neighborhood improvement plans or street reconstruction plans and any natural resource protection or Official Map adopted by the Select Board.
8. Middlebury Street Tree Planting Plans, and the publications: "Planting Sustainable Landscapes" (June 2001) and "Recommended Trees for Vermont Communities" (April 2001) published by the State of VT Dept of Forests Parks and Recreation, Vermont Urban and Community Forestry Program.

Copies of the above-referenced documents may be obtained from the Planning and Zoning Office.

- B. The Design Advisory Committee may review and comment on the design aspects of a proposed project and make recommendations under any of the standards in these regulations. The DRB shall consider the recommendations of the Design Advisory Committee.

When considering aesthetics, the "Quechee Analysis" criteria adopted by the State Environmental Board in judging undue adverse effects on aesthetics under criterion 8 of Act 250 shall be used. The DRB shall consider the context of the project, the surrounding area, the visibility of the project and visual sensitivity. If

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the effect of the project would be adverse, then the DRB shall consider and determine if the adverse impact is undue. “Undue” means improper, excessive, unreasonable or immoderate.

An impact is undue if:

1. the project violates the above-referenced standards, or other standards in the Town Plan or these regulations; or
2. the project would be unharmonious or detrimental to the attractiveness and character of Middlebury and the DRB finds it would be shocking or offensive to the average resident; or,
3. there is an unreasonable rejection of customary planning and mitigating measures which the applicant could utilize to minimize poor design or appearance, such as professional architect or landscape architectural design.

- C. The DRB shall consider, and may adopt, modify or reject recommendations of the Design Advisory Committee. The DRB shall have independent finding powers, and may make their own findings of fact consistent with the standards under this section.

## **Section 540 - Conditional Review Process**

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**Note:** This is the principal review procedure established under the Middlebury Zoning and Subdivision Regulations and the standards are designed to be used by the DRB as described below.

### I. Applicability

A. This section shall apply to:

1. land development of a conditional use listed in Section 610.
2. review of planned unit developments (Section 550) and subdivisions (Section 560).
3. alterations or additions to, or removal of, an historic building or site (Section 690)
4. an application for a waiver of setback requirements (Section 724).
5. an application for waiver of height limits (Section 727).
6. change of a nonconforming use to another nonconforming use (Section 810).
7. extension or resumption of a nonconforming use (Sections 820 and 830).
8. resumption of discontinued conforming uses (Section 320).
9. other types of applications, where specified in these regulations.

### Substantial change to pre-existing development or prior permitted projects

B. This Section shall apply to substantial changes to:

- a pre-existing land development project (that would be subject to DRB review if now proposed); and,

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- a project approved under prior Zoning Ordinances as a conditional use or under site plan approval, or subdivision approval.

A change is “substantial” if it could reasonably have an undue adverse effect under any of the review standards in this ordinance.

### Exemptions from hearing; administrative approval.

- C. Where the Administrative Officer finds that a project or application is minor in nature and would not have an undue adverse effect under any of the review standards, the Administrative Officer may grant exemption from hearing after notice to the DRB and as provided in Section 910 III. Projects that may be minor in nature include setback waivers to construct sheds, garages, covered porches and other small structures. The exemption may be granted subject to conditions to address the standards in these regulations. However, exemption shall not be made administratively where the project involves new land subdivision or development, new principal building construction or substantial changes/increases in use.

## II. Procedure

### Pre-Hearing Consultation

- A. Initial inquiries shall be to the Administrative Officer, who shall explain the review and approval process, note requirements in these regulations and schedule meetings with the Design Advisory Committee and the DRB, as appropriate.

The Administrative Officer shall consult with the chair of the DRB as well as the Town Manager and Department Heads regarding upcoming applications. The Administrative Officer may schedule pre-hearing conferences and/or preliminary meetings to address applicable ordinance requirements, to identify general impacts under the ordinance standards and to coordinate needed reviews with other departments, boards or agencies.

### Submission of Application, Plans and Narrative

- B. Following the consultations above, the applicant shall file an application, with the required fees, consisting of a typed project description and narrative addressing the standards of this section and providing the data requested, and a plan or set of plans clearly drawn to the largest practical scale on at least 11”x17” paper, showing the following information and existing and proposed features. The application and plans may also be required to be filed electronically in pdf format.

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The level of detail or applicability of the following information shall be determined by the Administrative Officer at the initial consultation and may be expanded or otherwise modified by the DRB as it deems necessary:

1. Location and dimensions of lot lines, significant physical features including watercourses and wetlands, principal vegetation, trees and wooded areas, all easements and other encumbrances on the land, and structures. These features shall be shown both for the subject property and adjoining properties.
2. All access to public streets or roads, parking and service areas, pedestrian walkways, sight distances, circulation and parking lot layout and entrances to structures, traffic generation estimates (a traffic impact report may be required);
3. Building/structure elevations, floor plans, storage areas and dumpster / recycling enclosures, (model, sections, materials, details, and colors and actual samples may be required), photograph or computer image or rendering of the project to show perspective views from principal vantage points;
4. Signs and advertising displays, lighting specifications and photometric plan;
5. Detailed site grading (contours) and landscaping and screening, indicating types and specifications of trees or other screening materials, shrubs and ground cover, site drainage and stormwater retention/treatment plans;
6. Water, sewer and utility plans and flows (if not on Town water/sewer, locations of water supplies and on-site sewage and septic replacement areas);
7. Construction phasing and staging areas;
8. Zoning Data: table of uses and parking spaces required, lot size, setbacks, coverage of the lot by structures and parking/roads;
9. Other information as may be reasonably required to review the project under the standards in this section.

### Submission – Copies and format

- C. The application and related information in thirteen (13) double-sided copies and any email .pdf attachment shall be filed at the Planning and Zoning Office in the Town Office. The applicant may be required to submit up to three full size sets of plans to a scale of 1"= 20' (or larger scale if needed for legibility) as well as the required number of copies (13) and any color exhibits, in 11" x 17" size.

### Notices

- D. The Administrative Officer shall post public notices in the Municipal Building and cause to be published in a local newspaper, a list of applications received and

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the scheduled meetings of the Design Advisory Committee and DRB relating to each application.

The meeting with the DRB may be advertised as a preliminary presentation for informal discussion with the DRB. When a project is warned for the required public hearing it shall be noticed as provided in Section 1090 and 24 VSA 4464.

### Phased Review

- E. At the outset of the proceedings, the DRB shall establish the scope, sequence and initial schedule for the review. The DRB may, as it deems appropriate given the nature of the project and the issues involved, structure the review process to provide for conceptual (See Section 320) or phased review as the design is developed. The DRB may conduct proceedings and adopt findings and conditions at a conceptual or preliminary level, prior to acting on final plans.

The DRB may modify the review process as it deems necessary for orderly and efficient decision making, providing fairness to all parties. Preliminary or phased review may include, but is not limited to:

- early public notice and opportunity for a site visit;
- preliminary hearing to identify interested parties and address basic issues of:
  - conformance with the Town Plan;
  - nature and intensity of proposed uses;
  - municipal and school impact;
  - natural resources and historic preservation issues;
  - preliminary review of site access and layout, scale of buildings, traffic impact studies, and other key zoning issues.

As appropriate and/or legally required, the DRB may refer the application for review by one or more Town boards including the Selectmen, Design Advisory Committee, or other advisory commissions and committees, in accordance with 24 VSA 4433, for decisions and recommendations on issues within their expertise or jurisdiction.

## III. Review Standards

The DRB shall make findings of fact and conclusions of law that the project will comply with all of the following standards, as it determines are applicable:

- A. Existing and Planned Community Facilities and Services

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1. Water and Sewer. The project shall have sufficient water and sewer capacity available for its needs and shall not result in an unreasonable burden on the municipality's present or planned water or sewer systems (if Town water or sewer are not involved, the property must have adequate capability for on-site water supply and wastewater disposal in accordance with applicable State regulations);

The DRB may solicit input from the Wastewater Superintendent and Director of Public Works Operations.

2. School Impact. The project shall not cause an unreasonable burden on the ability of the Town or School districts to provide educational services;

The DRB may solicit input from the School Boards and Superintendent of Schools.

3. Municipal Impact. The project shall not place an unreasonable burden upon the ability of the Town to provide municipal services, including but not limited to Fire, Police, Ambulance, Highway, and Public Works Maintenance and Recreation;

The DRB may solicit input from the Town Manager, Director of Public Works Operations, Fire and Police Chiefs, MVAA, Recreation Director / Advisory Board.

4. Other Public Investments and Services. The project shall not endanger public or quasi-public investments or materially interfere with the function, efficiency, safety, or public's use and enjoyment of governmental, utility or non-profit community facilities, services or lands.

#### B. Character of the Neighborhood or Area Affected

1. The project shall not have an undue adverse effect on the character of the neighborhood, or area affected;

"Neighborhood" means in the same area; nearby including but not limited to the area within sight and/or sound. "Character of a neighborhood" refers to the distinctive traits, qualities or attributes; its appearance and essential nature, pattern of uses, and sense of community; the factors which give it identity.

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A goal of the Town Plan is to allow for appropriate mixed uses to generally encourage balanced diversity, while protecting the essential character of neighborhoods. The existence of one conditional use in a neighborhood shall not be interpreted as justification for another similar conditional use to be located there.

When considering the "character of the neighborhood or area", the DRB shall consider the following:

- a. existing neighborhood uses, types of buildings, noise and traffic.
- b. Town Plan objectives including but not limited to planned future neighborhoods, and neighborhood character enhancement.
- c. historic buildings and features; intensity, uniformity or mix of uses and buildings; mass, scale and spacing of buildings; scenic views, aesthetics, open space.
- d. privacy, security, identity, sense of community and cohesion.

2. Aesthetics and Historic Sites. The project shall not have an undue adverse effect on:

- aesthetics
- scenic or natural beauty of the area
- human scale (defined in the Town Plan)
- historic or archeological sites;

The DRB shall consider the Town Plan and specific standards in Section 530 and input from Design Advisory Committee.

3. Natural Resources. The project shall not have an undue adverse effect on:

- Agricultural lands and farms;
- Rivers and streams;
- Wetlands and wildlife habitat;
- Water and air quality; and
- Water supply wells and aquifers;

The DRB shall consider the intrinsic capability and appropriateness of the land to support the use described in the application. Where applicable, the DRB shall utilize Act 250 standards and State Agency of Natural Resources (ANR) information and regulatory framework. The DRB shall also consider input from any area Land Trust, and existing studies of resources including

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but not limited to the Land Evaluation and Site Assessment (LESA) study of agricultural lands, and the Town Aquifer Study.

4. Affordable Housing. The project shall not have an undue adverse effect on the present or projected housing needs in the Town in terms of amount, type, affordability and location;

The DRB may solicit input from the Addison County Regional Planning Commission and the Addison County Community Trust.

5. Downtown Impact. The project shall not have an undue adverse impact on the economic vitality of the downtown;

The DRB shall consider the following:

- a. Will the project have any adverse impact?
  - i. Context – Evaluate the location of the project. Consider its relationship to the Downtown Improvement Tax Assessment District and/or the historic core of the downtown.
  - ii. Potential harms – Will the project be compatible and harmonious? Consider the nature of use, scale, style and potential impacts on the downtown and features (visibility and prominence).
    - Will it significantly affect downtown image and ambiance?
    - Will it discourage pedestrians, reduce parking or negatively affect cultural activities downtown?
    - Will the project draw people out of the downtown, either directly from institutions or businesses currently located in the downtown, or indirectly by causing secondary growth which will have this effect?
    - Will it undermine or be adverse to downtown improvement efforts?
    - Consider the economic effects of the project on the historic core of the downtown or upon the downtown district as a whole. In any economic analysis, care must be taken to distinguish individual business competition concerns from a project's impact on the economic vitality of the downtown. A project's impact on market competition is a relevant factor under this standard only to the extent that it will have an impact on the economic vitality of the core of the downtown, or on the downtown as a whole.

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- Consider cumulative effects.

- b. Will the adverse impact be undue, considering all of the following:
  - i. Would it reduce the ability of the public to access, circulate and easily conduct business or enjoy cultural activities downtown, or diminish downtown improvement efforts, to an unacceptable degree?
  - ii. Do the economic impacts unreasonably outweigh the economic benefits?
  - iii. Are there other relevant impacts that significantly outweigh the benefits to the downtown's vitality?
  - iv. Has the applicant taken reasonable mitigating steps that would reduce or minimize the undue impact? This would include customary project planning and market analysis, considering different types of projects, and reasonably sizing the project to avoid or reduce the adverse impact on the downtown.

### C. Traffic on Roads or Highways in the Vicinity

The project shall have adequate traffic access, circulation and parking, and shall not cause unreasonable traffic congestion or unsafe conditions with respect to pedestrian or vehicular traffic or other transportation facilities.

The DRB shall consider:

- Input from the Police Chief
- Town traffic plans and studies
- Traffic engineering studies that may be required of the applicant;
- Pedestrian and bicycle needs
- Alternatives that reduce driving and traffic; and
- Public transit input from ACTR (Addison County Transit Resources).

### D. Performance Standards and other Town Ordinances

1. The project shall comply with all performance standards (Section 750) and other specific requirements of the Zoning Ordinance;
2. The project shall comply with other Town Ordinances and Regulations;

### E. Utilization of Energy Resources

The project shall not have an undue adverse effect upon the utilization of energy resources;

The DRB shall consider:

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- Whether the project will unreasonably harm any neighbor's access to solar energy or other alternative energy utilization.
- Whether the project will appropriately incorporate the principles of energy conservation and the best available technology that is practicable for efficient use and recovery of energy.
- Whether the project will be able to be served by existing and permitted utility facilities, without excessive demands or adverse indirect impacts.

The DRB shall utilize recognized standards and information from Efficiency Vermont, the VT Department of Public Service and Act 250 Criterion 9(F) standards.

#### F. Town Plan Conformance

The project shall comply with and actively further the Town Plan.

The DRB shall consider the standards and action steps set forth in the Plan and the Land Use Section including the neighborhood plans.

### IV. Application of Standards; Conditions and Decision

- A. Standards and criteria that are the same or similar to those in Act 250 shall be applied with the same tests and procedures used in Act 250 case law.
- B. The DRB may request additional information which it deems necessary and impose appropriate conditions and safeguards to meet the standards in this section. The applicant shall have the burden of proof that the project meets all standards.
- C. For major projects or in unusual cases, the DRB may grant conceptual, preliminary or partial approval, in the same manner as provided for any final decision.
- D. Any denial of an application for conceptual, preliminary or partial approval of a major project is not a final decision and may not be appealed as a matter of right. An applicant that has received such a denial, shall have the option to complete its application and request a final public hearing on such project.
- E. Where reasonably related to the project, conditions and safeguards may apply beyond the boundaries of the property which is the subject of the application (for example, for sidewalks, road improvements, traffic signal, etc.). In order to coordinate any required off-site improvements, a cash payment to the Town may be required for work performed by or on behalf of the Town, such funds to be used by the Town only for such required improvements.

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- F. The DRB shall justify such conditions in the findings of fact and shall ensure that any required dedication is reasonably related, in both nature and extent, to the impact of the proposed development.
- G. The DRB may also require the applicant to submit a letter of credit (or other security of a type approved by the Select Board) in an amount specified by the DRB sufficient to secure completion by the applicant of required landscaping and other site improvements and work in the public right-of-way, and maintenance for a period of up to two years after completion.
- H. If the DRB determines that the standards set forth above have not been met, it shall deny the application.
- I. The public hearing and proceedings shall be conducted and decisions rendered in accordance with Article X.
- J. An approval shall expire after two years from the date of issuance of the decision unless, within that time the permittee commences construction and makes substantial investments towards the approved work.

## **Section 550 - Planned Unit Developments and Review Process**

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### **I. General Provisions**

A Planned Unit Development (PUD) provides flexibility in the permitting process. It allows an applicant the opportunity to creatively explore the possibilities of land use within a given parcel or parcels of land while still subject to the criteria in the Section 540 Conditional Use review process. Similarly, the Town has the opportunity to allow certain types of uses that wouldn't traditionally be allowed in a given district while, at the same time, having the opportunity to regulate those uses in a way that benefits the community as a whole.

The purposes of the planned unit development provision are:

- A. To encourage innovation and efficiency in the design and layout of residential, commercial, industrial, institutional and multiple-use projects, and to encourage affordable housing;
- B. To maintain or establish significant open spaces for natural functions (including but not limited to wildlife corridors, wetlands, etc.), agriculture, forestry, recreation, scenic or public purposes which are reasonably related in both nature and extent to the impact of such projects and the needs of the existing and planned growth areas described in the Town Plan.

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Accordingly, the DRB is hereby authorized to modify the use, area and dimensional requirements of these regulations simultaneously with the approval of the subdivision plat or other master plan for a Planned Unit Development (PUD). However, such modifications shall be limited as provided in 24 VSA Chapter 117 and as set forth below.

## II. Applicability

Any development involving three or more acres, or any site located in the CBD or VRC districts, may qualify for consideration as a Planned Unit Development. Any residential project involving less than four dwelling units shall not qualify. A PUD may involve single or multiple properties, and one owner or multiple owners as co-applicants, under the procedures and standards of this section.

The DRB shall have the right to require that projects meeting the above criteria be submitted as a PUD application. Additionally, the DRB shall have the right to require any subdivision, multiple-unit residential project, shopping center, commercial project with a cumulative square footage exceeding 3,000sf or any institutional complex including Middlebury College or Porter Medical Center, to be submitted as a PUD application.

Uses listed in Section 610 as a "PUD" shall also be subject to review under the following procedure, and in accordance with the specific standards for the particular use, as provided elsewhere in this Ordinance.

## III. Standards

- A. Uses - The PUD shall be consistent with the Town Plan, and the land uses involved shall conform to those allowable for the district in which the project is located. However, at the discretion of the DRB, the PUD may include mixed uses such as apartments or retail, office or other business establishments appropriate to the neighborhood in the master plan, notwithstanding Section 610.

Principal buildings and mixed uses shall be so arranged as to be compatible and to ensure visual and aural privacy for the residents of the development and for adjacent properties.

- B. Intensity of Development - The DRB may approve a greater concentration of buildings than would normally be allowed under Section 620 of the Zoning Ordinance within some portions of the parcel, which concentration shall be offset by a lesser density (open or public space) on other portions. However, the minimum setback requirements for the district in which the project is located shall apply to the periphery of the development and may not be waived.

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The total number of dwelling units or principal buildings shall not exceed that which would be permitted if the parcel were subdivided into buildable lots in conformance with the district minimum lot area requirement for one family dwellings.

In no case shall the maximum number of units in a multiple family dwelling exceed six, except in a VRC, INS or CBD zone, or except in the case of "affordable units" as defined below.

#### C. Incentives for Affordable Housing:

1. In the CBD, INS, HDR, VRC and OFA districts the DRB may increase the gross density from one family dwelling unit per 10,000 sq. ft. lot area to a maximum of one dwelling unit per 5,000 sq. ft. lot area provided that a significant portion of the additional units will be "affordable units" as defined below.
2. In the MDR districts, the DRB may increase the gross density to a maximum of one family dwelling unit per 15,000 sq. ft. lot area provided that:
  - a. The Select Board has approved connection to Town water and sewer or have approved the project to be served by a municipal quality water and sewer system subject to such terms and conditions as the Select Board deems appropriate; and
  - b. a significant portion of the additional units will be "affordable units" as defined below.
3. "Affordable units" means housing which the DRB finds to be designed and established to meet the needs of below-median household incomes. Affordable units may include VHFA-eligible housing units, rental or owner-occupied dwelling units intended for long-term affordability, limited equity housing cooperatives, or perpetually restricted (housing land trust) projects.
4. Affordable units should be planned to provide an even distribution, diversity and integration of housing types and affordability levels, to the greatest extent possible, to meet the needs of the population. The DRB shall, notwithstanding the density incentives herein, review each PUD proposal to ensure there will be no undue adverse impact on the character of established residential neighborhoods.

#### D. Open Space Requirements

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The DRB shall not approve an application as a PUD unless it finds that the PUD will result in the dedication of open or public space consistent with the purposes of this Section. Where the clustering of buildings results in open or undeveloped space on the tract, the DRB shall condition approval of the project upon the establishment of an open space easement, conservation restriction, or homeowner's association or similar provision or instrument for this portion of the tract, to ensure conformance with subsection (B) above.

The open space instrument or provision shall be legally enforceable by the Town or by a designated land trust and shall run with the land. Further, the DRB may impose conditions as to the ownership, uses and nature of the project and the land to meet the purposes of this section. In addition, PUD open space shall meet the following specific objectives to be acceptable under this ordinance:

1. PHD (Protected Highway) District  
PUD's in this district shall provide suitable landscaping and open areas which protect views and enhance the appearance of development along Route 7.
2. Flood Hazard/Shoreland Areas  
PUD's in or adjacent to this district shall provide open space which (i) will maintain the flood-carrying capacity of the river without raising flood levels upstream or diverting flood flows onto other lands, (ii) will retain and provide vegetation along the riverbank, and (iii) will be reserved or developed for public recreational access.
3. CBD, VRC, OFA, and GC Districts  
PUD's in these districts shall include development of open space/facilities for recreation, parking, transit or other public purposes, as deemed appropriate by the DRB.
4. Other Districts  
Residential projects in the INS and HDR Zones shall provide at least 15% open space, and in the MDR at least 30% open space for projects on Town water and sewer, or at least 50% open space for other MDR projects. Within this open space the developer shall provide developed playground or other suitable recreation facilities to meet the neighborhood needs of the project. "Open space" shall not include parking lots or streets or private lots, or wetlands.

Any permit condition which requires a property owner to deed land or easements

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to the Town (or other public entity), shall be justified in the findings of fact to ensure that the required dedication is reasonably related in both nature and extent to the impact of the proposed development.

E. Master Plan Submission Requirements. The project shall be an efficient and unified treatment of the development possibilities of the site, and shall incorporate the following design requirements: a master plan shall be submitted with narrative and one or more maps/plans, to show how the requirements of this section and the provisions of the Town Plan will be met, as well as describing:

1. the general concept, and how neighborhood identity will be established and retained, the Land Use section of the Town Plan shall be referenced;
2. uses planned for each area and the phasing of buildout;
3. location of preserved farm land, natural or wildlife areas, resource and recreation areas;
4. an economic analysis of the infrastructure, and, evidence of financial ability to support, and municipal service requirements of the project;
5. design control guidelines for the project; and such other information which the DRB may require.

F. Review Process and Standards.

1. The project shall be reviewed under the procedure and criteria in the Conditional Use Review Section 540, which are incorporated herein by reference. As provided in Section 530, preliminary layout plans and final PUD plans shall be referred to the Design Advisory Committee for recommendations to the DRB.
2. A PUD shall also be subject to the applicable requirements and standards of Sections 560-580 below.

#### IV. Supplementary Rules and Regulations of PUDs

As provided in 24 V.S.A. Section 4417(g), the DRB may prescribe, from time to time; supplementary rules and regulations for any planned unit development. The DRB shall hold a public hearing prior to the establishment of any such rules and regulations.

#### V. Approved Planned Unit Developments

Approved PUD's shall continue to be administered and implemented according to the conditions and plans under which originally approved, but extensions, enlargements or

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revision thereof not contemplated in the orders of approval creating them shall be subject to this Section. For a PUD that is preexisting and was not originally required to have a master plan, the existing site plan may be considered to be the master plan. Any prior conditions of approval that are unmet shall be completed prior to considering any application for extensions or substantial change. Any substantial change to a PUD shall require a public hearing and approval by the DRB.

### **Sections 560-566 - SUBDIVISION REVIEW**

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#### **Section 560 - Applicability**

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- I. Definition - Subdivision: the division of a lot, tract or parcel of land into two or more lots, tracts, sites, or other divisions of land for the purpose, whether immediate or future, of sale, conveyance, lease, or development. It includes re-subdivision, condominium conversion and the division of a lot or parcel held in common ownership and subsequently divided into parts among the owners.
- II. In accordance with 24 V.S.A. Chapter 117, §§4402, 4418 and 4463, whenever any subdivision of land is proposed that is not specifically exempted from these provisions under Subsection III below, subdivision approval by the DRB is required prior to undertaking:
  - any construction, building development, grading, land clearing (excluding customary forestry, or agricultural or surveying activities) associated with the subdivision of land; or
  - any sale, conveyance or lease of any subdivided lot; or
  - the issuance of any permit for any land development involving land to be subdivided; or
  - the filing of a subdivision plat with the Town Clerk.
- III. Exemptions - The following are specifically exempted from subdivision review under this Section:
  - A. Parcels leased for agricultural purposes, providing that no new roads are created for uses other than accepted agricultural practices.
  - B. The conveyance of rights-of way or easements that do not result in the subdivision of land (Note: a zoning permit is required - see Section 510).
  - C. Adjustment of a property line between abutting properties, provided that the parcel conveyed will not be a building lot. (Note: a zoning permit is required for administrative approval of division of land - see Section 510).

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- D. Amendments to an approved subdivision plan that will not be a substantial change to the nature of any previous subdivision or conditions of approval (Note: a zoning permit is required - see Section 510).

- IV. Coordination with Conditional Use review or Planned Unit Development Review (PUDs) - Subdivision applications involving Conditional Uses or Planned Unit Developments shall be reviewed concurrently with subdivision review.

### **Section 561 - Sketch Plan Review [applying to all applications for subdivision]**

- I. Application Requirements - The applicant shall submit to the Administrative Officer, not less than 15 days prior to any regularly scheduled DRB meeting, a complete subdivision application and associated fees. The application shall include the filing copies and information as required for conditional uses under Section 540. In accordance with 24 VSA §4418(2)(A), the DRB may waive or vary application submission or substantive requirements as the DRB deems are inapplicable due to the nature of the application and its context. The applicant shall identify at the sketch plan stage any requested waivers.
- II. Sketch Plan Review – The DRB in its discretion may review the sketch plan at a public hearing or informally at a scheduled meeting, following which the DRB shall issue a sketch plan determination, including:
  - A. a determination of whether the subdivision is a minor subdivision to be reviewed under Section 563, or major subdivision to be reviewed under Sections 562 and 563 (See Section 320);
  - B. a preliminary determination of likely approval or denial of any requested waivers;
  - C. a preliminary determination of whether or not the proposed subdivision plan generally conforms to applicable subdivision review standards under Sections 570-579, or would be in conformance with the Middlebury Town Plan and other municipal regulations currently in effect;
  - D. recommendations or directions for proposed changes in subsequent submissions, including a checklist of additional information required, and any studies or supporting documentation required by the DRB.
- III. Effective term of Sketch Plan Determinations - DRB determinations and associated recommendations shall remain in effect for six (6) months from the date of issuance, unless otherwise approved or extended by the DRB. Within 6 months of the determination by the DRB, the applicant may apply to the DRB for preliminary plan review for a major

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subdivision under Section 562 or final plan/plat approval for a minor subdivision under Section 563. The DRB may require an application that is over 6 months old to be resubmitted for Sketch Plan review including updated plans and information and new public hearing notice.

### **Section 562 - Preliminary Plan Review [applying only to major subdivisions]**

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- I. Application Requirements - Within six (6) months of the date of action on a sketch plan by the DRB, the applicant shall submit an application and associated fees for preliminary plan and plat approval to include the information and directions specified by the DRB under Section 561(III), along with service of notice to adjoining owners per statute (see Section 1090).
- II. Public Hearing - The DRB shall hold at least one public hearing on the preliminary plan and render its decision in accordance with Section 1095,
- III. Preliminary Plan Approval - The DRB shall approve, approve with modifications, or disapprove the preliminary plan and associated plat based on a determination of whether or not the preliminary plan conforms to applicable subdivision review standards under Sections 570-580, and would be in conformance with the Middlebury Town Plan and other municipal regulations in effect. The DRB may also require, as a condition of approval, the submission of proposed changes or modifications or further study. Approval, conditions of approval, or grounds for disapproval shall be set forth in a written notice of decision issued in accordance with Section 1095. The approval of a preliminary plan shall be effective for a period of six (6) months from the date of written notice of approval, unless otherwise approved or extended by the DRB in the written decision.
- IV. Phasing - At the time that the DRB grants preliminary plan approval it may authorize or require the plat to be divided into two or more phases based on the timing of construction or implementation of related necessary public facilities and services and conformance with the Middlebury Town Plan and any Capital Budget and Program adopted per the Middlebury Town Charter. Conditions may be imposed upon the filing of application for final plat approval for each phase as the DRB deems necessary to ensure the orderly development of the plat and to avoid overburdening Town facilities and services.
- V. Effective Term of Preliminary Plan Approval - Approval of the preliminary plan shall not constitute approval of the final subdivision plan and plat. Subsequent to the approval of the preliminary plan, the applicant shall apply for other approvals of officials and/or agencies having jurisdiction over the project including ACT 250 or other state and federal agency approvals as required. Upon receipt of such approvals and the expiration of any appeal periods, the applicant may apply to the DRB for final plan/plat approval under Section 563.

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DRB Preliminary Plan determinations and associated recommendations shall remain in effect for six (6) months from the date of issuance, unless otherwise approved or extended by the DRB. The DRB may require an application that is over 6 months old to be resubmitted for Sketch Plan review including updated plans and information and new public hearing notice. The DRB may waive or extend this expiration if the applicant is diligently pursuing the application process or for good cause, otherwise the DRB should require resubmission and notice and review as a new application, subject to zoning and subdivision regulations then in effect, and other wise reflecting any changed conditions.

### **Section 563 - Final Plan/Plat Approval [applying to all applications for subdivision]**

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- I. Application Requirements - Within six (6) months of the date of sketch plan approval for minor subdivisions, or preliminary plan approval for major subdivisions, the subdivider shall submit an application for final subdivision plan approval, including final plat approval.

The application for final subdivision plan and plat approval shall include associated fees and information specified herein and as directed by the DRB, and evidence of service of notice to adjoining as required by Section 1090. Copies of the hearing notice shall also be sent, at least 15 days prior to the hearing date, to the clerk of an adjacent municipality in the case of a plat located within 500 feet of a municipal boundary.

- II. Public Hearing – As required by 24 VSA 4463, the DRB shall hold at least one public hearing on the final plan /plat and shall render its decision in accordance with Section 1095.
- III. Action on Final Plan/Plat - The DRB shall approve, approve with conditions, or disapprove the final subdivision plan/plat, based on a determination of whether or not the plan and associated plat conform to subdivision review standards under Sections 570-578, and would be in conformance with the Middlebury Town Plan and other municipal regulations in effect.
- IV. Effect of Final Plan / Plat Approval - The approval by the DRB of a final subdivision plan and associated plat shall not be construed to constitute acceptance of any legal interest by the Town of any street, easement, utility, park, recreation area, or other open space shown on the final plat. Such acceptance may be accomplished only by a formal resolution of the Select Board, in accordance with state statute. Each approval for a final plan / plat may contain a time limit within which all improvements necessary for the subsequent development of the subdivided lots (e.g., roads, utilities) shall be completed, not to exceed 3 years unless otherwise required or extended by the DRB.

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**Section 564 - Plat Recording Requirements; Expiration of DRB Approval**

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- I. In accordance with 24 VSA §4463(b), within 180 days of the date of receipt of DRB final Subdivision plat approval under Section 563, the applicant shall file three (3) copies of the final subdivision plat, including one (1) mylar copy and two (2) paper copies, for approval by the DRB Chair and recording with the Town in conformance with the requirements of 27 V.S.A., Chapter 117.
- II. In addition, the following language shall be printed on the mylar:

<p>APPROVED BY RESOLUTION OF THE DEVELOPMENT REVIEW BOARD OF THE TOWN OF MIDDLEBURY, VERMONT SUBJECT TO THE REQUIREMENTS AND CONDITIONS OF THE DECISION DATED ____ DAY OF _____, 20____ SIGNED THIS ____ DAY OF _____, 20____</p> <p>BY _____y of _____, 20____.</p> <p>(DRB CHAIR)</p>	<p><b>TOWN CLERK'S OFFICE</b> TOWN OF MIDDLEBURY, VT ____ day of _____, 20____ ____ o'clock ____ Minutes ____ M Rec'd and recorded as Map # _____ ATTEST: _____ (TOWN CLERK)</p>
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III. Approval of subdivision plats not filed and recorded within this 180- day period shall expire. As provided in 24 VSA (b)(1) the Administrative Officer may grant one 90-day extension for plat filing in the event the applicant documents that other required local and/or state permits are still pending.

**Section 566 - Revisions to an Approved Plat**

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No changes, modifications, or other revisions that alter the plat or DRB conditions attached to an approved subdivision plan shall be made unless the proposed revisions are first resubmitted and the DRB approves such revisions. The DRB reserves the right to reconvene a public hearing, and require notice to potential interested persons, prior to acting on any change. The DRB should require such notices and hearing in the event of any substantial change.

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### **Sections 570-578 - SUBDIVISION AND PUD STANDARDS**

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#### **Section 570 - Application of Standards**

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- I. The DRB shall evaluate any subdivision of land and PUD in accordance with the standards set forth below. Where these standards conflict with other provisions of these regulations, the more stringent shall apply.
- II. Pursuant to 24VSA §4418(2)(A), the DRB may waive or vary subdivision review standards, if the DRB determines that the requirement:
  - A. is not requisite in the interest of public health, safety, and general welfare;
  - B. is inappropriate due to the inadequacy or lack of connecting facilities adjacent to or in proximity to the subdivision; and,
  - C. will not have the effect of nullifying the intent and purpose of these regulations, the Middlebury Town Plan and/or other municipal bylaws and ordinances in effect. Any request for a waiver should be submitted in writing by the applicant. In granting such waivers, the DRB shall require such conditions that will, in its judgment, substantially secure the objectives of any waived or varied requirements.
- III. The DRB may require the developer to submit additional information to determine conformance with the standards herein. The DRB may also, in light of findings based on these standards, require the modification or phasing of a proposed subdivision, or measures to avoid or mitigate any adverse impacts.
- IV. The DRB may require from the developer for the benefit of the Town a development agreement secured by a letter of credit in an amount sufficient to cover the full cost of constructing any public improvements that the DRB may require in approving the project under these standards. Such performance bond shall be submitted in a form approved by the Town Attorney and in an amount sufficient to cover the cost of all required public improvements, and landscaping and mitigation as specified by the DRB.

#### **Section 571 - General Standards**

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- I. Conditional Use Standards. The subdivision or PUD shall be reviewed under the standards in Section 540.
- II. Conformance with PUD Standards. A subdivision involving a PUD shall be additionally reviewed under the standards in Section 550.

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- III. Compatibility with Existing Settlement Patterns - Subdivisions shall be designed and laid out to achieve the purpose and desired settlement pattern of the district in which they are located. To the extent feasible, new subdivisions of land shall:
- A. maintain and extend desired settlement patterns, including lot area and configuration, road layout, and building locations, for the neighborhood or district in which they are located;
  - B. maintain contiguous tracts of open land, including conservation areas, with adjoining parcels;
  - C. connect to, and extend where appropriate, existing road, path, utility and open space corridors; and,
  - D. conform with any Select Board –adopted: Official Map, Fluvial Erosion Hazard map, natural resource protection map, and any specific neighborhood, street or area redevelopment or reconstruction plans approved by the Select Board.
- IV. Density & Lot Layout - Density, lot size and layout shall conform to zoning district standards, and general standards pertaining to frontage, lot and yard requirements, unless modified or waived by the DRB under planned unit development provisions, in accordance with Section 550. In addition:
- A. Lower densities of development may be required by the DRB based on site limitations.
  - B. Lot layout shall be appropriate for the intended use, and reflect the purpose of the district in which the lots are located.
  - C. Corner lots shall have sufficient width to permit a front yard setback from each road.
  - D. Side lot lines shall be generally at right angles to straight roads, or radial to curved roads.
  - E. Lots with irregular shapes (curves, jogs, dog-legs, bowling alleys etc.) shall not be created unless warranted by conditions of topography, the location of natural features, or existing roads.
  - F. Boundary adjustments involving one or more non-conforming lots may be permitted providing the boundary adjustment does not increase the degree of non-conformance.
- V. Establishment of Building Envelopes - All lots shall have a designated building envelope. Such building envelope shall be designated to identify and limit the location of principal and accessory structures, parking areas, and associated site development. The size and shape of

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the building envelope shall reflect district setback requirements and siting limitations in accordance with all Zoning regulations.

VI. Landscaping & Screening - The DRB may require the plans to show preservation, planting and/or maintenance of trees, hedges, ground cover and other vegetation in one or more areas of land to be subdivided, in accordance with these regulations and to:

- A. provide an undisturbed, vegetated buffer between developed and undeveloped portions of a subdivision to protect water quality, important wildlife corridors and habitat, wetlands and other natural features;
- B. provide for stormwater infiltration and management;
- C. provide screening of development to increase privacy, reduce noise and glare, or to otherwise soften and/or lessen its visual impacts, and to establish buffers or barriers between incompatible land uses;
- D. establish and maintain street trees along public or private roads to create a canopy effect and/or maintain a pedestrian scale where the DRB deems appropriate;
- E. to preserve existing specimen trees, tree lines, hedgerows, and wooded areas of particular natural or aesthetic value to the site.

Nothing in these regulations shall prohibit a property owner from performing normal maintenance on approved landscaping to maintain its intended effect and purpose.

VII. Energy Conservation - Energy efficient site design and layout shall be encouraged and may be required where the DRB deems appropriate. In order to promote energy conservation, to the extent practicable:

- A. building locations shall be established that have southern, southeastern and southwestern orientation to enable passive and active solar access;
- B. vegetation preservation and landscaping shall be effectively incorporated to provide wind barriers and to reduce heat loss or gain as appropriate;
- C. the siting of lots and buildings shall minimize road and driveway and utility construction; and
- D. supporting infrastructure for alternative modes of transportation (e.g., interconnected bicycle and pedestrian paths, transit stops) will be incorporated into developments.

VIII. Disclosure of Subsequent Development Plans - Whenever a subdivider submits a proposal for development on a minor portion of a parcel, the applicant shall provide a general

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indication of the intended use of the remaining portion of the land in accordance with the following requirements.

- A. Such indication shall include at minimum a written description of the proposed type and intensity of use, access, and schedule for the development of the remainder of the parcel.
  - B. For phased subdivisions and/or planned unit developments, a master plan for the entire parcel may be required that identifies designated primary and secondary conservation areas and other common land and open space; proposed development areas; the general location of proposed infrastructure, including road, utility and green space corridors; and an estimate of the type, density, and timing of future development.
- IX. Land Not to be Cleared in Preparation for Future Application Review. The submission of a site preparation plan shall be required prior to tree clearing or vegetation removal activities which include pre-development site preparation work. When a landowner fails to submit such a plan and secure prior DRB approval, the DRB may limit land development to the non-impacted portion of the parcel, and direct the manner in which the site shall be restored or re-vegetated prior to land subdivision and development.
- X. Where appropriate and to the extent practicable, the DRB may require Low Impact Design standards including:
- A. Rain Gardens
  - B. Constructed Wetlands
  - C. Vegetated Swales
  - D. Cisterns
  - E. Roof Top Disconnection
  - F. Infiltration Trenches
  - G. Green Roofs
  - H. Pervious Pavement

### **Section 572 - Protection of Natural Resource and Scenic Features**

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- I. Design Process - All subdivisions and PUD proposals shall be designed with a process that first identifies natural and scenic resources in an existing features plan of the area and then fashions potential subdivision and development to preserve such resource and scenic features to the maximum extent possible.
- II. Gathering and Use of Resource information - Subdivision boundaries, lot layouts, the location of roads, driveways and infrastructure, and building envelopes shall be located and

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configured to avoid undue adverse impact to natural and scenic resource features as identified pursuant to the Town Plan and in field evaluations by natural resource professionals. The DRB may require an applicant to conduct independent evaluations and mapping where the DRB finds there are likely important natural resource features, habitat or scenic vistas that would be affected by a project and need to be delineated and evaluated to properly include these in the design of a project. Where required, a separate GIS resource plan shall be prepared with color airphoto base layer and sections or other exhibits to demonstrate that:

- A. Building envelopes shall be located and configured to avoid or minimize impact on natural resource features and highly scenic vistas, ridgelines and knolls which are visible from public vantage points;
- B. Lot lines, infrastructure and road, driveway and utility corridors shall be located to avoid and minimize the parcelization, fragmentation, or destruction of resource features and natural scenic beauty;
- C. Roads, driveways and utility corridors shall be laid out to minimize impact and shall be shared where practical. Where sites include features such as existing roads, tree lines, stone walls, fence lines, trails or paths, streams and wildlife corridors, the design shall work around, conserve or utilize those as appropriate to minimize new impacts and preserve desirable elements.
- D. The design and layout of the project shall complement adjacent preserved lands, conservation easements, and private deed restricted areas.

### **Section 573 - Resource and Open Space Preservation & Common Land**

- I. Intent – Subdivisions and PUDs shall be designed where possible to result in long term sustainable management and preservation of resource and scenic features.
- II. Preservation of Open Space – To the extent that important resource and scenic features are identified and can be physically conserved within a project, provision shall be made for management and preservation at a minimum for the present and future residents of the subject properties. Common area preservation or dedication to Land Trust entities for parks, recreation, trails, natural areas, view shed and historic site protection are encouraged and with the consent of the applicant may provide for public access as well. The location, size and shape, management and conservation provisions of physically conserved areas within a subdivision or PUD shall be as approved by the DRB, in accordance with the following:
  - A. Designated open space may include the portion of any lot outside of the building

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envelopes which are characterized by one or more important identified resource features and/or may be contiguous or complementary to such features on adjacent lots. Planned unit developments must also meet open/public space requirements under Section 550.

- B. The location, shape, size and character of the resource area or conserved common areas shall be suitable for its context, resource values and intended function.
  - C. Provisions shall be made to enable open space designated for agriculture and forestry to be used effectively and over the long-term for these purposes. Areas preserved for agricultural and forestry use should be of a size that retains their workability for equipment and eligibility for available tax abatement programs. Management plans for farm land, forests, wildlife habitat, shorelands and buffers may be required by the DRB as appropriate to ensure suitable long-term protection and management.
  - D. Sewage disposal areas and utility and road rights-of-way or easements, access and parking areas and stormwater retention ponds shall not be counted as open space or resource conservation areas, except where the applicant can prove, to the satisfaction of the DRB, that they will in no way disrupt or detract from the values for which the open space or resource asset that is to be protected.
- III. Common Infrastructure - Land held in common for the preservation and maintenance of open space or natural resource areas shall be established separate from the maintenance and protection of shared infrastructure such as community wastewater systems, recreation facilities, roads and utility rights-of-way. These should be held under separate common ownership and be subject to the legal requirements set forth below.
- IV. Legal Requirements - Protected open space and resource areas and separate common infrastructure shall be designated on the final plat. Protected open space and resource areas may be dedicated, either in fee or through a conservation easement approved by the DRB, to the Town of Middlebury, or to a community association comprising all of the present and future owners of lots in the subdivision, and/or a non-profit land conservation organization such as the Middlebury Area Land Trust or Vermont Land Trust or the Nature Conservancy. Where such features are to be held in common they shall be subject to deed restrictions stipulating the permitted and restricted uses and establishing the person or entity responsible for maintenance and long term stewardship. All costs associated with administering and maintaining open space and/or common land shall be the responsibility of the applicant and subsequent land owners.

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### **Section 574 - Stormwater Management & Erosion Control**

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- I. The DRB shall require such temporary and permanent stormwater management and erosion control measures as may be necessary to control surface runoff, sedimentation and water pollution on-site and downstream from the proposed subdivision or PUD. Factors to be considered in determining the types of controls necessary shall include pre-development site and runoff conditions, vegetation and ground cover, slope and drainage patterns, soil types, the percentage of land covered in impermeable surfaces, types of pollutants generated, distances to streams and other surface waters, preservation of wetlands, and impact on adjoining properties.
- II. Land shall be subdivided and improved in reasonable conformity to existing topography in order to minimize grading, cut and fill, and to retain, insofar as possible, natural rolling contours, native ground cover, and native soils. For effective stormwater management, subdivision and/or site design and layout shall, to the extent feasible:
  - A. minimize lot frontage and setback distances, building envelope and footprint areas, in accordance with district standards and other applicable requirements;
  - B. minimize the length, width and paved area of roads, driveways and parking areas, in accordance with applicable road and parking standards;
  - C. minimize the impervious area connected directly to stormwater conveyance systems (e.g., by draining such areas over stable, vegetated pervious areas);
  - D. incorporate landscaped areas to absorb stormwater runoff from adjoining impervious surfaces (e.g., yard areas, filter strips, and parking lot islands);
  - E. incorporate shared driveways and parking areas;
  - F. avoid or minimize the use of curbing and gutters;
  - G. maximize the use of pervious materials (e.g., for paths, spillover parking and driveways);
  - H. maintain natural vegetative cover and designated wetland, riparian and shoreland buffers;
  - I. use vegetated and open channels to convey and treat stormwater, wherever possible; and
  - J. incorporate naturally occurring ponding and drainage areas.
- III. Best management practices (BMPs) as defined by the Vermont Agency of Natural Resources, the U.S. Natural Resource Conservation Service or other accepted regulatory

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authority shall be used to:

1. minimize stormwater runoff;
2. maximize on-site infiltration;
3. encourage natural filtration functions;
4. incorporate and/or simulate natural drainage systems; and
5. minimize the discharge of pollutants to ground and surface waters.

Best management practices may consist of one or more structural and/or nonstructural techniques, including but not limited to: vegetated buffers and filter strips, grassed or lined swales, retention basins, recharge trenches, constructed wetlands, and bioretention and filtration facilities, but should be appropriate for site conditions and the intended pattern and density of development.

- IV. Control of stormwater runoff flows from all impervious surfaces shall be accomplished by limiting the post-development peak discharge rate from the subdivision so that it does not exceed the pre-development peak discharge rate from the site for a 2-year, 24 hour event. Additional control of treated stormwater (e.g., for 10- or 25-year or 100-year, 24 hour storm events) may be required if site specific considerations warrant the attenuation of larger storm events.
- V. Stormwater facilities, including detention ponds, culverts and ditches, shall be designed to accommodate potential run-off from the entire upstream drainage area at full development, as well as runoff resulting from the proposed subdivision, and should at minimum accommodate a 25-year, 24-hour storm event.
- VI. The designation of on-site snow storage areas may be required as part of project design. These areas shall not be located within wetland or surface water buffer areas, and shall be contained in such a manner that runoff is managed through a detention or infiltration facility or other best management practice that removes pollutants. An off-site storage area may be approved if an appropriate site is available and secured for long-term use.
- VII. The DRB may request determination of the effect of the subdivision on existing downstream drainage capacity and facilities outside of the project area. Where the DRB anticipates that increased runoff incident to the development may overload the capacity of the downstream system or facility, it may require the applicant to delay construction until adequate capacity exists, or to contribute to capacity improvements to prevent such an overload.
- VIII. If a subdivision will result in changes in flow type, flow channel changes, increased stormwater discharge or flooding in areas not owned or controlled by the applicant, the

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applicant must secure easements for all areas of flow or flooding on affected properties. Easements must extend up to, but need not include, the channel of any river or stream accepting flow from the subdivision. Suitable land use restrictions must be included in easements to prevent any activity that may interfere with drainage and stormwater management.

- IX. All areas exposed during construction shall be protected in accordance with standards of the Vermont Department of Environmental Conservation, the U.S. Natural Resource Conservation Service or other appropriate regulatory body. Permanent vegetation and erosion control measures shall be established according to a schedule to be included in the plans and specifications. The DRB also may require the phasing of construction to reduce the amount of land disturbed at any one time, and may stipulate deadlines for the installation of temporary and permanent erosion control or stabilization measures.
- X. The DRB may require the preparation and implementation of stormwater management and/or sedimentation and erosion control plans and associated analyses to ensure that site improvements, including excavation, road and driveway construction and site clearing and grading, shall not unduly impact neighboring properties or surface waters. Such plans, if required, shall be prepared by a licensed Vermont engineer, and include provisions for the inspection and long-term maintenance of stormwater management and erosion control facilities.

### **Section 575 - Community Services and Facilities**

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- I. Municipal Facilities and Services - The proposed subdivision shall not create an undue burden on municipal facilities or create an unreasonable demand for public services. The DRB will consider whether the anticipated tax return from the proposed development is equal to or exceeds the cost of anticipated municipal services and facilities directly attributable to the proposed development, and whether the proposed development will place an unreasonable burden on the ability of local governmental units to provide municipal, governmental, or educational services and facilities. A fiscal impact analysis and/or the phasing of development in accordance with a duly adopted capital budget and program may be required as appropriate, the cost of which is to be borne by the applicant.
- II. Fire Protection Facilities - Adequate water storage or distribution facilities for fire protection within the subdivision or PUD shall be provided to the satisfaction of the DRB. Fire hydrants, dry hydrants, or ponds shall be installed by the developer where required by the Fire Chief. The applicant shall submit documentation of review with the Middlebury Fire Department as to the adequacy of emergency access and fire protection facilities. For all driveways serving one or more dwelling units in a subdivision or PUD, the following minimum emergency access standards shall be required:

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- A. one 12' x 50' turnout for every 400 feet; and
  - B. a turn around area with a “Y” or “T” configuration or a cul-de-sac with an inside turn radius of not less than 30 feet.
- III. Parks & Playgrounds – For any project in one or more phases totaling over 50 units, the DRB may require the dedication of up to 15% of the plat area for a developed park, playground, or other suitable recreation facilities for use by the occupants of the project.

### **Section 576 - Roads & Pedestrian Access**

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- I. Applicability of Road Standards - The standards contained herein shall apply to all proposed public roads and to private roads serving four or more lots. In addition, these standards may be applied to private roads serving three or fewer lots when the DRB determines such standards are necessary to provide suitable access to, or accommodate, anticipated future subdivision. Acceptance of private roads by the Town is subject to the approval of the Middlebury Select Board pursuant to state law for the laying out of public rights-of-way.
- II. Road Design - All roads serving proposed subdivisions and PUDs shall be constructed in accordance with the following general requirements:
- A. Rights-of-way for all roads shall be a minimum of 60 feet in width.
  - B. To ensure adequate safety and service, the width of travel lanes and shoulders shall be based on average daily traffic (ADT) and design (anticipated posted) speeds. The design standards for rural roads are included in the Table below and shall be considered the maximum, although the DRB may modify such standards in situations in which such modification is warranted to ensure pedestrian and vehicular safety, and when the strict application of the standards would adversely impact the scenic character and/or natural resources or features located on the site.
  - C. Lower design and posted speeds may be required along with traffic calming measures to avoid and/or minimize impacts to residential neighborhoods.

<b>Table - Lane and Shoulder Widths for Rural Roads</b>							
Design Volume (ADT)	0-25	25-50	50-100	100-400	400-1500	1500-2000	2000+
Design Speed (mph)	Paved Widths of Lane/Shoulder (ft)						

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25	7/0	8/0	9/0	9/2	9/2	10/3	11/3
30	7/0	8/0	9/0	9/2	9/2	10/3	11/3
35	7/0	8/0	9/0	9/2	9/2	10/3	11/3
40	7/0	8/0	9/2	9/2	9/2	10/3	11/3
45	--	--	9/2	9/2	9/2	10/3	11/3
50	--	--	9/2	9/2	10/2	10/3	11/3

*Source: Vermont State Standards for the Design of Transportation Construction, Reconstruction and Rehabilitation on Freeways, Roads and Streets, October 1997. Note: See III below*

- D. Wider travel lanes and/or shoulders may be required as appropriate to road function (i.e., for on-street parking, collector and arterial roads), or to safely accommodate shared use by bicycles.
- E. Permanent dead end road and cul-de sacs street systems shall be discouraged unless deemed necessary by the DRB due to physical site limitations or safety considerations. No dead end road shall be permitted without a suitable turn around at its terminus, either a "T" or "Y" configuration or a road loop with an outside radius of not less than 75 feet.
- F. Roads shall logically relate to topography to minimize site disturbance and the amount of cut and fill required, and to produce usable lots, reasonable grades and safe intersections in relation to the proposed use of the land to be served by such roads. Maximum road grade shall not, for any 50 feet section, exceed an average grade of 10%.
- G. Roads shall, to the extent feasible be designed and laid out to:
  - 1. avoid adverse impacts to natural, historic, cultural and scenic resources;
  - 2. be consistent with existing road patterns in village and other settlement areas;
  - 3. maximize connectivity within the subdivision and to adjoining parcels and road networks;
  - 4. follow existing linear features, such as utility corridors, tree lines, hedgerows and fence lines; and
  - 5. avoid fragmentation of agricultural land and other designated conservation areas.
- H. Techniques for the preservation of scenic road corridors and streetscapes shall be employed for the construction and maintenance of roads within designated scenic or village areas, including but not limited to the selection of visually compatible materials, the preservation of existing features, and the management of vegetation within the road corridor.

### III. Road Construction Standards - Road construction, including specifications relating to the

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crown, grade, sub-base and surface and drainage shall conform to the most recently amended Vermont Agency of Transportation's Standard A-76, or, for roads to be dedicated to the Town, to the Middlebury Select Board-adopted Town Highway Standards. In case of a conflict between the Select Board – adopted Standards and any other standards referenced or included in these regulations, the Select Board adopted Standards shall control.

IV. Intersections - In addition to access requirements under Sections 630 and 705, a new or relocated road shall be located so that:

- A. Minimum corner and sight stopping distances are provided in relation to design speed and road type, in accordance with the standards set forth in the Vermont Agency of Transportation's Vermont State Standards for the Design of Transportation Construction, Reconstruction and Rehabilitation on Freeways, Roads and Streets, dated October 1997, or as most recently amended. Minimum stopping and corner sight distances of rural local roads are provided in the Table below:

<b>Table - Minimum Stopping &amp; Corner Site Distances for Rural Roads</b>		
Design Speed (mph)	Stopping Sight Distance (ft) <sup>a</sup>	Corner Sight Distance (ft) <sup>b</sup>
25	150	275
30	200	330
35	225	385
40	275	440
45	325	495
50	400	605
<sup>a</sup> Wet pavement		
<sup>b</sup> Corner site distance is measured from a point on the intersecting road or driveway, at least 15 feet from the edge of the traveled way on the main road.		
<i>Source: Vermont State Standards for the Design of Transportation Construction, Reconstruction and Rehabilitation on Freeways, Roads and Streets, October 1997.</i>		

- B. It is directly opposite an existing road or driveway to form a four-way intersection wherever feasible. Intersections creating centerline offsets of less than 125 feet shall not be permitted, except for driveways serving single and two-family dwellings, which shall have a centerline offset of at least 75 feet.
- C. It intersects the existing road at an angle that is as close to 90 degrees as possible.
- D. The intersection grade does not exceed 3% for a distance of 35 feet from the edge of the travel lane.
- E. No structure or planting is situated to impair corner visibility.

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- V. Drainage & Stormwater - A stormwater drainage system shall be provided which is designed to control and accommodate stormwater collected on all proposed roads and/or parking areas in accordance with Section 574 of these regulations. Roadbeds, shoulders, ditches and culverts shall be designed and maintained in conformance with the Vermont Better Backroads Manual, as most recently amended.
- VI. Coordination with Adjoining Properties - The arrangement of roads in the subdivision shall provide for the continuation of roads of adjoining subdivisions and for proper projection of roads through adjoining properties which are not yet subdivided, in order to make possible necessary fire protection, movement of traffic and construction or extension, presently or when later required of needed utilities and public services. Where, in the opinion of the DRB, topographic or other conditions make such continuance undesirable or impracticable, the above conditions may be modified.
- VII. Access Permits - In accordance with statute and Section 630, all road and driveway accesses to State Highways shall be subject to the approval of the Vermont Agency of Transportation and in the case of Town streets and highways to the Town Standards adopted by the Middlebury Select Board and these regulations. Access to all lots created by subdivision and to all buildings or other land development located thereon shall be only from such permitted access road or driveway.
- VIII. Access Management - In addition to access requirements under Section 630, to better manage traffic flow and safety, avoid congestion and frequent turning movements, preserve the carrying capacity of important travel corridors, and to avoid strip development, the following access management standards shall apply to all subdivisions and PUDs:
  - A. In order to limit the number of access points onto public highways in accordance with Section 630, sketch plans shall show options for shared driveways and/or internal development roads providing access to multiple lots. These features will be required unless the DRB determines that they are not feasible.
  - B. If a subdivision has frontage on primary and secondary roads, access shall be from the secondary road unless the DRB determines that topographic or traffic safety conditions make such an access impracticable.
  - C. Where extensions of new roads could provide future access to adjoining parcels, a right-of-way shall be provided.
  - D. The creation of reserved strips shall not be permitted adjacent to a proposed road in such a manner as to deny access from adjacent property to such road.

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- IX. Traffic & Road Capacity - Traffic to be generated by the proposed subdivision shall not result in unreasonable traffic congestion or unsafe conditions, or exceed the capacity of roads and intersections in the vicinity of the subdivision. The DRB may require the preparation of a traffic impact study to identify impacts and mitigation measures necessary to ensure road safety and efficiency, the cost of which is to be borne by the applicant. The implementation of mitigation measures, including required road improvements necessitated by the subdivision, shall be the responsibility of the applicant as follows:
- A. Where an existing access road is inadequate or unsafe, the DRB may require the developer to upgrade the access road to the extent necessary to serve additional traffic resulting from the subdivision and to conform to these standards.
  - B. In situations where a development may require the realignment, widening or an increase in the capacity of an existing road, or where the Middlebury Town Plan or capital program indicates that such improvements may be required in the future, the developer may be required to reserve and dedicate land for such improvements.
  - C. In the case of subdivisions requiring construction of new roads, any existing road that provides either frontage to new lots or access to new roads shall meet these standards.
  - D. Where a subdivision requires expenditures by the Town to improve existing road(s) to conform to these standards, the DRB may table or disapprove such subdivision until the Select Board certifies that funds for the improvements have been assured. The subdivider may be required to contribute to any or all of the expenses involved with road improvements necessitated by the project.
- X. Road Names & Signs - Roads shall be named in accordance with the Middlebury E-911 Road Naming Policy, and shall have specific historic, cultural or geographical relevance and shall be subject to approval by the Select Board. Said names shall be identified on signs designed and located in accordance with the Town policy, and shall be clearly depicted on the final plat. Road name signs shall be installed by the applicant.
- XI. Driveways - Driveways serving three or fewer lots shall meet the standards set forth in Section 705. In addition:
- A. Driveways should be laid out to follow existing linear features, such as utility corridors, tree lines, hedgerows and fence lines; to avoid the fragmentation of meadow land and other designated conservation areas under Section 572, and to avoid adverse impacts to natural, cultural and scenic features.
  - B. The use of common or shared driveways is encouraged and may be required in

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order to minimize the number of access points.

XII. Modification of Road Standards - In the case of unusual topographic conditions or other circumstances which would make the strict adherence to these standards a substantial hardship, the DRB may modify the strict application of one or more of these standards providing the applicant can demonstrate that the proposed road is accessible by emergency response vehicles, does not pose any threat to the safety of motorists or pedestrians, will not result in unreasonable maintenance requirements for landowners, and is designed in a manner that is consistent with other applicable standards of these regulations.

XIII. Parking & Transit Stops. Parking shall be provided in accordance with Section 760. For PUDs and subdivisions located on existing or proposed public transit routes, sheltered transit stops, which may include centrally located park and ride areas and bike racks to serve the development, shall be incorporated, in consultation with ACTR. Added transit services primarily attributable to a development may be required to be supported as part of the approval or by impact fees. Major residential subdivisions shall also incorporate one or more sheltered school bus stops as recommended by the School Board.

XIV. Pedestrian Access. The DRB may require pedestrian rights-of-way to facilitate pedestrian circulation within the subdivision and to ensure access to adjoining properties or uses or public facilities.

- A. The DRB may require, in order to facilitate pedestrian access from a subdivision to schools, parks, playgrounds, or other nearby roads, perpetual unobstructed easements at least 20 feet in width. Easements shall be indicated on the plat.
- B. Unless specifically waived by the DRB, sidewalks shall be required along internal streets of major subdivisions, major arteries within or bordering the subdivision, and to connect to existing sidewalks on adjoining properties. Sidewalks and paths shall have a tree belt of at least 10' width. The design and surface of sidewalks and paths shall be in accordance with Town Standards adopted by the Select Board.

### XV. Legal Requirements

- A. Every subdivision plat shall show all proposed road and pedestrian rights-of-way, as required under these regulations, regardless of whether the proposed right-of-way is intended to be accepted by the Town. In the event that the right-of-way is not intended for acceptance by the Town, the mechanism by which the right-of-way is to be maintained, owned and/or conveyed shall be clearly documented.
- B. Documentation and assurance shall be provided that all proposed roads and

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rights-of-way will be adequately maintained either by the subdivider, a homeowners' association or through other legal mechanisms. Such documentation shall be in a form approved by the DRB and filed in the Middlebury Land Records.

### **Section 577 - Water Supply & Wastewater Disposal**

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- I. Water Supply - Water supply systems shall be designed and built to meet all applicable state and municipal requirements. There shall be no undue burden upon existing water supplies from the proposed water supply for the subdivision. The DRB may require evidence that adequate water supply is available through an existing or proposed system prior to granting final approval.
- II. Wastewater Disposal Capacity - The applicant shall demonstrate that soil conditions on-site are adequate to accommodate the installation of a wastewater disposal system designed in accordance with State requirements, and are of sufficient capacity for the intended density and types of use; or that an alternative, off-site disposal location, secured through an easement or other form of legal conveyance, is similarly suitable and available. Subdivisions involving an existing structure shall provide documentation that any existing sewage disposal system is adequate to meet the intended use of the site without adverse impact to public health, safety or water supplies, and that either a suitable replacement area able to accommodate a new system in accordance with State regulations is available, or that adequate Town capacity is available and committed in a community system or wastewater treatment facility.
- III. Individual Systems - Individual on-site water and wastewater systems shall meet all State requirements for design, installation and maintenance.
- IV. Connection to Existing System - Where connection to an existing Town water or sewer main is proposed, the developer shall provide engineering evidence as to the adequacy of the Town systems to meet the needs of the proposed development. The developer will be required to provide any mains, hydrants, valves and vaults, manholes and such pumping and other facilities as may be necessary, in accordance with Select Board - adopted standards and specifications. The Town may require, at the applicant's expense, independent engineering review of plans and installation. The developer may be required to provide larger lines, pumping, storage and other facilities outside of the PUD or subdivision to serve the project area, as directed by the Town Water and Sewer Commissioners (Select Board) for such facilities to become part of the Town systems for maintenance by the Town.
- V. Community Systems - Proposed development may be serviced by private, community water and/or wastewater systems which shall be designed and installed in accordance with all

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applicable municipal and state regulations and standards. The developer shall be responsible for independent engineering review of plans and installation.

### **Section 578 – Subdivision and PUD Utilities and Easements**

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- I. Location - All utility systems, existing and proposed, throughout the project shall be shown on the final plat, and be located as follows:
  - A. All utility systems, which may include but not be limited to electric, gas, telephone, fiber optics, and cable TV, shall be located underground throughout the subdivision, unless deemed unreasonable and prohibitively expensive by the DRB.
  - B. The developer shall coordinate design with the utility companies to insure adequate and suitable areas for under or above ground installation, both for the proposed subdivision/PUD, and areas adjacent to it that are likely to develop, as determined by the DRB.
  - C. Utility corridors shall be shared with other utility and/or transportation corridors where practicable, and be located to minimize site disturbance, the fragmentation of meadowland and other designated conservation areas, and to avoid or minimize any adverse impacts to natural, cultural or scenic resources, and to public health, as deemed appropriate by the DRB.
- II. Easements - Easements of sufficient width (minimum 20' for water, sewer and drainage, 30' for access driveways and a minimum of 60' for streets) shall be provided so as to serve both the proposed subdivision and existing and anticipated development outside the subdivision. Such easements shall be shown on the final plat.

### **Section 580 – Official Map for Public ROW/Property Acquisition**

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- I. Authorization is hereby made for an Official Map pursuant to 24 V.S.A. §4421, which shall be in conformance with the Town Plan and shall have the purpose of actively furthering implementation of proposed streets and highway access, pedestrian and bike ways and other public facilities to be established. The Official Map shall be adopted and amended from time to time by recommendation of the Planning Commission and enacted by resolution of the Select Board.
- II. Proposed subdivisions, PUDs, and other land developments shall be consistent with the municipal utility and facility improvements as shown on the Official Map. No zoning permit may be issued for any land development that does not conform with any street lines, drainage ways, recreation facilities, education facilities, or other public facility as shown on

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the Official Map.

- III. Development review for properties with mapped public facilities - Any application for subdivision, PUD, or other land development review that involves property on which the Official Map shows a planned public right of way or public facility shall demonstrate that the proposed subdivision or development shall accommodate these in accordance with this Section. Failure to accommodate the mapped public facility or obtain a minor change in the Official Map shall result in the denial of the development or subdivision.
- IV. If a permit for any land development within the lines of any proposed street, drainage way, park, or other public facility shown on an official map is denied pursuant to this Section, the Select Board shall have 120 days from the date of the denial of the permit to institute proceedings to acquire that land or interest in that land, and if no such proceedings are started within that time, the DRB shall review the application without regard to the proposed public facilities as shown on the Official Map.
- V. Changes to the Official Map. The recordation of approved plats or the adoption of any urban renewal plan under 24 V.S.A. Chapter 85 shall, without further action, modify the Official Map accordingly. Other changes may be made and incorporated by resolution of the Select Board, as set forth in 24 VSA 4421VI.
- VI. Status of mapped public facilities. The adoption, as part of an official map, of any existing or proposed street or street line or drainageway, or any proposed park, school, or other public facility, shall not constitute a taking or acceptance of land by the municipality, nor shall the adoption of any street in an official map constitute the opening or establishment of the street for public use or obligate the municipality in any way for the maintenance of the street.

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### **ARTICLE VI - DISTRICT REGULATIONS**

#### **Section 610 - USES ALLOWED IN THE ZONING DISTRICTS**

A person shall not use any land or structure within a Zoning District unless such use falls into one or more of the following categories and such use complies with all other applicable provisions of these regulations:

1. The use conforms to a type or classification listed as a permitted use in the applicable Zoning District, as set forth in the following tables. (Note: see definitions in Section 320.)
2. The use conforms to a type or classification listed as a conditional use in the applicable Zoning District, as set forth in the following tables, and the use has received approval pursuant to Section 540. (Note: see definitions in Section 320).
3. The use qualifies as an accessory use, as that term is defined in Section 320.
4. The use qualifies as a lawful nonconforming use, in which case it may be continued subject to the provisions of Article VIII.
5. The use is subject to limited zoning authority pursuant to 24 V.S.A. 4413, in which case the provisions of these regulations shall apply to the extent permitted by said Section 4413.

Any use not falling into one of the above categories shall be deemed prohibited. Defined uses shall be strictly construed under Section 320. *See Sections 670 and 680 for regulations concerning the Flood Hazard Area and the Aquifer/Wellhead Protection Area.*

#### **I. Agricultural Rural (AR) Zone**

##### Permitted Uses:

agriculture (see Section 780)  
bed & breakfast house  
forestry (see Section 780)  
home occupation (see section 730)  
one family dwelling  
camp  
two family dwelling

##### Conditional Uses (Section 540):

agricultural business/industry (see Section 780)

## Middlebury Zoning and Subdivision Regulations

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agricultural storage warehouse  
animal hospital and/or kennel  
cemetery  
church, library, museum  
commercial greenhouse  
commercial forestry operations: firewood/bark mulch processing, log storage yard  
commercial fruit & vegetable stand (see Section 782)  
contractor storage yard and/or shop  
garden center and/or nursery  
governmental use and/or public utility substation  
indoor/outdoor riding stable  
nursery school (child care) 6+ children  
nursing home/assisted living  
outdoor recreation  
public park  
public or private school  
rooming house  
sawmill, biomass processing  
soil, sand, gravel extraction (see Section 786)  
quarrying (see Section 788)  
railspur and/or transload facility

Planned Unit Developments may include any of the uses allowable in the district and as provided in Section 550.

## **II. Medium Density Residential (MDR) Zone**

### Permitted Uses:

bed & breakfast house (see section 745)  
home occupation (see Section 730)  
one family dwelling  
two family dwelling

### Conditional Uses (Section 540):

church, library, museum  
commercial fruit & vegetable stand (see Section 782)  
governmental use  
nursery school (child care) 6+ children  
nursing home/assisted living  
public or private school  
public park

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rooming house

Planned Unit Developments may include any of the uses allowable in the district and as provided in Section 550.

### **III. High Density Residential (HDR) Zone**

#### Permitted Uses:

home occupation (see Section 730)  
one family dwelling  
two family dwelling

#### Conditional Uses (Section 540):

bed & breakfast house  
church, library, museum  
commercial fruit and/or vegetable stand (Section 782)  
governmental use  
historic house inn (see Section 745)  
multiple family dwelling  
nursery school (child-care) 6+ children  
nursing home/assisted living  
public or private school  
public park  
rooming house

Planned Unit Developments may include any of the uses allowable in the district and as provided in Section 550.

### **IV. Office Apartment (OFA) Zone**

#### Permitted Uses:

bed & breakfast house  
home occupation (see Section 730)  
one family dwelling  
two family dwelling

#### Conditional Uses (Section 540):

barber and/or beauty shop  
business or professional office  
church, library, museum  
club

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commercial school  
funeral home  
governmental use  
inn  
multiple family dwelling  
neighborhood retail shop (owner-occupied)  
nursery school (child care) 6+ children  
nursing home/assisted living  
public or private school  
public park  
rooming house

Planned Unit Developments may include any of the uses allowable in the district and as provided in Section 550.

### **V. Village Residential Commercial (VRC) Zone**

#### Permitted Uses

bed & breakfast house  
home occupation (see Section 730)  
one family dwelling  
two family dwelling

#### Conditional Uses (Section 540):

bank  
barber and/or beauty shop  
business or professional office  
church, library, museum  
club  
commercial school  
commercial fruit and/or vegetable stand (see Section 782)  
funeral home  
governmental use and/or public utility substation  
inn  
indoor recreation  
motor vehicle service station  
multiple family dwelling  
nursery school (child care) 6+ children  
nursing home/assisted living  
public or private school  
public park

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restaurant and/or bar

retail store and/or services

rooming house

social service facility

Planned Unit Development may include any of the uses allowable in the district and as provided in Section 550.

### **VI. Central Business District (CBD) Zone**

#### Conditional Uses (Section 540):

bank

barber and/or beauty shop

bed and breakfast house

business or professional office

church, library, museum

club

commercial school

community college or Middlebury College uses

governmental use

home occupation (see Section 730)

inn

indoor recreation

multiple family dwelling

one family dwelling

public park

restaurant and/or bar

retail store and/or services

two family dwelling

Planned Unit Developments may include any of the uses allowable in the district and as provided in Section 550.

### **VII. General Commercial (GC) Zone**

#### Conditional Uses (Section 540):

business or professional office

cabinet shop and/or furniture shop

commercial grain storage

contractor storage yard and/or shop

equipment and/or vehicle rental and/or sale

food processing and/or storage

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fuel storage yard  
garden center and/or nursery  
governmental use and/or public utility substation  
indoor recreation  
industry  
lumber yard and/or retail  
machine shop  
motor vehicle sales and/or service  
public park  
restaurant and/or bar  
retail store and/or services  
sawmill, biomass processing  
slaughter house  
truck and/or tractor repair  
truck terminal yard  
warehouse or rental storage facility

Planned Unit Developments may include any of the uses allowable in the district and as provided in Section 550.

### **VIII. Industrial (IND) Zone**

#### Conditional Uses (Section 540):

beverage plant  
commercial grain storage  
computer facility (including data processing & telecommunications) (see Section 697)  
concrete or asphalt plant  
contractor storage yard and/or shop  
dairy product processing  
food processing and storage  
fuel storage yard  
governmental use  
industry  
laundry plant  
machine shop  
manufacturing with accessory retail (see Section 697)  
monument and/or stone works  
offices (see Section 697)  
public park  
public utility substation

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research and/or development facilities - (see Section 697)

sawmill, biomass processing

slaughter house

soil, sand and gravel extraction (see Section 786)

truck terminal yard

warehouse

waste and wastewater treatment facilities

Planned Unit Developments may include any of the uses allowable in the district and as provided in Section 550.

### **IX. Airport (AIR) Zone**

#### Conditional Uses (Section 540):

airport manager residence

commercial fruit and vegetable stand

contractor storage yard and/or shop

equipment/vehicle rental and/or sale

garden center and/or nursery

governmental use and/or public utility substation

public park

soil, sand, gravel extraction (see Section 786)

storage trailer storage

warehouse and/or rental storage facility

Planned Unit Developments shall include the Middlebury State Airport PUD (airstrip and heliport/aircraft uses are restricted to locations within the Airport PUD). Other PUD's may include any of the other uses allowable in the district and as provided in Section 550.

### **X. Forest (FOR) Zone**

#### Permitted Uses

agriculture (see Section 780)

forestry (see Section 780)

camp

#### Conditional Uses (Section 540):

commercial forestry operations: firewood/bark mulch processing, log storage yard

governmental use

home occupation (see Section 730)

one family dwelling (see Section 742)

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outdoor recreation  
public park  
soil, sand, gravel extraction (see Section 786)

### **XI. Institutional (INS) Zone**

#### Permitted Uses:

home occupation (see Section 730)  
one family dwelling  
two family dwelling

#### Conditional Uses (Section 540):

business or professional office  
church, library, museum  
club  
governmental use  
hospital  
indoor recreation  
inn  
multiple family dwelling  
nursery school (child care) 6+ children  
nursing home/assisted living  
outdoor recreation  
public or private school  
public park  
rooming house

Planned Unit Developments shall include Middlebury College and Porter Medical Center and may include any of the uses allowable in the district and as provided in Section 550.

### **XII. Protected Highway District (PHD) Zone**

#### Conditional Uses (Section 540):

accessory apartment  
agriculture (see Section 780)  
animal hospital and/or kennel  
bank  
barber or beauty shop  
bed & breakfast house  
business or professional office  
cabinet shop and/or furniture shop

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car wash (see Section 640 V)  
club  
commercial fruit & vegetable stand (see Section 782)  
commercial school  
crematorium  
funeral home  
garden center and/or nursery (see Section 640 V)  
indoor recreation  
industry (see Section 640 V)  
inn  
motor vehicle sales and/or service (see Section 640 V)  
motor vehicle service station (see Section 640 V)  
museum  
outdoor recreation (see Section 640 V)  
public park  
restaurant and/or bar  
retail store and/or services (see Section 640 V)  
storage/warehouse (see section 640 V)

Planned Unit Developments may include any of the uses allowable in the district and as provided in Section 550.

### **Section 620 - Lot Area, Width, Coverage, Height and Setback Requirements for Districts**

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A person shall not use any land or commence any land development in a district specified in this Section unless such use or land development conforms to the following minimum lot areas, lot frontages or widths, front, side and rear yard setbacks, and the following maximum coverage and heights for buildings or other structures. (See the following lot dimension requirement chart and definitions.)

#### **I. Definitions:**

- A. Dwelling Unit - a detached home, mobile home, condominium or town house unit, or apartment unit. (See also Section 320 definitions.)
- B. Lot - lands occupied or capable of being occupied by a principal building and its accessory buildings, together with the required yards, parking and other open spaces required by these regulations, having not less than the minimum lot area required for the proposed use or principal building in the district which such land is located.

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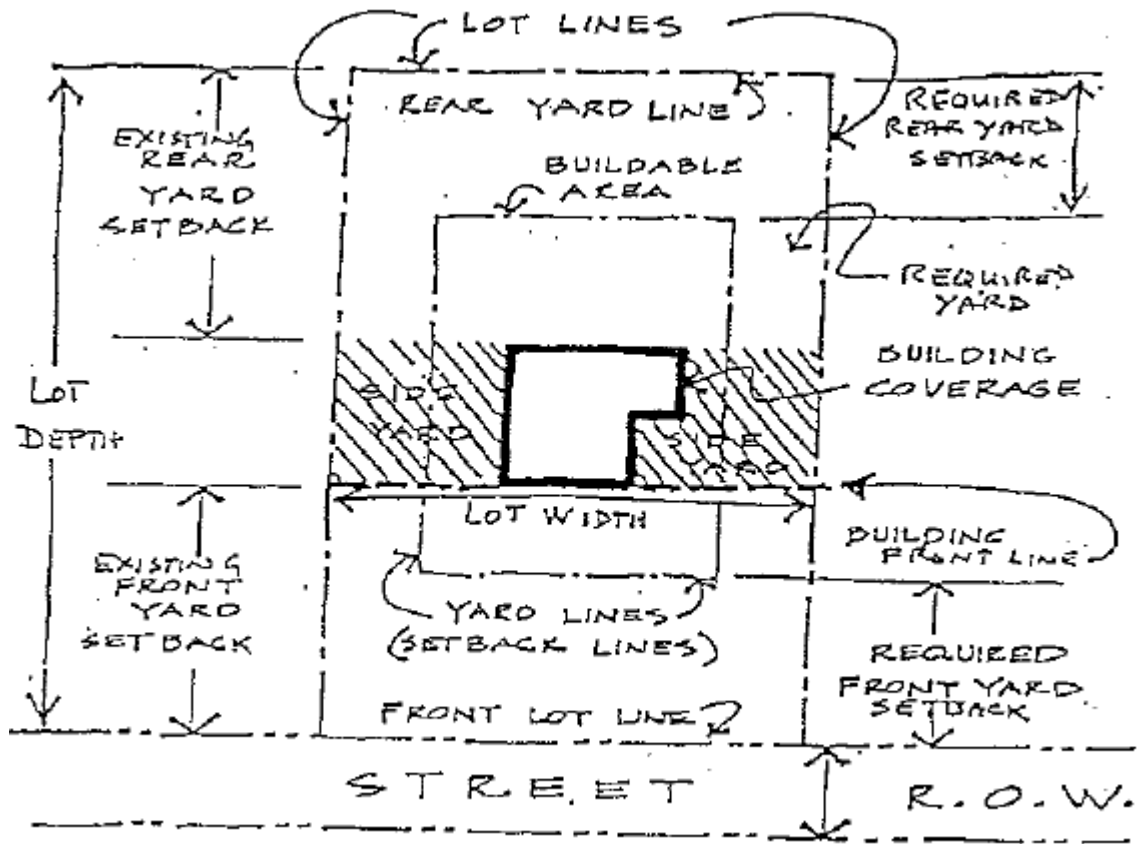
(See Section 701 for preexisting small lot and merger provisions).

- C. Lot Area - total contiguous area within the lot lines, calculated by horizontal measurements, not including public rights of way. Lot area on one side of a public highway shall not be added to lot area on the other side of such highway in calculating lot area.
- D. Building Coverage - the maximum percentage or square footage of the lot area which may be covered by the footprint (ground floor level) of buildings and other structures.
- E. Lot Depth - the mean distance between the front and the rear lot lines, measured at right angles to a front lot line.
- F. Lot Frontage or Width - length of a front lot line (frontage), or the width of the lot at the building front line (note: The minimum frontage or lot width requirement is not intended to require that the entire lot be that minimum width).
- G. Principal Building - a building in which the main, primary or principal use of the property is conducted. Attached garages, porches or carports are part of the principal building. Garages, sheds etc. are considered accessory buildings.
- H. Setback - the required distance which a building or other structure must be from lot lines or other features specified in the ordinance. The rear setback requirement also applies from structures to any streams and shall be preserved with existing natural vegetative growth (see Sections 660 and 750).
- I. Required Yard - the area which constitutes the front, rear and side yard minimum setbacks. Buildings and structures are prohibited in this lot space (except where expressly provided in these regulations).

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**Lot Dimensions Diagram**



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## **Section 620 – (Continued) Lot Dimension Requirements Table**

District	Minimum LOT AREA	Minimum FRONTAGE	Maximum Structure HEIGHT	Maximum Building COVERAGE	Minimum SETBACKS		
	( Per Dwelling Unit or Per Principal Building)	(or lot width at the principal building)	(See also Section 727)	(see definition Sec 620 I D )	Distance from structure to property lines or street centerline (CL) or to street right –of – way (ROW)Rear setback also applies to streams.		
					FRONT	SIDE	REAR
FOR	25 AC (See Section 742 for maximum overall density)	600'	35'	NR	125' from CL	100'	100'
AR	Town Water & On-Site Septic-1 AC Well & On-Site Septic-2 AC (see also Schedule A below for maximum # lots / houses sites)	200' 200'	35'	NR	75' from CL	25'	50'
MDR	Well & on-site septic- 2 AC Town water & on-site septic- 1 AC E. Midd. Fire District - 30,000 Sq.ft. Town water & sewer- 20,000 Sq. ft.	200' 150' 125' 100'	35'	NR	65' from CL	25'	50'
HDR	10,000 Sq. ft.	75'	35'	NR	25' from ROW	15'	25'
OFA	10,000 Sq. ft.	100'	35'	NR	25' from ROW	15'	25'
VRC	10,000 Sq. ft.	100'	35'	NR	25' from ROW	15'	25'
CBD	10,000 Sq. ft.	55'	50'	NR	0' from ROW	5'	25'
GC	1 AC	150'	50'	40%.	35' from ROW	25'	35'
IND	3.5 AC	275'	50'	40%	50' from ROW	25'	35'
AIR	2 AC	200'	35'	45%	75' from CL	40'	50'
INS	10,000 Sq. ft.	100'	35'	NR.	50' from CL	15'	25'
PHD	Town Water & Sewer 20,000 Sq. ft. On-Site Septic 1 AC Non-residential P.U.D. 3 AC	200'	35'	40%	50' from ROW	50'	50'

AC= Acre    CL = centerline of traveled roadway    NR = not restricted    ROW= Right of way    Sq. ft. = Square feet

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**SECTION 620 (continued) - Schedule A - AR – Agricultural/Rural District  
Residential Density**

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Parcel Area (Acres)	Maximum permitted number of home sites (counting existing & new home sites)
0 - 3.9	1
4 - 24.9	2
25 - 49.9	3
50 - 74.9	4
75 - 99.9	5
100 - 124.9	6
125 - 149.9	7
150 - 174.9	8
175 - 199.9	9
Etc.*	Etc.*

\*Each additional 25 acres is allotted an additional home site.

A. "Parcel Area" shall be the acreage of a parcel on the effective date of this provision (July 28, 1987). Parcel means a separate tax map parcel as shown on the tax map (Note: farm parcels which are divided by roads and are combined for property tax and listing purposes shall be considered separate parcels for purposes of zoning. A set of property maps as of July 28, 1987 is on file in the Planning & Zoning Offices.

B. This table limits the total number of home sites which are permitted, including existing and new home sites. The minimum lot size can be as small as one acre, with Town water; or as small as two acres, in the case of on-site water supply and septic system.

C. Approval of lot size and layout are also dependent upon meeting other requirements, e.g.: on-site sewage, lot frontage/width, access, and other provisions of the Zoning and Subdivision Regulations. See also Section 650 regarding siting, view conservation and minimizing loss of open space and farm lands.

D. This Schedule A was amended on 12/8/2008; prior subdivision approvals in ARR (*former name of AR district*) that specify or allocate development rights for home sites will be honored per specific approval orders/conditions.

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### **Section 630 - Access Limitations on Principal Town and State Highways**

In any district, the following regulations apply to each parcel having a front lot line abutting the edge of a right-of-way of U.S. Route 7, Vermont Route 116, Painter Road, Washington Street Extension, Cady Cross Road, Foote Street, Halladay Road, Vermont Route 125, Munger Street, Quarry Road, or Seminary Street Extension. The purpose of this section is to maintain the through-traffic carrying function of principal highways and to encourage development in depth rather than strip development:

- I. The total number of access roadways permitted within a continuous length of lot frontage shall not exceed the number set forth in the following table. In calculating the number of access roadways permitted, there shall be included any access roadway in existence on March 23, 1973, or constructed thereafter:

FOR EACH CONTINUOUS LENGTH OF LOT FRONTAGE OF		TOTAL NUMBER OF ACCESS ROADWAYS PERMITTED		
MORE THAN	BUT LESS THAN	NO ACCESS ROADWAY AS OF 3-23-73	ONE OR MORE ACCESS ROADS AS OF 3-23-73 NONE SERVING A DWELLING	ONE OR MORE ACCESS ROADS AS OF 3-23-73 ONE SERVING A DWELLING
0'	1000'	1	1	2
1000'	2000'	2	2	3
2000'	3000'	3	3	4
3000'	4000'	4	4	5
4000'	5000'	5	5	6

- II. An access roadway lawfully existing on or after March 23, 1973 may be used, maintained and improved.
- III. "Access roadway", as used in this Section, means any graveled or paved roadway designed and used for motor vehicle travel and located between the public highway front lot line and line parallel with the front lot line and having a distance from it equal to the required front yards setback. However, "access roadway" does not include a farm entrance used solely to gain access to a field used for agricultural purposes.
- IV. "Parcel", as used in this Section, means all contiguous lands within a person's boundary lines, or the lines of lands he controls, as those lines existed on March 23, 1973. Subdivision of a parcel after that date shall not create a right to construct any access roadway in addition to those permitted in this Section.

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- V. "Continuous length of lot frontage", as used in this Section, means a distance measured along a public highway or front lot line of a right-of-way line to the nearest intersecting side lot line or municipal highway right-of-way.
- VI. "Public highway", as used in this Section means any one of the above named public highways.
- VII. Subject to an applicant's rights to construct access roads as limited in this section, if a lot proposed for development abuts or is part of another parcel owned or controlled by the applicant, the DRB shall, where the physical features of the land permit, issue any approval on conditions that the applicant, and all successors in interest, cause traffic from such other lands to pass through the roadways of the lot for access to the public highways.

### **Section 640 - Special Regulations - Land Adjacent to U.S. Route 7**

The following regulations shall apply to land development in the PHD and other lands along U.S. Route 7, north of the intersection with High Street or south of Creek Road:

- I. A person shall not change or increase the use of any land or commence any land development, other than a driveway entrance, sign, landscaping, or utility lines, within 125 feet from the centerline of the traveled portion of U.S. Rt. 7 or within 75 feet from the right-of-way (whichever is the greater setback). On a parcel owned or controlled by a person on the effective date hereof (May 23, 1980) and having a lot depth of less than 200 feet, this setback shall be reduced to 40 percent of lot depth, but in no case less than 50 feet from the edge of the right-of-way.
- II. Any roadway or above-ground utility within 125 feet from the centerline of the traveled portion of U.S. Route 7 shall be constructed at approximately right angles to the centerline.
- III. The outdoor storage or display of raw materials or inventory shall be located to the rear of the buildings or otherwise appropriately screened from public highway view and the view of persons in residential districts. Outside retail display of items customarily used and kept out of doors (eg: lawn and garden items) may be permitted by the DRB in designated areas off of the highway right of way.
- IV. The display of motor vehicles or equipment for sale or rent shall be prohibited within 75 feet from the centerline of the traveled portion of the public highway. Not more than 5 vehicles or pieces of equipment may be displayed in the area between the front line of the principal building and the aforementioned 75 feet setback line, and these units must be located within 10 feet of each other.

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- V. The following uses shall be located 150' or greater from the center line of US Route 7:
  - A. motor vehicle sales and service
  - B. industrial uses
  - C. retail stores/services that involve buildings over 15,000 sq. ft. footprint
  - D. parking lots with more than 15 spaces
  - E. outside storage yards (including screened areas per III above)

### **Section 650 - Preservation of Farmland, Wildlife Habitat, and Scenic Views in AR and PHD**

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The purpose of this section is to prevent harm to the scenic and agricultural land resources in Middlebury.

- I. The subdivision of lots and the siting of non-agricultural buildings in the AR and PHD zones shall be subject to the following: While preserving the rights of the property owner to create the number of building sites allowable within the zone with adequate sewage disposal:
  - A. lots shall be located and sized so as to preserve farm lands and wildlife habitat to the maximum extent possible; and
  - B. buildings and other structures shall not generally be sited in the middle of open fields. Buildings and structures shall be located so as to preserve agricultural utilization, wildlife habitat, and scenic views and minimize the loss of open space to the extent possible.
- II. This section shall be implemented by the Administrative Officer for individual zoning permit applications, or by the DRB in the case of subdivisions or Planned Unit Developments.
- III. The DRB may allow a density bonus of an additional lot or building site, to compensate, only in unusual cases where the application of the above standards would create unreasonable additional costs upon the property owner.

### **Section 660 - Shorelands, Riparian Buffers and Fluvial Erosion Hazard Areas**

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- I. In order to protect water quality, prevent erosion, protect fish and wildlife habitat and preserve the natural beauty of shorelands and riparian buffer areas, there are hereby

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established shoreland/riparian buffer protection areas abutting all rivers and year-round flowing streams in Middlebury as shown on the Town GIS maps. The protection areas shall extend back from the edge of a river or stream as follows:

- (A) Along the Otter Creek, Middlebury River and Muddy Branch (downstream from Vt. 116/Case Street):
    - 1. The protection/buffer areas shall be a minimum of 100 ft., or to the limit of a flood hazard area where such limit is over 100 ft. from the river bank; and
    - 2. Where embankments forming the edge of the flood hazard area are 25% or steeper in slope, the protection area shall extend to 100 ft. back from the top of the embankment; and
    - 3. To the limits of the Fluvial Erosion Hazard (FEH) zone that has been prepared by the Agency of Natural Resources and accepted by the Select Board, dated February 8, 2011 (see maps in appendix); hereby adopted by reference.
  - (B) Along all other streams shown on the Town GIS maps, the protection/buffer areas shall be the distances provided for the rear setback (see Section 620).
- II. Within the above-defined shoreland/riparian buffer protection areas, the following regulations shall apply:
- (A) Trees which provide shade and hold the soil on banks and other existing natural vegetative growth shall not be removed except that the Administrative Officer may permit specific removal of trees which are dead or which represent an imminent threat to the safety of people or structures, or other vegetative modification/restoration projects as recommended by the U.S. Soil Conservation Service or VT Agency of Natural Resources.
  - (B) There shall be no dumping or filling, berming or dredging, in these areas.
- III. Any land development or other changes in the Special Flood Hazard Areas (SFHA) shall be subject to Section 670. Any land development outside of the SFHA but in the FEH shall be subject to the following:
- (A) New structures or additions shall not exceed 600 sq ft in net additional coverage of the lot, cumulatively from the effective date hereof (January 9, 2013).

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- (B) New structures shall be located within 50 feet of the existing primary building and no closer to the top of bank than the existing principal building.
  - (C) Development shall not increase the susceptibility of the subject property or other properties to fluvial erosion damage.
  - (D) Development shall not increase the potential of materials to be swept onto other lands or into the stream that would cause damage to other properties from fluvial erosion.
  - (E) Development shall not cause an undue burden on emergency service providers during and after fluvial erosion events.
- IV. This section shall not apply to existing agricultural fields, nor to the CBD or to bridges or Town water or sewer facilities, or other utilities which must cross the river or stream. Also, this section shall not apply to Planned Unit Developments in the VRC where the requirements of paragraph II above would be inconsistent with DRB required improvements and public access to riparian or shoreland areas under Section 550 III(d)(2).
- V. Subject to a determination that the purposes in Section 660 I will be satisfied, the requirements of the subsections above may be waived or reduced, under the conditional use review procedure in Section 540.

### **Section 665 – Wetland Buffers**

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Wetlands are classified by the State of Vermont as Class I, II, or III wetlands. Setbacks from class I and II wetlands are regulated by the State and are 50' from the delineated edge of the wetland. For class III wetlands there is no State regulated setback at this time. Under Town zoning the required setback for a class III wetland is at least 50', unless State regulations specifies otherwise.

### **Section 670 – Special Flood Hazard Area Regulations**

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#### I. Statutory Authorization and Effect

In accordance with 10 V.S.A. Chapter 32, and 24 V.S.A. Chapter 117 §4424, §4411 and §4414, there are hereby established zoning regulations for areas at risk of flood damage and hazards in the Town of Middlebury, Vermont.

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These regulations shall be administered concurrently and in the same manner as the other Middlebury Zoning and Subdivision Regulations. **Note, however, that this Section includes unique definitions, rules and procedures for interpretation and other special provisions which are applicable for the areas covered herein.**

### II. Statement of Purpose

It is the purpose of these regulations to:

- A. Implement the goals, policies, and provisions in the Middlebury Town Plan;
- B. Avoid and minimize the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flood related damages;
- C. Ensure that development in hazard areas is reasonably safe and accomplished in a manner that is consistent with public well being, does not impair stream equilibrium, flood plain functions, or river/stream corridors;
- D. Manage all flood hazard areas designated pursuant to 10 V.S.A. Chapter 32, the municipal hazard mitigation plan; and make the Town of Middlebury, its citizens, and businesses eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds as may be available.

### III. Other Provisions

#### A. Precedence

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

#### B. Validity and Severability

If any portion of these regulations are held unconstitutional or invalid by a competent court, the remainder shall not be affected.

#### C. Warning of Disclaimer of Liability

These regulations do not imply that land outside of the areas covered by this Section will be free from flood damages. These regulations shall not create liability on the part of the Town of Middlebury or any municipal official or employee thereof, for any flood

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damages that result from reliance on these regulations, or any administrative decision lawfully made hereunder.

### IV. Applicability

#### A. Regulated Flood Hazard Areas

These regulations shall apply to the Special Flood Hazard Area (SFHA) in the Flood Insurance Study dated July 3, 1984 and as shown on Flood Insurance Rate Maps (FIRM) and Floodway (FLOODWAY) Maps dated January 3, 1985, published by the Department of Homeland Security, Federal Emergency Management Agency (FEMA), National Flood Insurance Program, as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. Chapter 32 § 753.

#### B. Base Flood Elevations and Floodway Limits in Special Flood Hazard Areas

Base flood elevations and floodway limits provided by the National Flood Insurance Program (NFIP) and in the Flood Insurance Study and accompanying maps shall be used to administer and enforce these regulations. In Special Flood Hazard Areas where base flood elevations and/or floodway limits *have not* been provided in the Flood Insurance Study and accompanying maps, it is the applicant's responsibility to develop the necessary data. Where available, the applicant shall use data provided by FEMA, or State or Federal agencies. The two areas in Middlebury where current FEMA maps do not show floodway boundaries are on Otter Creek, downstream of the falls below Pulp Mill Bridge, and on the Middlebury River upstream of the VT 125 Sand Hill Bridge.

#### C. Interpretation

The information presented on any maps or contained in any studies adopted by reference, shall be presumed accurate.

If uncertainty exists with respect to the boundaries of the Special Flood Hazard Area or the floodway, the location of the boundary shall be determined by the Zoning Administrator (ZA). If the applicant disagrees with the determination made by the ZA, a Letter of Map Amendment (LOMA, see definition) shall constitute proof of the boundaries.

The ZA and DRB shall interpret and administer these regulations consistent with the National Flood Insurance Program federal regulations in 44 C.F.R. parts 59 and 60, and consistent with any rulemaking promulgated by the VT Agency of Natural Resources

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under 10 VSA Chapter 32 (Flood Hazard Areas) and Chapter 41 (Regulation of Stream Flow and Stream Alterations).

### V. *(Reserved)*

### VI. Development Review in Hazard Areas

#### A. Permit process

A permit is required from the Zoning Administrative Officer (ZA) for all development in all hazard areas defined in subsection IV. Note: “Development” has a special definition under this Section (See XI, below) and includes building interior improvements. Development that requires conditional use approval, non-conforming use approval, or a variance from the Development Review Board (DRB) under these flood hazard regulations, must have such DRB approvals prior to the issuance of a permit by the ZA. Any development in the designated hazard areas shall meet the standards in VII. Any permit issued by the Town shall require that all other necessary permits from State or Federal Agencies have been received before the commencement of site work or any construction.

#### B. Exempted Activities

- Routine maintenance of existing property, such as walks, paths, roads, utilities and storm water drainage, is exempt, however floodwall maintenance /reconstruction does require a permit.
- Lawns and gardens are exempt. (Grading, fill, terracing and structures associated with lawn and garden improvements require permits).
- Silvicultural (forestry) activities are exempt \* if they are conducted in accordance with the Vermont Department of Forests and Parks Acceptable Management Practices [see 24 VSA 4413(d)]. \* = Subject to required ANR Stream Alteration and Corps of Engineers Permits
- Agricultural activities are exempt \* if they are conducted in accordance with the Vermont Department of Agriculture’s Accepted Agricultural Practices (AAP). Prior to the construction of farm structures the farmer (property owner) must notify the ZA in writing of the proposed activity. The notice must contain a sketch of the proposed structure including setbacks. [See 24 VSA 4413(d)]  
\* = Subject to required ANR Stream Alteration and Corps of Engineers Permits

#### C. Prohibited Development

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In all Special Flood Hazard Areas the following are prohibited:

- New residential or non-residential principal structures (including the placement of manufactured or mobile homes, or travel trailers or campers or other vehicles used as residences, or storage trailers).
- Junk or junk storage (any existing must be cleaned up).
- New fill, except as necessary to elevate existing structures above the base flood elevation.

In the Floodway the following are also prohibited:

- New structures or improvements, of any type or nature (principal or accessory, new structures or additions, minor or substantial).
- Any grading or fill, or replacement of individual water supply wells or septic systems or utilities;
- All development that is not expressly permitted, or conditionally permitted.

### D. Permitted Development

The following activities may be permitted by the Zoning Administrative Officer, provided the Development Standards in subsection VII are met:

In the Flood Fringe Area:

- Interior or exterior minor improvements to existing structures (ie: which are not “substantial improvements” as defined in XI below) and which do not increase the footprint of the existing structure by more than 600 sq ft., cumulatively from the effective date of this Section (January 9, 2013) [example: small shed addition]
- Grading of existing ground, without net fill (such as leveling of lawn or establishing positive drainage), or any grading incidental to elevating existing structures above base flood elevations.

### E. Conditional Use Review

Conditional use review and approval by the DRB is required prior to the issuance of a permit by the ZA for the following proposed development:

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### In Floodway Areas:

- road improvements\*
- bridges and culverts \*
- any channel management or flood wall reconstruction or replacement, hard bank armoring or rip rap \*

### In Flood Fringe Areas:

- New accessory structures (see definition) not exceeding 600 sq.ft., cumulatively from the effective date of this Section (January 9, 2013) [ Example: new detached 2 car garage]
- Substantial improvements (see definition) to existing structures, whether interior or exterior or additions to existing footprint;
- Fill to elevate existing structures, or relocation, or flood-proofing (see definitions)
- Replacement water supply or septic systems, or utilities
- Road improvements
- Bridges and culverts\*
- Channel management \*
- Flood wall reconstruction or replacement\*

\* = *Subject to required ANR Stream Alteration and Corps of Engineers Permits*

## F. Variances

Variances may be granted in writing by the DRB only in accordance with all the criteria in 24 V.S.A. § 4469, § 4424 (E), and 44 CFR Section 60.6, after a public hearing noticed as described in subsection VIII and Section 1090.

Any variance issued in the Special Flood Hazard Area may be allowed only if the DRB determines that the project will not increase flood heights, based on either a FEMA Letter of Map Revision, or review by VT ANR, and after informing the applicant in writing over the signature of the DRB Chair that “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 of coverage”. Such notification shall be maintained with a record of all variance actions.

## G. Nonconforming Structures and Uses

Structures and uses lawfully established in hazard areas on the effective date of this section (January 9, 2013) may be continued and maintained as provided herein (except for any junk or junk storage [see Definitions], which in no instance shall be grandfathered or allowed to remain). Under the section 540 Conditional Use review procedure and

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standards, and applicable provisions in Section VII below, the DRB may consider the following:

1. Changes in non-conforming uses - see also Section 810.
2. Extensions of non-conforming uses or structures - see also Section 820.
3. Resumption of non-conforming use after discontinuance - See also Section 830.
4. Abandonment of structures - See Section 753 II.
5. Replacement after destruction or razing - See Section 840.
6. In the instance of a nonconforming structure that is substantially damaged or destroyed, the provisions of Section 845 shall not apply within Hazard Areas. Such a substantially damaged or destroyed non-conforming structure:
  - A. May be reconstructed only in circumstances when the structure cannot be relocated to a less hazardous location on the parcel; AND
  - B. The lowest floor of the reconstructed structure must be rebuilt on compacted fill to one foot or more above the base flood elevation, and the structure must otherwise comply with all requirements of the National Flood Insurance Program and Section VII below.

An individual manufactured home lot in an existing manufactured home park that is vacated shall not be considered a discontinuance or abandonment of nonconformity. Replacement manufactured homes must be placed so as to meet the development standards in this bylaw.

### VII. Development Standards

The criteria below are the minimum standards for development in the hazard areas. Where more than one zone or area is involved, the most restrictive standard shall take precedence.

#### A. Special Flood Hazard Area

1. All development shall be reasonably safe from flooding, determined by the following standards;
  - a. Designed, operated, maintained, modified, and adequately anchored to prevent flotation, collapse, release, or lateral movement of the structure;
  - b. Constructed with materials resistant to flood damage;
  - c. Constructed by methods and practices that minimize flood damage;
  - d. Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to

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prevent water from entering or accumulating within the components during conditions of flooding;

- e. Adequately drained to reduce exposure to flood hazards;
  - f. Located so as to minimize conflict with changes in channel location over time and the need to intervene with such changes;
  - g. Required to clean up any junk or junk storage on the premises; and
  - h. Required to locate any fuel storage tanks (as needed to serve an existing building in the Special Flood Hazard Zone) a minimum of one foot above the base flood elevation and be securely anchored to prevent flotation; or storage tanks may be placed underground, if securely anchored as certified by a qualified professional.
2. In the two areas in Middlebury where current FEMA maps do not show floodways - - on Otter Creek, downstream of the falls below Pulp Mill Bridge, and on the Middlebury River upstream of the VT 125 Sand Hill Bridge - - development shall not be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated encroachment, will not increase the base flood elevation more than 1.00 foot at any point within the community. The demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and certified by a licensed professional engineer.
3. Structures to be substantially improved, shall be located such that the lowest floor is at least one foot above the base flood elevation. This must be documented, in as-built condition, with a FEMA Elevation Certificate;
4. Non-residential structures to be substantially improved shall:
- Meet the standards in 3 above; or,
  - Have the lowest floor, including basement, together with attendant utility and sanitary facilities designed so that two feet above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A permit for flood proofing shall not be issued until a licensed professional engineer or architect has reviewed the structural design, specifications and plans, and has certified that the design and proposed methods

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of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.

5. Fully enclosed areas below grade on all sides (such as new below-grade crawlspaces and basements) are prohibited.
6. Fully enclosed areas that are above grade, below the lowest floor [eg: walk out basements, basement garages], below the base flood elevation (BFE) subject to flooding, shall:
  - a. Be solely used for parking of vehicles, storage, or building access [ie: not used for sleeping quarters], and such a condition shall clearly be stated on any permits; and,
  - b. Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs must be certified by a licensed professional engineer or architect, or meet or exceed the following minimum criteria: A minimum of two openings on two walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
7. Recreational vehicles, travel trailers, campers and other vehicles used as such and storage trailers must be fully licensed and readily moveable/trailerable on public highways.
8. A small accessory structure (600 square feet or less), need not be elevated to the base flood elevation in this area, provided the structure is placed on the building site so as to offer the minimum resistance to the flow of floodwaters and shall meet the criteria in VII A6 (above).
9. Water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.
10. Sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.
11. On-site waste disposal systems shall be located to avoid impairment or contamination during flooding.

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12. The flood carrying and sediment transport capacity within the altered or relocated portion of any watercourse shall be maintained, and any alteration or relocation shall not result in any decrease of stream stability as demonstrated by a Stream Alteration Permit from the Agency of Natural Resources;
13. Bridges and culverts, which by their nature must be placed over or in the river, must have a Stream Alteration Permit from the Agency of Natural Resources.
14. Subdivisions and Planned Unit Developments may have only open space and may not have roads within any special flood hazard area.
15. Existing buildings, including manufactured homes, to be substantially improved in Zone AO shall have the lowest floor, including basement, elevated above the highest adjacent grade, at least as high as the depth number specified on the community's FIRM, or at least two feet if no depth number is specified.

### B. Floodway Areas

1. Encroachments or development above grade and less than one foot above the base flood elevation, are prohibited unless hydrologic and hydraulic analyses are performed in accordance with standard engineering practice, by a licensed professional engineer, certifying that the proposed development will:
  - a. Not result in any increase in flood levels (0.0 feet) during the occurrence of the base flood; and
  - b. Not increase any risk to surrounding properties, facilities, or structures from erosion or flooding.

A FEMA Conditional Letter of Map Revision (CLOMR) may be accepted as proof.

2. Public utilities may be placed underground, and the analyses may be waived, where a licensed professional engineer certifies that there will be no change in grade and the utilities will be adequately protected from scour.

## VIII. Administration

### A. Application Submission Requirements

In addition to the requirements of Sections 520 and 540, applications for development in Hazard Areas shall include:

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1. Where applicable, a site plan that depicts all existing structures on the subject property and adjoining properties, the proposed development, all water bodies, Special Flood Hazard Area and Floodway boundaries, the horizontal distances from the proposed development to the top of bank, any existing and proposed utilities and drainage, any proposed fill and pre and post development grades, and the elevation of the proposed lowest floor, referenced to the same vertical datum as the elevation on the current Flood Insurance Rate Maps.
2. A Vermont Agency of Natural Resources Project Review Sheet for the proposal. The Project Review Sheet shall identify all State and Federal agencies from which permit approval is required for the proposal, and shall be filed as a required attachment to the municipal permit application. The identified permits, or letters indicating that such permits are not required, shall be submitted to the ZA and attached to the permit in the Town files before any commencement of site work or construction.

### B. Referrals

Upon receipt of a complete application the ZA shall submit a copy of the application and supporting information to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources (or to an approved designee) , in accordance with 24 V.S.A. § 4424. A permit may be issued only following receipt of comments or the expiration of 30 days from the date the application was submitted, whichever is sooner.

If the applicant is seeking a permit for the alteration or relocation of a watercourse, copies of the application shall also be submitted to the adjacent communities, the Stream Alteration Engineer at the Vermont Agency of Natural Resources, and the Army Corps of Engineers. Copies of such notice shall be provided to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation (or to an approved designee), in accordance with 24 V.S.A. § 4424. A permit may be issued only following receipt of comments, or the expiration of 30 days from the date the application was submitted, whichever is sooner.

### C. Decisions

The DRB shall consider any comments from ANR and the Corps of Engineers. The DRB may recess the proceedings on any application pending submission of additional information. Decisions shall be issued in accordance with Section 540 IV and Article X.

### D. Records

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The Administrative Officer shall properly file and maintain a record of:

1. All permits issued in areas covered by this bylaw;
2. An Elevation Certificate with the as-built elevation (consistent with the datum of the elevation on the current Flood Insurance Rate Maps for the community) of the lowest floor, including basement, of all new, substantially improved, or flood proofed buildings (not including accessory buildings) in the Special Flood Hazard Area;
3. All flood proofing and other certifications required under this regulation; and,
4. All decisions of the DRB (including variances and violations) and all supporting findings of fact, conclusions and conditions.

### IX. Certificate of Compliance/Occupancy

In accordance with Chapter 117 §4449, it shall be unlawful to use or occupy, or permit the use or occupancy of any land or structure, or part thereof, created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure within Special Flood Hazard Area until a certificate of compliance/occupancy is issued therefore by the Administrative Officer, stating that the proposed use of the structure or land conforms to the requirements of these bylaws.

A certificate of compliance/occupancy request or application shall be processed in accordance with Section 930 II.

The ZA shall also inspect the premises and gather information to determine whether permits identified on the Project Review Sheet have been acquired and that all work has been completed in conformance with the zoning permit and associated approvals. If a Certificate cannot be issued, notice will be sent to the owner and copied to the lender, if known.

### X. Enforcement and Penalties

A. These regulations shall be enforced under Sections 940 and 1210 in accordance with 24 VSA Chapter 117. A copy of any notice of violation in hazard areas shall be mailed to the ANR State NFIP Coordinator.

B. If any appeals have been resolved, but the violation remains, the ZA may submit a declaration to the Administrator of the National Flood Insurance Program requesting a denial of flood insurance to the property pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

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C. Violations of the Accepted Agricultural Practices shall be enforced under this Section as violations of this bylaw. Such violations shall also be immediately reported to the Secretary of Agriculture for enforcement under 6 V.S.A. Section 4812.

### XI. Definitions applicable to Hazard Areas

“Accessory Structure” means a structure which is: 1) detached from and clearly incidental and subordinate to the principal use or structure on a lot, 2) located on the same lot as the principal structure or use, and 3) clearly and customarily related to the principal structure or use. For residential uses these include garages, garden and tool sheds, and playhouses. See also definition of structure.

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

“Base Flood Elevation” (BFE) is the elevation of the water surface elevation resulting from a flood that has a 1 percent chance of equaling or exceeding that level in any given year. On the Flood Insurance Rate Map the elevation is usually in feet, in relation to the National Geodetic Vertical Datum of 1929, the North American Vertical Datum of 1988, or other datum referenced in the Flood Insurance Study report, or the average depth of the base flood, usually in feet, above the ground surface.

“Berm” means a linear fill of earthen, rock or concrete material on or adjacent to the bank of a watercourse that constrains waters from entering a flood hazard area or river corridor.

“Channel” means an area that contains continuously or periodic flowing water that is confined by banks and a streambed.

“Channel width” (or bankfull width) is the width of a stream channel when flowing at a bankfull discharge. The bankfull discharge is the flow of water that first overtops the natural banks. This flow occurs, on average, about once every 1 to 2 years.

“Development” in this section 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.

“Equilibrium condition” means the width, depth, meander pattern, and longitudinal slope of a stream channel that occurs when water flow, sediment and woody debris are transported by the stream in such a manner that it generally maintains dimensions, pattern and slope without unnaturally aggrading or degrading the channel bed elevation. 10 VSA §1422(14).

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“Fill” means any placed material that changes the natural grade, increases the elevation, or diminishes the flood storage capacity at the site.

“FIRM” means Flood Insurance Rate Map

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

“Flood Insurance Rate Map” (FIRM) means the official map of a community, on which the Federal Insurance Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community. The hazard boundaries are available in paper, and (in the future) will be available in pdf, or Geographic Information System formats as a Digital Flood Insurance Rate Map or DFIRM.

“Flood Insurance Study” means an examination, evaluation and determination of flood hazards and, if appropriate, the corresponding water surface elevations or an examination, evaluation and determination of mudslide (i.e., mudflow) and/or flood related erosion hazards, prepared by FEMA.

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

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

“Floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point. Please note that Special Flood Hazard Areas and floodways may be shown on separate FEMA map panels.

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“Floodway, Regulatory” 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.

“Functionally dependent use” means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water.

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

“Junk” means old or scrap iron, steel or other metals, discarded or unsellable wood, dumped materials including but not limited to tires, household appliances, plumbing fixtures, furniture, rope, rags, batteries, glass, rubber, debris, waste, trash, old construction materials, or any discarded, dismantled, wrecked, scrapped, or mined motor vehicle or parts thereof. (see also Middlebury Ordinance for the Regulation of Outdoor Storage of Junk and Junk Vehicles).

“Letter of Map Amendment (LOMA)” is a letter issued by the Federal Emergency Management Agency officially removing a structure or lot from the flood hazard zone based on information provided by a licensed engineer or surveyor. This procedure 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.

“Lowest floor” means the lowest floor of the lowest enclosed area, including basement, except an unfinished or flood resistant enclosure, usable solely for parking of vehicles. (Building access or storage in an area other than a basement area is not considered a building’s lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 CFR 60.3 )

“Manufactured home (or Mobile home)” means a structure, transportable in one or more sections, which is built on a permanent chassis and is used for residential or non-residential or storage purposes, whether or not wheels remain attached.

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“New construction” for regulation under this section, means structures for which the start of construction (as defined in definition of substantial improvement below) commenced on or after the effective date of the floodplain management regulation adopted by the community and includes any subsequent improvements to such structures.

“Non-residential” includes, but is not limited to: small business concerns, churches, schools, nursing homes, farm buildings (including grain bins and silos), pool houses, clubhouses, recreational buildings, government buildings, mercantile structures, agricultural and industrial structures, and warehouses.

“Special Flood Hazard Area” is the floodplain area that is subject to a 1 percent or greater chance of flooding in any given year. For purposes of these regulations, the term “area of special flood hazard” is synonymous in meaning with the phrase “special flood hazard area”. This area is labeled Zone A, A5 or A7 in the current flood insurance studies and on the maps published by the Federal Emergency Management Agency. Maps of this area are available for viewing in the Town Offices or online from the FEMA Map Service Center: [msc.fema.gov](http://msc.fema.gov)

“Structure” means, for regulatory purposes under this bylaw, a walled and roofed building, as well as a manufactured or mobile home, recreational vehicle, travel trailer, camper or other vehicle used as such, or storage trailers, and any gas or liquid storage tanks.

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

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

(The “start of construction” as used in the definition of new construction or substantial improvement means the date the building permit was issued, provided the actual start of

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

“Top of Bank” means that vertical point along a stream bank where an abrupt change in slope is evident. For streams in wider valleys it is the point where the stream is generally able to overflow the banks and enter its floodplain. For steep and narrow valleys, it will generally be the same as the top of slope.

“Violation” means the failure of a structure or other development to be fully compliant with this bylaw. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR 60.3 is presumed to be in violation until such time as that documentation is provided.

## **Section 680 - Aquifer/Wellhead Protection Areas**

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The Aquifer/Wellhead Protection Areas are the public water supply “Source Protection Area - Wellhead” areas for Middlebury and East Middlebury shown on the GIS map enacted as part of the Town Plan entitled “Middlebury’s Community Utilities and Educational Facilities”. The areas are based on the public water supply Source Protection Plan Maps submitted to the VT Agency of Natural Resources Water Supply Division. Larger scale copies of these maps may be viewed in the Planning & Zoning Office. Within these areas, in addition to all other applicable regulations, the following provisions shall apply:

- I. Any use of land, change of use including but not limited to storage or handling of fuels, chemicals, salt or other water soluble materials, or similar activities or other land development which, in the opinion of the Administrative Officer, could have an adverse effect upon the Town wells or the aquifer, shall be prohibited. The Administrative Officer may reasonably require a property owner or other person responsible to furnish evidence from a qualified hydrogeologist or engineer that any use or development will not pose an undue risk to drinking water supplies.

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- II. Any interested person may appeal any order or determination under this section to the DRB as provided under Article X of this Ordinance.

### **Section 690 - Historic Sites**

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- I. Properties Affected; Permit Requirements; Standards.

Within the Historic District, as defined in the Town Plan, and on any other property which is on the State or Federal Register of Historic Places, there shall be no replacement, demolition, removal or destruction, or substantial change to the exterior essential historic features, unless and until a permit is granted by the Administrative Officer. Decisions under this Section shall be based upon the Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings (Revised 1983). These standards are the same as would qualify a project for the Federal Preservation Tax incentives Program.

- II. Jurisdiction; Review Procedure

In the case of an application for an addition or alteration to a historic building where the use and structure would otherwise be handled as a permitted use, the Administrative Officer shall have jurisdiction under this section. In any conditional use or subdivision or Planned Unit Development, or in any case involving historic landmarks as provided below, the DRB shall have jurisdiction under this section. The Design Advisory Committee will make recommendations on all applications. (see Section 530).

- III. Preservation of Landmarks

This section shall apply to the properties listed on the National Register of Historic Places for Middlebury, November 13, 1976, with amendment entered September 17, 1980 (available in the Town Clerk's and Planning Offices) and listed as "outstanding historical components" (pages 7-2 through 7-24), and as listed in Appendix D of this Zoning Ordinance. These properties shall be deemed historic landmarks under 24 VSA 4407(15) and it shall be the responsibility of the property owners to maintain and preserve such landmark structures. With respect to external appearance, and other than normal maintenance, no such landmark structure shall be demolished, moved or changed, nor rehabilitated or substantially altered, without approval of plans therefore by the DRB. The applicant shall employ a qualified architect and/or historic preservation consultant to prepare plans and supervise rehabilitation and other alterations. The DRB shall consider the recommendations of the Design Advisory Committee and shall make findings of fact under (VI.) below, when deciding any application.

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### IV. Conservation of Historic Contributing Buildings

This section shall apply to other historic contributing buildings in the Historic District and properties listed on the State Register of Historic Places, published by the VT Division for Historic Preservation, 1992. (also available in the Town Offices). These properties are important and should be preserved wherever reasonably possible. Any alterations to the exterior, additions or other substantial changes shall be subject to approval under the jurisdiction set forth in (II.) above. For any application for removal or destruction of an historic structure, the criteria in (VI.) below shall be used.

### V. Incentives and Waivers to Ensure Historic Preservation

Where it has been adequately demonstrated to the DRB after public hearing that in order to maintain or preserve an historic structure, a waiver or modification of use restrictions, parking requirements or other provisions of this ordinance is a clear necessity, such waiver or modification may be granted upon conditions and security as the DRB deem necessary and appropriate.

### VI. Review Criteria

- A. With respect to external appearances, and other than normal maintenance, no structure under this Section may be rehabilitated, substantially altered, restored, moved, demolished or changed, and no new structure within an historic district may be erected, without approval of the plans therefore. The following shall be considered in any review of plans submitted:
  - 1. the historic or architectural significance of the structure, its distinctive characteristics, and its relationship to the historic significance of the surrounding area;
  - 2. the relationship of the proposed changes in the exterior architectural features of the structure to the remainder of the structure and to the surrounding area;
  - 3. the general compatibility of the proposed exterior design, arrangement, texture, and materials proposed to be used;
  - 4. any other factors including the environmental setting and aesthetic factors which are found to be pertinent.
- B. When the DRB is reviewing an application relating to an historic landmark or district, the following shall apply:
  - 1. the DRB shall be strict in its judgment of plans for those structures deemed to be significant under (III) above. The DRB is not required to limit new

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construction, alteration or repairs to the architectural style of any one period, but may encourage compatible new design;

2. if an application is submitted for the alteration of the exterior appearance of a structure or for the moving or demolition of a structure deemed to be significant under (III) above, the DRB shall meet with the owner of the structure to devise an economically feasible plan for the preservation of the structure;
3. an application shall be approved only when the DRB is satisfied that the proposed plan will not materially impair the historic or architectural significance of the structure or surrounding area;
4. in the case of a structure deemed to be significant under (III) above, the DRB may approve the proposed alteration despite criterion (3) of this section if: (I) the structure is a deterrent to a major improvement program which will be of clear and substantial benefit to the municipality; or (II) retention of the structure would cause undue financial hardship to the owner.

### **Section 692 – Gas Station Canopies and Drive-Thru Facilities**

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Gas station canopies and drive-thru facilities shall be prohibited in the Historic District and on any historic landmarks or any historic contributing buildings in the Town.

### **Section 697 – Computer, Research and Development Facilities, Offices and Accessory Retail Uses in the Industrial Zone**

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The DRB may allow offices, computer facilities (including data processing and telecommunications facilities), research and development facilities, and accessory retail uses in the Industrial Zone provided that such uses will not interfere with manufacturing uses planned for the district.

### **Section 698 – Limitation on Retail Facilities**

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Notwithstanding any other provision of these regulations, no application for land development in any Zoning District which would result in a single retail store/business with a gross floor area in excess of 50,000 square feet shall be considered or permitted by the Town of Middlebury.

## **ARTICLE VII - GENERAL USE REGULATIONS**

### **Section 701 - Preexisting Small Lots**

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- I. Any lot in individual and separate and non-affiliated ownership from surrounding properties in existence on the effective date of any zoning regulation, including an interim zoning regulation, may be developed for the purposes permitted in the district in which it is located, even though not conforming to minimum lot size requirements, if such lot is not less than one-eighth acre in area with a minimum width or depth dimension of forty feet. (Note: Middlebury first adopted zoning on March 5, 1968).
  - A. If such lot subsequently comes under common ownership with one or more contiguous lots, the lot shall be deemed merged with the contiguous lot for purposes of this chapter. However, such lot shall not be deemed merged and may be separately conveyed, if:
    1. the lots are conveyed in their preexisting, nonconforming configuration; and
    2. on the effective date of any zoning regulations, each lot had been developed with a water supply and wastewater disposal system; and
    3. at the time of transfer, each water supply and wastewater system is functioning in an acceptable manner; and
    4. the deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems in case a wastewater system fails, which means the system functions in a manner:
      - a. that allows wastewater to be exposed to the open air, pool on the surface of the ground, discharge directly to surface water, or back up into a building or structure unless the approved design of the system specifically requires the system to function in such a manner;
      - b. so that a potable water supply is contaminated or rendered not potable;
      - c. that presents a threat to human health; or
      - d. that presents a serious threat to the environment.
  - B. If, subsequent to separate conveyance, as authorized under subdivision (I)(A) of this section, a wastewater system fails, the owner shall be required to obtain from the secretary of natural resources a wastewater permit as required under the subdivision regulations or a certification that the wastewater system has been modified or replaced, with the result that it no longer constitutes a failed system.

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### **Section 705 - Access, Rights of Way, Driveways and Road Requirements**

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#### I. Required Frontage or Access Right of Way

As allowed by 24 VSA §4412(3), land development may be permitted on lots without frontage on a public road provided that access to a public road through a permanent easement or right-of-way has been approved, pursuant to the applicable land development review procedures in Article V. Such existing right-of-ways must be least twenty feet in width; however, any new right-of-way created hereafter shall be at least thirty feet in width. A maximum of three lots without frontage may be served by any right-of-way.

The approval of access shall follow the procedures and requirements for the particular development in Article V.

#### II. Driveway and Right of Way Requirements

To provide for safe and adequate access:

- A. No driveway shall be constructed in a corridor of land or land area having a width of less than 30 feet at its narrowest point. To provide room for snow, drainage and landscaping, a driveway shall be set back at least 5 feet from the lot or right-of-way lines.
- B. To provide for fire and ambulance access, driveways shall be constructed and maintained with an unobstructed corridor at least 12 feet in width, minimum vertical clearance of 14 feet, a grade not to exceed 10%, and a minimum outside radius of curvature of 48 feet.
- C. A driveway access shall be constructed in accordance with State Agency of Transportation B-71 Standards with respect to sight distance.
- D. Driveways serving more than one property shall be permitted only when the interests of each owner will be protected by an agreement or deed provisions for private, joint maintenance of the common driveway. Driveways serving four or more properties shall be subject to approval by the DRB in accordance with Town Public Highway or Street Standards.

#### III. Access to Commercial and Industrial Uses

No driveway or other means of access for vehicles, other than a public street, shall be maintained or used in any part of a residential district for the servicing of a commercial or industrial use unless an applicant can demonstrate that the standards in Section 540 will be

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met.

### IV. Access Limitation

No lot on which a single family, two family, or three family dwelling is located shall be served by more than one access roadway. In the event of a conflict between this provision and Section 630, that Section shall control. No driveway shall be wider than is reasonably necessary to safely accommodate traffic passing over it and in no event wider than 22 feet for a dwelling or 28 feet for a major business or institutional development.

## **Section 710 - Front Yards**

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- I. Front Yard Setback - the required setback of a building or above ground structure from the centerline of the traveled portion of a public street or highway, except that this setback shall be measured from the Front Lot Line or other features where expressly indicated in the Ordinance.
- II. Front Lot Line - any lot line separating a lot from an existing or proposed public street or highway. This line coincides with the street property line or right-of-way line.
- III. Where front yard setbacks in any district have been established for more than 50 percent of the frontage on any block at a depth greater than the minimum required for the district, the depth of required front yard setbacks shall be increased to comply with such established depth. In no case shall the depth of the required front yards be less than that specified in Section 620 for the district in which it is located.
- IV. Notwithstanding the measurement of front yard setbacks from the centerline of the travelled portion of the road in certain districts in Section 620, under no circumstances shall any structure or building be permitted within any public highway right-of-way.
- V. Corner Visibility - In any district, except a Central Business District, no obstruction to vision such as a structure, fence, shrubbery or snow over three feet in height shall be maintained on any corner lot within a triangular area formed by the front lot lines along the streets to the points on such lines a distance of forty feet from their intersection, and a line connecting such points.
- VI. Corner Lot - a lot abutting two or more intersecting streets which have an interior angle of less than 135 degrees at that intersection. A lot abutting a curved street shall be considered a corner lot if the tangents to the curve at the points of intersections of the side lot lines with the street, intersect at an interior angle of less than 135 degrees.

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### **Section 711 – Private Rights of Way**

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In order to allow for safe, unobstructed passage of emergency vehicles, new structures shall not be built closer than fifteen feet from the edge of a private right of way serving two or more lots.

### **Section 713 - Reduction in Lot Area**

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No lot or required yard shall be so reduced in area, setbacks, frontage or lot width, parking, coverage, or other requirements that it does not meet such requirements for the district where it is located.

Whenever a lot upon which stands a building or structure is changed in size or shape so that the area, setback, and yard requirements of this ordinance are no longer complied with, such building shall not thereafter be used until it is altered, reconstructed or relocated so as to comply with these requirements.

The provisions of this Section shall not apply when a portion of a lot is acquired for a public purpose.

### **Section 715 - Required Yards**

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- I. No part of a required yard or other open space, off street loading and unloading space, or parking space required for any building or use shall be included in calculating the required yard, other open space, off street loading and unloading or parking space required for any other building or use, unless specifically permitted by these regulations.
  - A. Required Yard - the area which constitutes the front, rear and side yard minimum setbacks. Buildings and structures are prohibited in this lot space (except where expressly provided in these regulations).
  - B. Yard - on a lot, the space not occupied by any structure.
- II. Allowable projection in Yards. Every part of a required yard shall be open from the soil to the sky, unobstructed except for a customary driveway, walkways and patios, lawns, trees, shrubbery and gardens, and except for the ordinary projections of sills, belt cornices, pilasters, leaders, chimneys, eaves and ornamental features, and certain architectural features needed for the operation of active and passive solar energy systems, including but not limited to overhangs, detached solar collectors, reflectors and piping, provided that no such projections may extend more than three feet into any required yard. Open or enclosed fire escapes, fireproof outside stairways, handicapped ramps, entrance decks (covered, enclosed or not) and balconies may project into a required yard not more than four and one-

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half feet.

### **Section 718 - Side Yards**

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The side yard setback is the required setback from a side lot line. A side lot line is any lot line which is neither a front lot line nor a rear lot line. See diagram in Section 620.

### **Section 721 - Rear Yards**

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- I. The rear yard setback is the required building setback from a rear lot line. The rear lot line means a lot line opposite and most distant from the front lot line. There is no rear lot line of a corner lot. See diagram in Section 620.
- II. Accessory buildings may be built within the required yard defined by the rear yard minimum setback. No such accessory building shall be less than ten feet from any rear lot line, occupy more than 40 percent of the required rear yard nor exceed twenty feet in height. A garage built into or attached to a dwelling shall not be considered an accessory building, but part of the principal building. This exception shall not apply adjacent to wetlands or streams.
- III. For any lot in any district with a rear lot line abutting the edge of a railroad right-of-way, there shall be no rear yard setback requirements.

### **Section 724 – Setback Waivers**

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Following the procedure and using the standards for conditional review in Section 540, an applicant may apply for a waiver of the setback requirements set forth in Section 620, 640, 710, 713, 715, 718, 721, or 780(I)(A). In no case shall a waiver be granted under this provision which would result in a yard setback of less than five feet (5'), except in the Central Business District (CBD); nor shall a waiver be granted which would increase the size of a retail store beyond the 50,000 square foot limit of Section 698. A waiver of 0ft may be approved by the DRB in the CBD by following the procedure for approving setback waivers using the process described in Section 540. The Administrative Officer or DRB may require appropriate plantings or screening or other reasonable conditions that mitigate the impact of the reduced setback upon adjacent property owners.

### **Section 727 – Height Regulations**

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As provided by 24 V.S.A. 4412(6), this Section shall apply to all structures, including antennae, wind turbines and other renewable energy resource structures, except where local jurisdiction is

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preempted by 30 VSA Section 248.

- I. Height limitations. The maximum allowable height of a building or other structure shall be calculated by the vertical distance from the average elevation of the finished lot grade at the front of a building or structure, to the highest point of the roof or structure, except in the case of gable-roofed buildings with roof pitches between 6/12 and 12/12, where the measurement shall be to the average height between the eaves and the ridge.
- II. A building or other structure may be permitted to exceed the maximum height limitation in any district under the procedure and standards in Section 540, provided:
  - A. Fire protection is adequately provided for, and all minimum front, side and rear yard setbacks are met plus the height of the structure (eg: if district setback is 15' a 60 ft. high structure must be set back  $60+15=75$  feet from the lot line); and
  - B. The structure is any of the following and does not constitute a hazard to the Middlebury State Airport: wind energy system, television or radio towers, church spires, belfries, monuments, tanks, water and fire towers, stage towers and scenery lofts, non-farm silos, cooling towers, ornamental cupolas, and chimneys, elevator bulkheads, smokestacks, conveyors, flagpoles and telecommunications poles or towers; and
  - C. The structure shall not be lighted in any manner (except for historic landmarks). In the event FAA requires lighting, the structure shall be lowered so that lights will not be required.
  - D. Notwithstanding the above, no structure (including anything attached thereto) shall exceed 110 ft. in overall height.

### **Section 730 - Home Occupations**

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- I. A home occupation is a use of an accessory building or minor portion of a dwelling for an occupation which is customary in Middlebury, and which does not change the character of the neighborhood or area in which it is located. Examples include: dressmaking, home cooking, teaching (limited to not more than four pupils at any one time), photo studio, attorney, architect, accountant, real estate broker, insurance agent, psychologist, furniture making, repair or refinishing, cabinet making, bicycle repair, barber shop, beauty parlor, fix-it shop, print shop, shoe making or repair, and any and all other home occupation uses which are customary in residential areas and which do not change the character thereof.

The following do not qualify as home occupations: the sale of property at retail, unless as a

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minor or subordinate part of a permitted home craft; commercial stable or kennel; restaurant; tea room; musical or dance instruction to groups; medical office or clinic; garage or shop for the repair of motor vehicles; machine shop; mortuary; antique shop, gift shop; or uses similar to the foregoing.

### II. Home occupations are subject to the following:

- A. The business shall be operated by a member or members of the family residing in the principal building. If the property is sold to another person, any preexisting home occupation zoning rights shall not run with the land.
- B. Not more than one person outside the family shall be employed or conduct business from the premises.
- C. The business shall be operated wholly within the principal building or accessory building and no goods, materials, or products shall be publicly displayed on the premises.
- D. There shall be no exterior storage of materials no large commercial vehicles, and no other exterior indication of the home occupation.
- E. The noise level shall not be of such a volume as to be a nuisance to abutting property owners.

### III. Sign - When a permit is issued for a home occupation, one sign shall be permitted as follows:

- A. A flat sign not to exceed four square feet in sign area; or
- B. An overhanging sign not to exceed four square feet in sign area; or
- C. A free-standing sign not to exceed four square feet in sign area.
- D. No sign shall be illuminated.
- E. No sign shall be located within ten feet of a front lot line.

### IV. Parking - A person using a dwelling for a home occupation shall provide, in addition to the parking spaces required for the dwelling, adequate off-street parking spaces on the same lot or on a lot adjacent thereto under the same ownership or under a permanent easement. The front lawn shall not qualify or be used for home occupation parking. When permitting a new home occupation, the applicant shall demonstrate that there is adequate off street parking for the existing dwelling and occupancy and other uses of the property.

### V. The above regulations shall not be construed to infringe upon the right of any person to use

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"a minor portion of a dwelling unit for an occupation that is customary in residential areas and that does not have an undue adverse effect upon the character of the residential area in which the dwelling is located", as provided in 24 VSA § 4412(4). A zoning permit shall be required only when the home occupation involves a sign, or when the public is invited to visit the home by advertising with resulting traffic and parking activity. A permit is not required for a home occupation in an apartment or other dwelling unit if the occupation involves merely computer or telephone business with no customer traffic to the premises.

- VI. In cases where use as a home occupation is denied because it does not comply with any regulations in Subsections I-IV above, the applicant may appeal to the DRB. The appeal shall include consideration of the requirements of 24 V.S.A. § 4412(4), the provisions of Subsections I-IV above, and application of the criteria found in Section 540, including Character of the Area/Neighborhood Considerations.

### **Section 733 - Conversion of Accessory Buildings**

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Accessory buildings such as a garage or barn, may be converted to other principal uses allowable in the district, but only if the structure will conform to the setbacks, parking and other requirements applicable to principal buildings.

### **Section 736 - Accessory Apartment Unit**

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As required by 24 VSA §4412(1)(E), one accessory apartment shall be a permitted accessory use to a single-family dwelling, notwithstanding the minimum lot or density requirements of the zoning district, subject to the following provisions:

- I. The accessory apartment is clearly subordinate to a single-family dwelling and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation.
- II. The accessory apartment may be within or attached to the single family dwelling, or within or attached to an accessory structure such as a garage or carriage barn on the lot.
- III. The floor area of the accessory apartment shall not exceed the larger of either 30% of the total habitable floor area of the single family dwelling prior to creation of the apartment or 850 square feet. The accessory apartment shall contain no more than two bedrooms.
- IV. The property owner must occupy either the principal single-family dwelling or the accessory apartment. If the owner is an irrevocable trust, documentation may be required to demonstrate that the on-site occupant is a legal beneficiary of the trust. Corporations shall not be eligible to apply as owners for an accessory apartment.

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V. The accessory apartment shall:

- A. For new construction, meet all setback and building height requirements for the district in which it is located. For a unit that involves an addition to (or replacement of) a preexisting nonconforming structure, the degree and aspect of noncompliance shall not be increased by the addition of the accessory apartment unit;
- B. have adequate potable water and wastewater systems in accordance with applicable municipal and state regulations;
- C. have adequate off-street parking for the residents of the principal dwelling and the accessory apartment in accordance with Section 760. No front yard lawn space shall be used or converted to parking space. Any added parking associated with addition of an accessory apartment shall be in an existing driveway or in a parking space established behind the front line of the principal dwelling; and
- D. require a completed Certificate of Occupancy, if the accessory apartment is detached from the one-family dwelling.

VI. A zoning permit issued for an accessory apartment unit shall only authorize the development of a use that is accessory to the principal residential use of the property and as such shall be retained in common ownership and under continuing jurisdiction. If the owner relocates his or her principle domicile longer than one year, the accessory unit may be subject to dimensional standards and review as a conditional use under Section 540.

VII. If the unit is located in an accessory structure, it may be subdivided and/or converted for conveyance or use as a principal dwelling only if it is found to meet all subdivision requirements for new single family lots including lot sizes, density and dimensional requirements for the district in which it is located, and only if the structures will be served by individual, separate water and sewer services.

VIII. One caretaker's apartment or dwelling unit may qualify as an accessory use to a nonresidential principal use, subject to conditional use approval under Section 540.

### **Section 739 - Group Homes and Child Care Homes**

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As required by 24 V.S.A. Section 4412(1)(G) and 4412(5), the following shall be allowed in the same districts and to the same extent as one family dwellings are allowed under these regulations:

- I. A residential care home or group home, to be operated under State licensing or registration,

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serving not more than eight persons who have a handicap or disability as defined in 9 V.S.A. Section 4501, provided that no such home shall be so considered if it is located within 1,000 feet of any other such home, existing or permitted.

**9 VSA 4501 definition:** *"Handicap" or "disability," with respect to an individual, means a physical or mental impairment which limits one or more major life activities; "Physical or mental impairment" means*

*(A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; or endocrine;*

*(B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;*

*(C) The term "physical or mental impairment" includes but is not limited to such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism. A **handicapped individual does not include any individual who is an alcoholic or drug abuser who, by reason of current alcohol or drug use, constitutes a direct threat to property or safety of others.***

- II. A family child care home or facility, where the owner or operator is to be licensed or registered by the state for child care, that is serving six or fewer children, or, subject to site plan approval, no more than six full-time children and four part-time children as defined in 33 V.S.A. 4902(3)(A).

**33 VSA 4903(3)(A) definition:** *A family child care home: is a child care facility which provides for care on a regular basis in the caregiver's own residence for not more than 10 children at any one time. Of this number, up to six children may be provided care on a full-time basis and the remainder on a part-time basis. For the purpose of this subdivision, care of a child on a part-time basis shall mean care of a school-age child for not more than four hours a day. These limits shall not include children who reside in the residence of the caregiver; except (A) these part-time school-age children may be cared for on a full-day basis during school closing*

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*days, snow days and vacation days which occur during the school year.*

### **Section 742 - Dwellings in the Forest Zone**

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The DRB may grant conditional approval to allow a dwelling in this district based on the standards in Section 540 provided the property has frontage or existing driveway access to a Town-maintained or State-maintained highway as stipulated in Section 705. No logging, clearing, or cutting of trees for the purpose of development shall commence prior to DRB final approval of a dwelling in this district. The DRB shall limit how much land can be cleared for the purpose of constructing a dwelling, but in no case shall approve a building envelope for a house that is larger than 2 acres. A forestry management plan prepared by a certified forester may be required prior to approval for all new development. The DRB may require temporary and permanent stormwater management and erosion control measures as may be necessary to control surface runoff, sedimentation and water pollution on-site and downstream from the proposed subdivision. Dwellings shall not be permitted on Class 4 Town Highways without agreement with the Town, or on U.S. Forest Service or privately maintained pent roads.

### **Section 743 – Universal Design**

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For the purpose of encouraging universal building design and providing for ease of mobility as residents choose to spend later years in single family residential settings, all new home construction may incorporate the following features:

- A. At least one stairless or ramped access
- B. 36" wide exterior and interior doors and hallways;
- C. Ground floor bedroom and complete bath; and,
- D. 5' by 5' clear/turn space in living area, kitchen, ground floor bedroom

### **Section 745 – Inns in the HDR and INS Districts**

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The DRB may grant conditional use approval to allow conversion of a large older home, located on a major collector street in the HDR or INS Districts, to an inn. It is intended that estates such as the Means House or The Heights or similar large properties be eligible for such conversion, and that conditions be set to ensure historic preservation in a manner such as the Waybury Inn and Swift House Inn. Conditional use approval shall also be required for any future substantial change or increase in use, and the DRB shall guard against changes which result in excessive commercial use or appearance which would be out of character with the neighborhood or the district.

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### **Section 747 – Multiple Dwelling Units in OFA, VRC, and CBD**

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In the OFA, VRC and CBD Districts, subject to conditional use approval in accordance with Section 540, dwelling units may be added notwithstanding lot area. Adequate off-street parking shall be available in accordance with Section 760.

### **Section 748 – Affordable Housing Inclusion Requirement**

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- I. In every residential development, the DRB shall consider ways to achieve greater affordability for low and moderate income persons, including wherever appropriate:
  - A. elimination of curbs (except in village commercial projects)
  - B. elimination of sidewalks on side streets but to have sidewalks on major collector streets or as needed for school safety
  - C. minimizing excessive street width
  - D. allowing above ground power, in sites that are substantially wooded.
- II. The approval shall refer to Select Board-adopted development standards and specifications for public roads, water, sewer and drainage.
- III. In consideration of the above and the availability of density bonus provisions in Section 550III(c), the following affordable housing requirement is imposed: In residential projects of 10 or more units by a developer in any 5 year period (starting with those approved after 7/1/88) the DRB shall require that at least 20% of the dwelling units be VHFA eligible (or comparably affordable). The DRB may allow this requirement to be met by an agreement to construct such affordable housing in a subsequent separate development or by payment of an affordable housing impact fee or payment to an affordable housing development fund, if established by the Select Board.

### **Section 750 - Performance Standards for All Uses**

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All new land development and existing land uses shall be constructed and maintained to comply with the following performance standards:

- I. Noise  
Noise volume shall be limited to levels that will not be a nuisance to adjacent uses. Customary agricultural operations and customary safety alarms are excluded. Noise levels or frequencies which are not customary or reasonably expected in consideration of the character of the district or neighborhood and which represent a substantial repeated

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disturbance to others shall be presumed to constitute a nuisance. To avoid noise disturbances to neighbors, reasonable conditions may be attached to any permit, including but not limited to: hours of operation; type, placement, muffling or enclosure of equipment or facilities; and noise levels.

### II. Construction activities

Where there are nearby neighbors, reasonable conditions may be attached to any permit involving construction activities, including but not limited to earth moving and hauling, rock drilling or crushing, jack hammer and other loud equipment. Reasonable conditions may also be established regarding construction staging, parking for construction trailers and workers, and truck routes, and limitation or prohibition of construction activities on Saturdays or Sundays or holidays, and between 4 p.m. and 7 a.m. This section shall not apply to emergency activities such as utility repairs.

**Note:** See also the Town of Middlebury Ordinance for the Regulation of Noise

### III. Blasting and Vibration

Blasting, vehicle traffic, and other activities causing substantial vibration shall not exceed a particle velocity of 0.5 inches per second below 40 Hz, nor 2.0 inches per second for frequencies above 40 Hz measured at the property line. Property owners and applicants and their blasting contractors shall be responsible for: notifying neighbors of proposed blasting; video documentation of conditions in the neighboring properties before and after blasting; adequate insurance and other customary measures that avoid and minimize the risk of damages and injury.

### IV. Dust and air pollution

Dust and air pollution shall be controlled to conform to the State of Vermont Air Quality Performance Standards. Construction waste, brush or trees shall be disposed of at the Addison County Solid Waste Management transfer Station or other facilities approved by the Town.

### V. Electromagnetic & microwave transmissions

Electromagnetic and microwave transmissions shall not to cause a health hazard or a nuisance to adjacent land uses. Transmissions exclusively regulated by the Federal Communications Commission are exempt.

### VI. Drainage

Drainage shall not cause a nuisance or damage to other properties. Changes in grading shall be directed to established drainage courses and controlled to avoid ponding or flooding of other properties. Changes in volume or direction of drainage shall not exceed the capacity of downstream drainage facilities, have an undue adverse effect upon water quality or wetlands or cause any maintenance burden upon the Town.

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### VII. Excavation, filling and regrading

Excavation, filling and regrading shall conform to the Vermont Handbook for Soil Erosion and Sediment Control on Construction Sites (1982 edition - as amended). The location of fill sites and access restrictions for hauling equipment shall be reviewed and approved by the Administrative Officer after consultation with the Department of Public Works and be consistent with State Solid Waste Management Regulations (Rule 6-309 or as amended).

Fill shall not be placed in or adjacent to streams or wetlands, or in any manner that would impair the functions of a stream buffer or wetland. A wetland delineation and evaluation by a qualified wetlands consultant may be required. See also Sections 660 and 665 regarding shorelands, riparian buffers, and wetland buffers.

The following shall be subject to conditional use review: fill of more than 1,000 cubic yards; and fill to elevate a house site more than 2 ft. higher than the average of the abutting house sites

### VIII. Odors

Noxious odors shall not be detectable beyond property lines. Odors from customary agricultural activities are exempted.

### IX. Fire, explosive and similar safety hazards

Fire, explosive and similar safety hazards which would substantially increase the risk to an abutting property, or place an unreasonable burden on the Fire Department, shall be prohibited (See also (XII) below).

### X. Water Pollution

All sewage and other wastes shall be safely managed and disposed of so that there is no hazard to public health. Any activity that poses an undue threat to water supplies or that would cause undue water pollution, shall be prohibited.

### XI. Ambulance Stretcher Access

Ambulance Dept. emergency access for the 80" x 24" stretcher shall be maintained in new or substantially improved buildings, as follows:

- A. public buildings or residential facilities over 2 stories shall include access by an elevator which will accommodate the stretcher horizontally.
- B. common stairwells for multi-story public buildings and residential facilities shall be constructed so that these stairwells can accommodate the stretcher carried at arm's length (not overhead or tipped excessively).
- C. elderly or handicapped facilities shall be constructed to permit access to all bedrooms via a stretcher on wheels.

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**Note:** Owned or rented multi-story dwelling units with individual ground level entrances and private internal stairways shall be exempt from this regulation (although owners and developers are encouraged to incorporate these design standards).

### XII. Fuel or Hazardous Materials Storage Facilities

Commercial, Industrial or Institutional fuel storage facilities, where regulated by the Vermont Department of Labor and Industry, shall incorporate the best available safety practices and technology, consistent with government and industry standards. Additional reasonable limitations and safeguards may be imposed as recommended by the Middlebury Fire Chief. This may include but is not limited to a requirement that fuel tanks or other hazardous materials be bunkered or underground or sited at suitable distances.

## **Section 753 - Demolition and Removal of Structures**

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- I. Within three months after a permanent or temporary building or structure in any district has been destroyed or demolished, the owner shall remove all structural materials, and shall cover over or fill any excavation or basement, to normal grade.
- II. The DRB may hold a hearing to determine whether a structure has been abandoned. Notice of the hearing shall be provided pursuant to Section 1090. The structure shall be deemed to have been abandoned if the DRB determines that it has been unoccupied for over one (1) year and that it is inadequately maintained. In determining whether the structure is inadequately maintained, the DRB shall consider whether lack of maintenance has given rise to any or all of the following conditions: (i) a threat to public health or safety, (ii) an undue adverse impact on the aesthetics of the neighborhood and surrounding area, and/or (iii) an undue adverse impact on neighboring property values. If the DRB determines that the structure has been abandoned, it may, consistent with the purposes of the Town Plan and this Ordinance, order that the abandoned structure be secured, repaired or removed at the expense of the owner.

## **Section 758 - Mini-Storage Facilities**

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- I. Rental storage units shall be subject to conditional use review. Rental storage buildings, doors and trim shall be all white or all single neutral color.
- II. Rental of an existing barn or shed may be permitted as a home occupation. See Section 730.

## **Section 759 – Recreational Vehicles and Construction and Storage Trailers**

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- I. Recreational Vehicles  
Although RV parks are not permitted in Section 620, a resident may park a travel trailer,

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camper, motor home or other recreational vehicle on their residential property. Such a vehicle may also be parked at another site, with approval of the property owner, within a structure or in a location that is not visible from other properties. Any such travel trailer, camper, motor home or other RV that is occupied for more than 14 consecutive days may be required to be permitted as a dwelling.

### II. Construction and Storage Trailers

A mobile home or trailer or other temporary construction hut may be temporarily sited and used as a construction office or for storage purposes where necessary or incidental to construction on that property. Such use shall not continue beyond the expiration of the Zoning Permit.

### III. Storage trailers and containers - A zoning permit shall be required for:

- A. Van trailers, other vehicles or parts thereof, or shipping containers used for storage facilities. Such types of storage facilities shall not be permitted where they would be visible from public roads or other properties, except upon conditional approval under Section 540.
- B. Use of a street or public right of way as a storage place or for staging or parking of construction vehicles or containers may be permitted by the Administrative Officer by a "Work in the Right-of-Way Permit". Such permits may only be issued after consultation with the Director of Public Works Operations and the Chief of Police, and shall be strictly limited in time to minimize obstruction and aesthetic impacts. The applicant shall be responsible for maintaining safe conditions for pedestrians and vehicular traffic.

## **Section 760 - Parking Requirements**

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- I. In order to insure the safe and continuous flow of traffic at all times as well as to facilitate the safe passage of all emergency vehicles, all structures and land uses shall be provided with sufficient associated off-street vehicular parking spaces to meet the reasonable parking needs of the employees, customers, visitors or other persons making use of the premises. For every structure or use hereinafter erected, altered or extended there shall be provided a minimum number of parking spaces as set forth below. In those instances where guidelines for particular uses or situations are not given below, or where the DRB is reviewing a large development under Sections 540 or 550, the ITE (Institute Of Transportation Engineers) and ULI (Urban Land Institute) guidelines shall be used.
  - A. Residential Requirements: Every structure used for dwelling purposes in all districts except for VRC, CBD, and OFA district shall have provided, on the same lot as the structure, or on a lot adjacent thereto under the same ownership

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or under a permanent easement, two (2) automobile parking spaces for each dwelling unit in the structure, up to four (4) dwelling units, and for each additional dwelling unit in the structure, one and one-half (1 1/2) parking spaces will be required, rounded to the next highest whole number. In the VRC, CBD, and OFA districts, every structure used for dwelling purposes shall have provided, on the same lot as the structure, or on a lot adjacent thereto under the same ownership or under a permanent easement, off-street automobile parking spaces equal to the number of dwelling units in the structure.

- B. Commercial Requirements: For every business or commercial use, (other than those types specified below) there shall be provided in connection therewith, on the same lot as the principal use or a lot adjacent thereto under the same ownership or under a permanent easement, parking spaces equal to one (1) parking space for each one hundred fifty (150) square feet or fraction thereof of floor area devoted to such use. A shopping center or commercial complex may be required to provide parking spaces to total the sum of all the parking spaces required for each individual business which occupies the center or complex.

Note: see provision for use of ITE and ULI standards in I. above.

- C. Industrial Requirements: For every industrial use, there shall be provided in connection therewith, on the same lot or a lot adjacent thereto under the same ownership, 1.25 off-street parking spaces based on the total number of employees on the largest shift.
- D. Business and Professional Offices: For each business or professional offices there shall be provided on the same lot or on a lot adjacent thereto under the same ownership or by permanent easement, one (1) parking space for each two hundred fifty (250) square feet of gross floor area.
- E. Medical Clinics and Medical Office Requirements: For a medical or health clinic or medical office, (including dentists and chiropractors) there shall be provided on the same lot or on a lot adjacent thereto under the same ownership, or by a permanent easement, eight (8) parking spaces for each professional.
- F. Rooming Houses or other Lodging Facilities: Every structure used as a hotel, motel, inn or tourist house or rooming house or bed & breakfast shall have provided, on the same lot or a lot adjacent thereto under the same ownership or under permanent easement, off-street parking spaces for automobiles as follows: two (2) parking spaces plus one (1) for each room for hire.
- G. Places of Public Assembly: Every structure used as a theater, auditorium, (including a school auditorium), stadium, church, lodge hall or other place of public or private assembly which provides facilities for seating people, shall provide accessible off-street parking spaces on the same lot therewith, or within

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four hundred (400) feet thereof, equal to one automobile space for every four seats, or fraction thereof, in such place of assembly.

- H. Indoor Recreation: Every structure used as a place of indoor recreation which does not provide facilities for seating people (bowling alleys, pool halls, etc.) shall provide accessible off-street parking spaces on the same lot, or on an abutting lot by permanent easement, equal to one (1) parking space per every two (2) customers as determined by the capacity of the establishment by state regulation.
- I. School or Child Care: Every structure used for school or child care services for five (5) or more children shall provide accessible off-street parking equal to three (3) spaces for each ten (10) children enrolled at the facility per session, or fraction thereof. (Note: See also Sec. 763 for pickup/drop-off requirements).
- J. Automobile Service Station: For each gas station or auto service facility there shall be provided on the lot or on an adjacent lot under same ownership five (5) parking spaces for each service bay.
- K. Restaurants and Bars: For each restaurant or bar there shall be provided on the lot or on an adjacent lot under the same ownership or by permanent easement, parking equal to one (1) parking space per every three (3) customers as determined by the capacity of the establishment by state regulations.
- L. Storage, Warehouse and Accessory Uses: For the purpose of computing parking space for areas such as utility areas, storage or warehouse activities, and for similar areas not normally open to general public, the requirement shall be one (1) parking space for 1,000 square feet of floor space, or fraction thereof, devoted to such use.
- M. Mortuary Requirements: Every structure used as a mortuary shall be located on a thoroughfare where on-street parking is permitted and shall be required to provide accessible off-street parking to equal one (1) parking space for every seventy-five (75) square feet of public floor space. A reduction in off-street parking requirements will be made for every 9 x 20 parking space available on the street, within one hundred fifty feet (150) of the structure.

## II. General Dimensions and Layout

- A. Parking Space - a defined space at least 20 feet long, and 9 feet wide, accessible to the street with not more than one backing/turning movement, and without requiring other cars to be moved, with a sufficient gravel or pavement surface to permit year round use.
- B. Parking areas shall be designed so as not to require or permit vehicles to back

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out onto a public way.

- C. The minimum aisle width shall be 22 feet for 90 degree parking and 15 feet for angle parking.
- D. Handicapped spaces shall be provided in accordance with ADA requirements. Such spaces shall be counted towards meeting the number of spaces required by these regulations.
- E. Where appropriate, public transit accommodations, bicycle parking facilities and special provisions for snow removal may be required by the DRB.
- F. Parking lots (4 or more spaces) shall be set back at least 10 ft. from property lines and the areas between parking and neighboring residences shall be screened with solid fence or evergreen plantings. This requirement may be waived at the request of the adjacent residential property owners or where the DRB determines that the purpose of adjacent property protection would not be served.
- G. Parking lot coverage shall not exceed 60% of the side or rear required yards.

### III. Parking Prohibited in the Front Yard

In all districts a person shall not use any land for parking (except for a customary driveway) or construct any parking space in the front yard(s). The DRB may waive this for minor portions of the parking (such as handicapped or limited customer usage) where it deems appropriate as part of a Planned Unit Development (see Section 550). The DRB should reduce or eliminate nonconforming parking lots in front yards when considering any new use or expansion of use on a site.

No person shall park vehicles or permit parking or storage of vehicles or boats on front lawn areas in HDR or MDR districts or in the historic districts in Middlebury or East Middlebury. Existing front lawns shall be generally preserved as grass or other landscaped or cultivated vegetation. Parking may occur in customary driveways, but driveways shall not be widened to wider than two-car width.

### IV. Parking Green Space Waivers

The number of actual parking spaces required to be built on the premises may be reduced by the DRB under the following provisions:

- A. The waiver shall require that the full complement of parking spaces be available on the lot, but a portion of the spaces can remain as green areas which have the potential of future conversion to parking should it be determined that more

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actual spaces are necessary to meet the reasonable parking needs of persons making use of the premises. In shopping centers or similar large parking lots, the DRB may reduce individual car parking in consideration of provided vans or public transit services and may also allow for up to 25% of the required spaces to be sized for compact cars. The compact car spaces shall be not less than 8 feet by 16 feet, and each compact space shall have appropriate signage and pavement markings.

- B. Such a waiver will be granted with the specific uses being considered; in the event that an application is made for the use change permit, the parking requirements shall be reconsidered for possible adjustments.
- C. Green areas shall be located on the lot such that conversion to parking spaces will not interfere with the safe flow of traffic.

#### V. Parking Impact Fee Waivers

In the Downtown Improvement District and in the VRC, where construction of on-site parking for a new or changed use is not reasonably possible, the DRB may waive the parking requirements upon finding that adequate public parking is existing or planned nearby, and upon payment of a fee. The fee shall be established in a schedule adopted by the Board of Selectmen (and amended from time to time), such funds to be used by the Town for the purpose of constructing new public parking and/or public transit accommodations which will be available for the new or changed use.

#### VI. Joint Use of Parking Spaces

Two or more establishments or uses on the same or contiguous lots may request a joint use of parking spaces from the DRB, when the total need for parking spaces at any peak time, is less than the total spaces required for each separate use. In granting such a request, the DRB shall consider the following:

- A. The different uses.
- B. The parking requirements of each individual use.
- C. The hours each use is open for business.
- D. The variations in the time when each establishment experiences maximum use.
- E. The minimum parking spaces should be sufficient to meet the requirements of maximum simultaneous use.

In no case will less than 50% of the required spaces be authorized. Approval will be automatically terminated if:

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- A. One of the establishments participating in the joint use is terminated.
- B. The time pattern of use of the joint facilities is altered by any participating establishment such that the total spaces provided is insufficient for the combined requirements of the users.

### **Section 763 - Loading/Unloading Spaces and Service Areas**

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- I. Requirement - Adequate space(s) and service areas for loading and unloading of trucks or other delivery/shipping vehicles and for rubbish and recycling activities shall be provided and maintained on the same premises with every building or structure or part thereof hereafter erected and occupied for the purpose of business, industrial or institutional use. Off-street loading and unloading space(s) are not considered as meeting part of the requirements for off-street parking spaces. Off-street loading and unloading shall not obstruct or interfere with the free use of any street, sidewalk or adjoining property. Off-street loading and unloading space shall be provided as set forth below at the time of any building or structure is erected and/or at the time any building or structure is enlarged or increased in use.
- II. Location, design and screening - No loading/unloading or service area shall be permitted that has an undue adverse effect upon neighboring properties or upon the character of the neighborhood. The DRB shall consider the impact of noise from truck backup alarms and delivery/pickup schedules and other effects upon the neighborhood.

Loading/unloading spaces and service areas shall not be located in the front yard, or be designed to require or permit backing into a public way or cause unreasonable traffic congestion or unsafe conditions.

Loading/unloading spaces, dumpsters and other service areas shall be screened from view from residences and public streets by enclosures of solid screen plantings or solid fence or building materials that are harmonious with the main structure.

- III. Size and number of required spaces - The size and number of loading/unloading spaces shall be sufficient to meet the performance standards in (A) and (B) above. The requirement may be increased if deemed necessary when the proposed use is compared with the demonstrated needs of established similar uses. Typical sizes for spaces are: 12' x 35' for straight trucks and garbage/recycling trucks; and 12' x 80' for tractor trailers.

The minimum requirement for parent drop-off/pickup for preschool and daycare facilities is: three (3) off-street loading and unloading spaces at least nine (9) feet by twenty (20) feet each.

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### **Section 766 - Landscaping and Screening**

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#### **I. Definitions:**

**ANSI A300:** Standards that are the generally accepted industry standards for tree care practices. They are voluntary industry consensus standards developed by TCIA and written by a committee called the Accredited Standards Committee (ASC) A300, whose mission is to develop consensus performance standards based on current research and sound practice for writing specifications to manage trees, shrubs, and other woody plants.

**Tree:** any self-supporting woody perennial plant with a trunk of at least six (6) inches in diameter at a height of four and one-half feet above the ground (DBH), or a multi-stemmed trunk system with a definitely formed crown.

**Parkway or greenway:** The lawn area or green space between the sidewalk and curb.

**Planting Bed:** For plants to thrive, they require viable rooting space where sufficient soil, water and air is available to nourish the plant. The size of this plant bed should relate to the mature size of the plant species. Formulas have been established through urban forestry research that set parameters for the correct size of plant beds.

**Public Tree:** All trees and shrubs on any Town park or other property owned or controlled by the Town on any public street, alley, median, sidewalk, or highway within the public right-of-way, as well as school district trees.

**Street Tree:** Any tree or shrub located on either side of all streets, avenues, bike paths, and located within the bound of all Village rights-of-way.

**Structural Soils:** A medium that can be compacted to pavement design and installation requirements while permitting root growth. It is a mixture of gap-graded gravels (made of crushed stone), clay loam, and a hydrogel stabilizing agent to keep the mixture from separating. It provides a way to connect islands of soil to each other so that a tree planted on one side of an impervious surface can grow roots across to a larger grassy area on the other side of the impervious surface.

**I. General Standard –** Every land development and building project shall provide and maintain street and parking lot shade trees and landscaping to complement buildings and sufficient screening so that:

- A. Neighboring properties are shielded from any adverse external effects of that development; and

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- B. The development is shielded from the impacts of adjacent uses such as streets, service and storage areas; and
- C. Landscaping shall conform with and actively further any Middlebury street tree and neighborhood improvement plans adopted for the subject area.
- D. Trees and other vegetation will be incorporated into landscaping plans to provide functional benefits such as mitigation of stormwater runoff and providing shade.

II. Landscaping Plans- for all commercial projects and major residential projects (3 or more dwellings), the Applicant must provide a Landscape Plan showing the locations and types of all existing trees greater than 6" dbh and proposed plantings, including species and size. This plan is subject to review by the Zoning Administrator, who may refer the Plan to the Conservation Commission and Design Advisory Committee, for providing input to the DRB.

III. Preservation of Landscape - The DRB may require modifications to the site plan to preserve existing site landscaping and features.

- A. Site contours shall depart only minimally from the character of the natural site and surrounding features.
- B. Removal of vegetation shall be limited to the minimum necessary for safe construction. Areas disturbed during construction shall be revegetated by the Applicant.
- C. Where development occurs in a forested or partially-forested area, the applicant may be required to submit recommendations from a professional forester regarding placement of improvements and removal of trees.
- D. Where tree coverage does not exist or has been removed, new plantings may be required. This may be subject to review by the Town Tree Warden.
- E. The annual mowing of open fields and meadows may be required by the DRB to preserve scenic views. Where mowing is required, the DRB may impose a requirement that mowing take place after June 15 in order to protect nesting birds.
- F. Wherever possible, existing healthy trees and shrubs shall be preserved.

IV. Screening and Outdoor buffering requirements - Screening shall include a mixture of vegetation that creates a visual buffer (not necessarily an impervious "wall"). The introduction of attractive fencing integrated with the vegetation can also be used to define the buffer. The amount and type of plantings will be determined by the DRB based on:

- The location and context of the site
- The type of use
- Proximity to neighbors
- The pattern and extent of existing vegetation (on-site and in the immediate area).

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- A. In all developments to the extent practicable, existing trees shall be retained and used to satisfy the provisions of the minimum landscaping requirement. Mitigation may be required if tree removal occurs.
- B. All parking areas for five (5) or more cars, all outdoor sales and display areas, all business uses and industrial uses, all contractor's yards, open storage and loading service yards and all commercial outdoor recreation shall be screened from any adjacent residential use and/or the ARR and FOR zoning districts. The amount of screening required will be proportional to the size of the proposed improvement.
- C. An appropriate design professional may be required to certify that the plantings have been performed in accordance with the landscaping plan and/or Section 766.

#### V. Shade and Shade trees:

- A. All new construction and redevelopment projects for uses abutting a public way shall be required to provide street trees along existing road frontages, unless some portion of this requirement is waived by the DRB or Administrative Officer due to physical site constraints. Redevelopment projects include changes of use that are accompanied by a change in ownership, and do not include turnover in leased spaces or condominiums.
- B. Street trees are required along new roads, public or private.
- C. Exemptions: The DRB may waive this requirement where a road passes through existing woods, to protect a scenic vista, or similar situation where street plantings would be inappropriate.

#### VI. Internal Parking Lot Landscaping:

- A. All off-street parking lots containing twenty (20) or more spaces shall be landscaped with trees, shrubs and other plants.
- B. At least one deciduous tree per ten (10) spaces shall be planted in a landscaped bed of not less than forty (40) square feet.
- C. No single rank of unbroken parking may be more than 20 spaces without a landscaped island or median, and in parking areas with more than 20 spaces the landscaped islands or medians must account for five percent (5%) of the parking area.
- D. Landscaped islands and medians must have an uncompacted soil volume large enough to support the long-term health of the proposed plant materials.
- E. The Development Review Board may reduce the landscaping requirement in lieu of reducing the minimum required number of parking spaces for projects on small lots with limited space.

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- F. Parking lot islands, medians and/or buffers shall be used to treat stormwater as required in Section 574 II.

VII. Planting Specifications- Plants shall be hardy for the climate and other conditions in which they will be used. Salt-tolerant and drought-resistant species must be used near roads, parking areas and pedestrian ways.

A. Tree planting specifications:

1. Where possible, trees shall be of a type indigenous to the area. Trees shall be well-adapted (hardy) for the site. Trees that produce and drop fruit may not be suitable for planting beside the public right-of-way. Where possible, trees shall exhibit Vermont fall foliage.
2. Final choice of tree species and exact planting locations are subject to DRB approval.
3. For mass plantings of 20 or more trees, no more than 25% of trees shall be of the same species.
4. A newly planted Tree shall be at least two (2) inches in diameter measured at six (6) inches above the ground, nursery grown stock, when newly planted.
5. Individual trees must be planted in at least the minimum volume of un-compacted soil called for in the Recommended Trees for Vermont Communities guide. Use of structural soils may be required to ensure the success of the plantings and their longevity.
6. Most community street trees are adjacent to sidewalks and curbs. Proper care shall be taken to prevent damage to trees during infrastructure repairs and maintenance.
7. Planting plans shall take into account maximum height and the presence of overhead and underground utilities. Street tree plantings in the public right of way are subject to approval by the Middlebury Department of Public Works and require a work in the right of way permit.
8. In residential developments, trees should be planted so there is at least one tree on the frontage of each lot, or according to the spacing shown in the table below, whichever results in the greater number of trees, subject to site constraints.
9. In residential developments, trees should be planted between the sidewalk and the street where possible.
10. Required maximum spacing of street tree plantings based on mature height:

Height (mature). If street trees are planted at intervals, they should conform to the following schedule.	Maximum Spacing (trunk-to-trunk distance)	Distance from curb
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Large (40 feet or greater)	50-70ft	No closer than 5ft
Medium (30-40 feet)	40-50ft	No closer than 4ft
Small (30 feet or less)	30-40ft	No closer than 3ft
<i>Based on classifications provided in the Vermont Tree Selection Guide</i>		

- B. Plantings shall be nursery grown or of otherwise healthy stock and of a type recommended for the proposed site in accordance with the standards and practices in the publications “Planting Sustainable Landscapes” (June 2001) and “Recommended Trees for Vermont Communities” (April 2001) published by the State of VT Dept. of Forests Parks and Recreation, Vermont Urban and Community Forestry Program.
- C. At the time of planting, canopy-forming deciduous trees shall be at least two-inches in diameter measured at a point 4 feet above finished grade. Evergreen species shall be at least 4 feet in height. Shrubs and ornamentals shall be at least 2-gallon pots.
- D. Warranty - All plantings required by this section shall be planted in accordance with accepted horticultural practice and shall be guaranteed for a period of three (3) years from the date of planting. The DRB may require a bond or other assurance requiring that the landscaping is completed according to the landscaping plan.
- E. Prohibited species – The following species are prohibited from use in the proposed landscaping plan for any new development in the Town of Middlebury.

<b>Table - Prohibited Landscape Plant Species</b>	
<b>Common name(s)</b>	<b>Scientific name</b>
<b>Trees</b>	
Ash, (Black)	E. nigra
Ash, (Green)	E. pennsylvanica
Ash, (White)	E. Americana
Black Locust*	Robina pseudoacacia
European Alder*	Alnus glutinosa
Maple, (Norway)**	Acer platanoides
Maple, (Amur)**	Acer ginnala
Tree of Heaven**	Ailanthus altissima
White Poplar*	Populus alba
<b>Shrubs</b>	
Barberry, (Common)**	Berberis vulgaris
Barberry, (Japanese)**	Berberis thundbergii
Border Privet*	Ligustrum obtusifolium
Buckthorn, (Common)**	Rhamnus cathartica

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Buckthorn, (Glossy)**	Rhamnus frangula
Burning Bush**	Euonymous alata
European Spindle-tree*	Euonymus europaeus
Honeysuckles, Bush and Vine (many varieties)**	Lonicera, spp.
Multiflora Rose	Rosa multiflora
Olive, (Autumn)*	Elaeagnus umbellata
Olive, (Russian)*	Elaeagnus augustifolia
Princess Tree*	Paulownia tomentosa
<b>Herbaceous</b>	
Asiatic Bittersweet**	Celastrus orbiculatus
Bitterbur Sweet-Coltsfoot*	Petasites hybridus
Black Swallow-wort**	Cyanthum louiseae
Common Reed**	Phragmites australis
Cypress Spurge*	Euphorbia cyparissias
Dame's Rocket*	Hesperis matronalis
False Indigo*	Amorpha fruticosa
False Spiraea*	Sorbaria sorbifolia
Flowering Rush	Butomus umbrellatus
Garden Loosestrife (yellow)*	Lysimachia vulgaris
Garlic Mustard**	Allaria petiolata
Giant Hogweed*	Heracleum mantegazzianum
Giant Knotweed*	Fallopia sachalinensis
Goutweed or Bishop's Weed**	Aegopodium podagraria
Himalayan Balsam*	Impatiens glandulifera
Japanese Hop*	Humulus japonicus
Japanese Knotweed**	Polygonum cuspidatum
Japasese Stiltgrass*	Microstegium vimineum
Pale Swallow-wort**	Vincetoxicum hirundinaria
Porcelainberry*	Ampelopsis glandulosa
Purple Loosestrife**	Lythrum salicaria
Reed Canary Grass*	Phalaris arundinacea
Reed Manna Grass*	Glyceria maxima
Spotted Knapweed*	Centaurea stoebe
Wall-Lettuce*	Mycelis muralis
Wild Chervil*	Anthriscus sylvestris
Wild Parsnip*	Pastinaca sativa
Yellow-flag Iris**	Iris pseudacorus
VT Agency of Ag, Food & Markets Class A & B noxious weeds	

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\* Denotes State of Vermont recognized invasive species

\*\* Denotes State of Vermont regulated invasive species

### **VII. Protection of Trees during Construction**

Any construction within 10 lateral feet of public trees requires protective measures to follow ANSI A300 Part 5 - *Management of Trees and Shrubs During Site Planning, Site Development, and Construction*.

### **Section 769 - Lighting**

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I. General Standard - Exterior lighting shall be kept to a minimum consistent with the requirements for pedestrian and vehicular safety and the character of the neighborhood.

II. Jurisdiction - All exterior lighting regardless of purpose (eg: security, advertising, etc.) shall be subject to this section. This section shall apply to contractors, utility companies, the Town, and private property owners.

III. Prohibition - No person shall place or maintain any light device or indirect lighting that causes undue glare, unnecessary illumination, annoyance to residents, pedestrians or drivers of vehicles, or any other type of nuisance.

IV. The following types of exterior lighting are prohibited:

- A. Unshielded commercial fixtures
- B. Drop-lens fixtures
- C. Intensive facade lighting
- D. Exposed fluorescent lighting
- E. Halogen lights and mercury vapor lamps
- F. Neon (except low-level/accent)
- G. Internal illumination of awnings
- H. Moving, flashing, flickering or animated lighting, other than seasonal holiday lighting. Seasonal holiday lighting may be displayed for no more than 60 days.
- I. Internally-illuminated bands of color and/or light on building exteriors
- J. Laser and search lights, sweeping or stationary (prohibited for all but emergency services)
- K. Lighting directed upwards (above horizontal) to illuminate flags, buildings, signs or landscaping, except that one U.S. flag per parcel may be uplit with luminaires of less than 2,500 lumens total (all lamps)

V. The following types of lighting are permitted:

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- A. Horizontal-mounted box cutoff fixtures and down-directed shielded soffit lighting with metal halide or color rendition-corrected high pressure sodium types of lighting, not to exceed 175 watts per fixture, or white LED lights of equivalent illuminance.
- B. Fully shielded lighting fixtures, except for residential applications of less than 1,200 lumens per lamp.

VI. The height of any lighting fixture shall not exceed 20 feet from grade, except per IX below (eg: for athletic facility lighting), and with the exception of security lighting that cannot reasonably be mounted lower as approved by the DRB or Administrative Officer. Light from outdoor luminaires may not be directed beyond the parcel boundaries onto adjacent properties or public ways.

VII. The maximum permitted average lighting level and uniformity of lighting shall be designed in accordance with the standards of the IESNA (Illuminating Engineers Society of North America). Further:

- A. The average lighting level on the surface to be lighted shall not exceed one foot-candle
- B. Maximum illumination of any point shall not exceed 5 foot-candles
- C. The uniformity ratio shall not exceed 20:1
- D. The maximum permitted average lighting level on any building façade or angular roof shall not exceed 5 foot-candles. Building façade lighting shall be reduced to one foot-candle after 10pm.
- E. Parking lot illumination must be reduced by at least 75% within an hour of the close of the business(es) the parking lot serves. This reduced lighting level can be achieved by turning off at least 75% of the parking lot lighting fixtures or by dimming lighting levels by 75%.
- F. The average lighting level of an area illuminated by security lighting shall not exceed one foot-candle. If practicable, security lighting shall be placed on timers and seasonally adjusted for fluctuations in daylight hours.

VIII. All lamps shall have a minimum color temperature of 2500 Kelvin. Energy-efficient LED fixtures shall be used to the greatest extent possible.

IX. Outdoor stadiums and recreational fields may be illuminated to allow nighttime use according to the following standards:

- A. The lighting plan for an outdoor recreation facility must demonstrate that only the minimum level of illumination required for the proposed activities will be provided. The DRB may independently determine the minimum illumination level required for any activity and impose that level as a condition of approval.
- B. Fixtures must be mounted and aimed so that their beams fall within the primary playing area and its immediate surroundings. No direct illumination may be aimed off site.

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- C. Lights on an outdoor recreational facilities shall be turned off except when the facilities are in use or being maintained.
  
- X. Lighting Plans may be required for all commercial projects, at the discretion of the Administrative Officer. Lighting plans shall include the information listed below. Administrative applications, including sign applications, may be required to provide any of the information below at the discretion of the Administrative Officer.
  - A. A photometric plan showing the lighting levels in foot-candles across all areas that will be illuminated, for both existing and proposed outdoor lighting. Lighting plans that are part of applications for conditional use review shall include a point-by-point analysis of anticipated illumination levels in all areas that would be illuminated. This plan must be based on the proposed luminaires and their mounting heights. The proposed maximum, minimum and average illumination levels and uniformity ratios shall be calculated for each area proposed to be illuminated, and shown in tabular form on the lighting plan.
  - B. The lighting plan shall list the types, locations and mounting heights of all proposed luminaires.
  - C. The submission shall include the manufacturer's specifications (cut sheets) for all proposed luminaires. There must be sufficient detail to demonstrate compliance with the standards of this section, including shielding details, color temperature and lumen outputs.

### **Section 772 - Signs, Awnings and Outdoor Advertising Regulations**

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The Select Board finds that scenic, cultural and historic resources of great value are distributed throughout the Town and have contributed greatly to its economic development by attracting tourists, permanent and part-time residents, and new industries and cultural facilities and that the following regulations are necessary in order to promote the public health, safety and other aspects of the general welfare, and to protect an important aspect of the economic base of the Town by preventing the destruction of its natural and historic beauty due to excessive outdoor advertising:

#### District One:

All lands included in the Central Business District, Village Residential Commercial, General Commercial District, Institutional District, and Office Apartment District.

#### District Two:

All lands included in the Protected Highway District, Industrial District, and the Airport District and in the General Commercial District on Exchange Street.

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### District Three:

All lands in the Town not included within District One or Two.

#### I. Definitions

As used in this Section the following terms are defined as follows:

- A. Building Front - the store front or wall of a building abutting or along a public right-of-way.
- B. Business Frontage - a continuous length of building front (storefront) for one or more businesses owned or controlled by the same person.
- C. Directory Panel - a flat sign located by a building's entrance listing two or more on-premises businesses or occupants.
- D. Directory Sign - A free-standing sign (not primarily supported by a building), listing one or more on-premise businesses.
- E. Flat Sign - a sign attached to, printed on or otherwise affixed to a building, the readable surface of which is parallel to the building front to which it is attached, which is primarily supported by the building and no part of which projects over 8" from the face of the building.
- F. False Building Front - a non-structural extension of a business front wall.
- G. Kiosk - a multisided structure to which temporary flyers, notices or similar signs are attached.
- H. Off-Premises Sign - a sign which directs attention to a business, profession, commodity, service or entertainment which is not carried on, sold, or offered on the same site or premises.
- I. Outdoor Advertising - any exterior sign, awning, banner, vehicle or other object or painting of a building in a franchise color scheme or unusual colors, or high – intensity lighting, which advertises, calls attention to or directs a person to a business, association, profession, commodity, product, institution, service entertainment, person, place, thing or activity of any kind whatsoever, and is visible from a highway or other public right-of-way.
- J. Overhanging Sign - a projecting sign attached or affixed to a building, the readable surface of which is not parallel to the building face to which it is attached or which projects over 8" from the face of the building.
- K. Parcel - contiguous lands owned by the same person, and lands contiguous thereto under that person's control.
- L. Residential Directional Sign - a sign erected and maintained by an individual to indicate the location of his residence.

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- M. Sign - any card, fabric, paper, metal, glass, wooden, plaster, plastic, stone or other sign or outdoor advertising device of any kind which displays or includes any letter, word, model, banner, flag, pennant, insignia, device or representation that is used or placed as an announcement, direction or advertisement. The work "placed" as herein used shall include erected, constructed, pasted, painted, tacked, nailed, glued, stuck, carved, regularly parked or otherwise fastened, affixed, or made visible in any manner whatsoever.
- N. Sign Area - the area of a flat sign shall be the area within the smallest rectangle (or circle, for circular signs) which can be drawn to encompass all letters, designs, tubing, panels and frames which are part of the sign. The area of an overhanging or directory sign shall be the total surface area of the sign on all sides, including all letters, design, panels and frames, and the supporting structure if any part of the structure is more than 6" wide, or if any part of the structure is more than 6" from an edge of the sign. In either of the latter cases, the whole visible surface of the supporting structure and any space between the structure and the sign shall be included as sign area. A false building front or awning or gas station canopy may be included in calculating sign area.
- O. Sign Height - the maximum height of a sign is the vertical distance measured from the average elevation of the finished grade between the front line of the building and the center line of the roadway to the highest point of the sign or supporting structure. The minimum height of a sign is the vertical distance measured from the average elevation of the finished lot grade between the front line of the building and the centerline of the roadway to the lowest part of the sign.
- P. Traffic Control Sign or Device - an official route marker, guide sign, warning sign, or sign directing traffic to or from a bridge, ferry, or airport, or a sign regulating traffic, which has been erected by authorization of the Select Board or by the Vt. Agency of Transportation in the case of State Highways.

## II. District Regulations

A person shall not erect, construct, display or maintain any sign except as hereafter set forth:

### A. District One - Maximum Number of Signs Permitted.

- 1. Ground Level Wall sign - for each ground level business frontage: One flat or one overhanging sign; business frontage on a corner lot - one flat or one overhanging sign facing each public right-of-way.
- 2. Above Ground Level - for each above ground level business frontage, one flat sign; business frontage on a corner lot, one flat sign facing each public right-of-way. (Location restricted to within area of window – See III below).

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3. Directory Panels and Signs - One directory panel or one directory sign per parcel, regardless of the number of business frontages of that parcel.
  4. Substitutions - A building may have either:
    - One flat sign on the building plus one freestanding directory OR
    - One overhanging sign on the building plus one freestanding directory OR
    - Two flat signs on the building and no freestanding directory OR
    - Two overhanging signs on the building and no freestanding directory.
- B. District One - Maximum Sign Area, Height & Setback
1. Flat Sign - the sign area of a flat sign for a ground level business shall not exceed the smaller of twenty-five square feet or one square foot for each foot of business frontage (storefront) along a public right-of-way. The area of a flat sign for a business above ground level shall not exceed 3 square feet.
  2. Overhanging Sign - the sign area of an overhanging sign shall not exceed 8 sq. ft. per side.
  3. Directory Sign - the sign area of a directory sign on a parcel with not more than 50 linear feet of business frontage (storefront) shall not exceed 6 square feet per side. For each 10 lineal feet of business frontage over 50', the maximum sign area shall be increased by 5 square feet per side, to a maximum of 25 square feet per side.
  4. Directory Panel - The sign area of a directory panel on a parcel with not more than 50 lineal feet of business frontage (storefront) shall not exceed 4 square feet. For each 10 lineal feet of business frontage over 50', the maximum sign area shall be increased by 4 square feet, to a maximum of 16 square feet. The sign area of an individual sign in a directory panel shall not exceed 54 square inches.
  5. Height and Setback - the sign height of a directory sign shall not exceed 10 feet, and its distance from a front lot line shall be at least 50% of the existing building front setback.
- C. District Two - Maximum Number of Signs Permitted
1. Ground Level Business - one flat sign or one overhanging sign per business frontage (storefront).
  2. Ground Level - More than One Business Frontage - for each ground level business frontage one flat or one overhanging sign; business frontage on a corner lot - one flat or one overhanging sign on each public right-of-way.
  3. Directory Panels and Signs – One directory panel or one directory sign per

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parcel, regardless of the number of business frontages of that parcel. (This is in addition to the sign attached to the building).

4. Substitutions - A person who is permitted an overhanging sign for a ground level business and who is also entitled to erect a directory sign may substitute one overhanging sign for the permitted directory sign. The sign area of such substituted sign shall not exceed this district's overhanging sign maximum. Until the substituted sign is removed, no directory sign shall be erected on the parcel.

#### D. District Two - Maximum Sign Area, Height & Setback

1. Flat Signs - The sign area of a flat sign for a ground level business shall not exceed the smaller of 50 square feet or one square foot for each lineal foot of business frontage (storefront) along a public right-of-way. The area of a flat sign for a business above ground level shall not exceed 3 square feet.
2. Overhanging Sign - The sign area of an overhanging sign shall not exceed 12 sq. ft. per side.
3. Directory Signs, Setback and Height
  - a. Signs in District Two shall be exempt from the building setback requirements of this Ordinance, but shall not be in the highway right-of-way.
  - b. The sign area and height of a directory sign shall vary according to the distance of the sign from the centerline of the public right-of-way according to the following schedule:

Sign Distance (ft.)		Maximum Sq. Ft. of Sign Area (per side)	Maximum Height (ft)
From Center Line of Roadway			
At Least	But Less Than		
35	40	14	14
40	45	16	16
45	50	18	18
50	55	20	20
55	60	22	20
60	65	24	20
65	70	26	20
70	75	28	20
75	80	30	20
80	85	32	20
85	90	34	20
90	95	36	20

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**Note:** Sign cannot be located off the owner's property or in the highway right-of-way.

### E. District Three

Commercial, Business and industrial uses (other than home occupations) in District Three shall be permitted signs subject to the regulations in District One for number, area, setbacks and height of signs.

## III. Location Regulations

A person shall not erect, construct, maintain, or display a sign including an exempt sign, in any district except in conformity with the following location regulations:

### A. Flat (Wall) Signs

Ground Level Business - A flat sign permitted for a ground level business shall be located below the level of any upper floor, on the wall of the building, except that no part of such sign or its supporting structure shall cover or be located within the area of a window.

Above or Below Ground Level Business - A flat sign permitted for a business above or below ground level shall be located within the area of a window of such business.

Business in a One Story Building - A flat sign permitted for a business in a building with no floors above the floor nearest ground level may be located anywhere on a wall of the building, except that no part of such sign or its supporting structure shall cover or be located within the area of a window.

### B. Overhanging Signs

Business in One Story Building - An overhanging sign permitted for a business in a building with no floors above the floor nearest ground level may be located anywhere on a wall or the building, except that no part of such sign or its supporting structure shall cover or be located within the area of the window.

Ground Level Business - An overhanging sign permitted for a ground level business, and the supporting structure for such sign, shall be located below the level of any upper floor, and no part of such sign or its supporting structure shall cover or be located within the area of a window.

An overhanging sign shall not project more than 48" from a wall of a building.

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It shall be deemed part of a building for purposes of computing setback requirements, unless the building is a nonconforming structure; in that case, it shall not be deemed part of a building for setback purposes, and if there is less than four feet of front yard setback, with the approval of the public officials having jurisdiction over a public right-of-way, an overhanging sign may project over a public right-of-way, to a maximum of forty-eight inches beyond the front line. Such a sign shall have a minimum clearance of ten feet above the finished grade of a sidewalk and fourteen feet above any roadway, driveway or alley.

#### C. Roof Signs

Signs located on the roof of a building or on top of a porch roof are prohibited. No sign which is attached to a building may extend above the edge of the roof of that part or side of the building to which such sign is attached.

### IV. Miscellaneous Sign/Advertising Regulations

#### A. General Sign Regulations

1. Any sign may designate more than one business or activity.
2. Illuminated signs shall not be lighted unless the premises are open for legal business.
3. All permanent signs shall be constructed of durable materials and shall be maintained in good condition at all times.
4. With the exception of exempt signs and street banners specified in Subsection V.A(2), no sign shall be erected or maintained which is not located on the premises of the activity of which it serves.
5. Signs are structures and are subject to front and side setbacks except as noted.

#### B. Prohibited Signs

A person shall not erect, maintain or display a sign in any district, including an exempt sign, which:

1. Interferes with, imitates, or resembles any official traffic control sign, signal or device, or attempts or appears to attempt to direct the movement of traffic.
2. Prevents the driver of a motor vehicle from having a clear and unobstructed view of official traffic control signs and approaching or merging traffic.
3. Contains, includes or is illuminated by any flashing, intermittent or moving lights, or moves or has any animated, moving or fluttering parts, streamers, pennants, or tethered large balloons or similar promotional advertising devices. The prohibition of signs with moving parts shall not apply to

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traditional barber poles. Customary advertising devices and displays used at licensed motor vehicle dealers such as balloons are not prohibited by this section.

4. Has any lighting, unless such lighting is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the main traveled way of a highway or neighboring property, or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle or otherwise to interfere with the operation thereof. Internally illuminated signs shall be prohibited in the Historic District. Any other sign lighting on an historic building shall be subject to review on a case by case basis under Section 690.
5. Is located upon a tree, or painted or drawn upon a rock or other natural feature, except that this restriction shall not apply to residential directional signs or signs with a sign area not to exceed four square feet identifying posted areas.
6. Advertises or calls attention to a business or other activity or profession, commodity, product, service, or entertainment not carried on, produced, sold, or offered in this state, or to an activity of any kind which has already occurred or has otherwise terminated.
7. Is in violation of or at variance with any federal or state law or regulation, including one containing or providing for conditions to or affecting the allocation of federal or state highway or other funds to or for the benefit of this Town.
8. Advertises activities which are illegal under any local, state or federal law applicable.
9. Is not clean or in good repair.
10. Is not securely affixed to a substantial structure.
11. Overhangs or is located within a public right-of-way, except as permitted in Subparagraph B.
12. Is illuminated, if such sign is located in a window above or below ground floor level.

#### C. Exempt Signs

The following signs are exempt from the requirements of this Ordinance, except as indicated in Subsection IV of this Section, and may be displayed without obtaining a Zoning Permit.

1. Signs located on or in the rolling stock of common carriers.
2. Signs on registered motor vehicles except those which are determined by the Administrative Officer to be circumventing the intent of this Ordinance.

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3. Signs, with an area of not more than 260 square inches, identifying stops or fare zone limits of common carriers by motor bus.
4. Signs erected and maintained by the Town outside of the highway right-of-way showing the place and time of services or meetings of churches and civic organizations in the Town. Not more than two such signs may be erected and maintained readable by traffic proceeding in any one direction on any one highway.
5. A residential directional sign which does not exceed four square feet in area, along highways (but not within the highway right-of-way), except that a permit is required if the person maintains a professional, commercial or business activity at his residence.
6. Official traffic control signs.
7. Signs of a duly constituted governmental body, including traffic and similar regulatory devices, legal notices or warnings at railroad crossings.
8. Small signs without advertising, displayed for the direction, instruction or convenience of the public, including signs which identify entrance direction or means of access/exit, rest rooms, service vehicles, posted areas and the like, with a total surface area not to exceed four square feet providing such signs are on the premises of the activity served by the sign.
9. Memorial signs or tablets erected by duly constituted governmental bodies.
10. Directional signs, subject to regulations promulgated by the Vermont Highway Department, with a total surface area not to exceed eight square feet providing directions to places of business selling agricultural products or Christmas trees harvested or produced on the premises while the sale is taking place.
11. Signs for identification purposes only, with an area not exceeding six square feet and setback at least ten feet from the edge of the right-of-way and maintained by:
  - a. State or community owned and operated institutions and facilities.
  - b. Public and private schools and other education institutions.
  - c. Public and private hospitals.
  - d. Churches, convents and parish houses.
12. One real estate for sale sign per parcel may be posted for each 1,200 feet of frontage, or part thereof, on a public road provided that such signs do not exceed an area of six square feet each. Both sides of such signs may be used and may list the name of an agent. This permission does not include so-called "sold by" signs.
13. On or off premises directional signs not over four square feet in area, providing directions to a temporary event such as an auction, special sale,

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garage sale, fair or party, providing such signs are not maintained for more than three consecutive days, nor more than six days per year. No such sign shall be placed on any utility pole. All such signs shall be removed immediately after the sale or event. The Town may remove signs in violation, at the owner's expense. [See also Town Policy Regarding Placement of Signs on Public Property, adopted by the Select Board – contact Planning/Zoning Office].

14. Signs indicating names of buildings, dates of erection, monument citations, commemorative tablets and the like when carved into stone, concrete, or similar material or made of bronze, aluminum or other permanent type construction and made an integral part of a structure.
15. Window displays and temporary signs on the inside of any storefront window. However, the use of the storefront window as a sign, such as by painting on the glass or by making the window into an internally illuminated sign, shall be considered as a sign subject to these regulations.
16. Customary signs on the gas pump island, including company shield or logo on the gas pumps, a gas price sign, a credit card accepted sign, and no smoking or similar required safety information, shall be exempt. However, lighting devices, a canopy, painting of a structure franchise colors or other unusual color, exterior commercial lighting and other forms of outdoor advertising shall be subject to these regulations.

#### V. Other Signs Permitted

In addition to the signs permitted in Section II, the following signs are permitted subject to the following conditions: (All require zoning permits except as in V A1).

##### A. Temporary Signs

###### 1. Special Sales

A person may, without obtaining a zoning permit, display one additional sign indicating a special sale, special rate, special entertainment, “open” flag or similar information, but subject to the provisions of Subsection III and IV(B) above, and that:

- a. The sign area of such sign shall not exceed eight square feet, and such sign shall be located on the premises of the activity it serves.
- b. Such sign, if not attached flat against a building, shall be located within the setbacks specified in Section 620.
- c. Such sign shall not be displayed more than ten consecutive days, nor more than fifteen days of any calendar month, nor more than forty-five days in any calendar year.

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- d. Upon findings that there is an abuse of the temporary/special sales sign provisions, contrary to the intent of this ordinance, the Administrative Officer may order or seek immediate removal of such signs.

2. Banners and advertising devices on public property

Street banners along or over Main St. announcing public events may be erected by the Select Board and per agreements with the Middlebury Business Association. Any such banners over public streets and any signs or outdoor advertising devices within public rights of way and on public property shall be subject to policies adopted by the Select Board and Town Manager.

3. Construction Signs

One free-standing sign structure may be erected and maintained on sites under construction. The total sign area including all contractors signs shall not exceed thirty-two square feet, and height shall not exceed ten feet and it shall be set back at least ten feet from the right of way. The sign may be erected upon issuance of a building permit but it shall not be erected earlier than one month prior to the start of construction and it must be removed no later than fourteen days after completion of construction.

#### B. Permanent Signs

1. Announcement Signs

One on-premises announcement sign shall be permitted for:

- a. A state or community owned and operated institution or facility.
- b. A public or private school or other educational institutions.
- c. A public or private hospital.
- d. Kiosks and Guide Post Signs. The Town Select Board may authorize a kiosk or Guide Post Sign in the right-of-way of Town roads or on Town property. The purpose of these shall be to provide wayfinding to districts and important destinations in the area as an aid to visitors, not as commercial advertising.
- e. Home Occupation signs - see Section 730

2. The developer of a Planned Unit Development may erect one directory sign per public street entrance with each sign not to exceed 20 sq. ft. total or to have a height in excess of 10 ft. No PUD with two or more directory signs shall have these on the same street closer than 250' or located such that two or more directory signs will be readable from any single point on the street.

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Internal PUD directory signs may be approved by the DRB in larger PUDs as part of an overall wayfinding plan.

### C. Changeable message signs

The changing of the letters or numbers on an approved sign which is specifically designed for the use of replaceable letters or numbers, shall not require a zoning permit.

### D. Awnings - Any awning, tent or fabric structure used as a sign, building or cover or enclosure, or as outdoor advertising shall be subject to the following regulations:

1. Traditional proportioned, awnings without internal lighting and with a color that is coordinated with the building may be permitted by the Administrative Officer. Lettering and graphics on the customary awning valence (fringe) shall not exceed 75% of the valence length or height.
2. Any awning or fabric structure shall provide at least 8 ft. clearance above sidewalks and 14 ft. above an alley or street. No awning or fabric structure shall project over a public street.
3. Awnings on historic buildings shall be designed so as to be harmonious with the historic character of the building and district and mounted so as to minimize damage to historic facade materials and features. Applications for such awnings which do not qualify for direct administrative approval under paragraph (1) above shall be submitted to the Design Advisory Committee for review and recommendations, and thereafter to the DRB under Section 690.
4. An awning or fabric structure shall not be interior lit (backlit). Preexisting interior lit awnings shall be deemed to be outdoor advertising signs and shall be turned off after business hours and overnight. (Down-directed soffit lighting from an awning is permitted. See Section 769 regulating lighting).
5. Any application for an awning or fabric structure with graphics or other lettering, multiple colors, or otherwise designed or used as an advertising device or used as a building, shall be subject to review by the Design Advisory Committee and approval by the DRB under Section 540.

### E. Flags - A person may display the flag of the United States, Vermont or Canada or their own national flag and shall be exempt from this section (no permit required). However, multiple flags, or unusually large flags or other flags used as outdoor advertising shall be prohibited. An unusually large flag is one that is larger than is flown over the Vermont or United States Capitol, or is out of proportion to the height of the pole on which it is flown.

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### VI. Nonconforming Signs

A sign which is nonconforming with respect to area, height, setback, location on a building, or number of signs permitted, shall not be enlarged, extended, moved, substantially changed in design or content, increased in area or intensity of illumination or otherwise altered, unless the sign as so enlarged, extended, moved, altered, or changed as to be in conformity with all parts of this Section. A person may reestablish a non-complying sign which has been damaged or destroyed by fire or other accident, but only within one year from such damage or destruction.

A nonconforming sign shall, as of the date of this ordinance, be subject to all parts of this section not pertaining to area, height, setback, location on a building or number of signs permitted.

- VII. The DRB may, upon findings that a business has no business frontage, allow that business one flat sign to face a public right-of-way. The size of the sign shall not exceed 10 sq. ft. in District One or 20 sq. ft. in District Two. The location of said sign shall be subject to Section III of the Sign Regulations.

### **Section 780 - Agricultural and Forestry Uses - Special Regulations**

The following special regulations shall apply to agricultural and forestry uses, except that nothing in this Section shall be deemed to prohibit or otherwise regulate “accepted agricultural and silvicultural practices,” as those terms are defined by the Vermont Secretary of Agriculture, Food and Markets and the Commissioner of Forests, Parks and Recreation pursuant to 24 V.S.A. 4413 (d).

#### I. Agricultural uses shall comply with the following:

- A. Barns, feed lots, pens, stock piles of animal wastes, and similar intensively used facilities for animal raising and care and manure management facilities shall not be located within 200 feet of a dwelling other than the farm owner’s and shall not be located within 50 feet of a public highway right of way, and shall comply with all other setback requirements for the applicable Zoning District. Provided, however, that if such facilities qualify as “farm structures” under 24 V.S.A. 4413(d), these setback requirements shall only apply to the extent that the Secretary of Agriculture, Food and Markets has not approved a petition for other setback requirements pursuant to the procedures set forth in the Vermont Accepted Agricultural Practice Regulations.
- B. Temporary and seasonal roadside stands, for the sale of locally grown agricultural products

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and Christmas trees only, may be permitted if sufficient room is provided for customers' vehicles off the traveled surface of the highway. At the Zoning Administrator's discretion, a site plan or permit may be required.

C. Farmers' markets, which are markets conducting retail sales of primarily locally produced agricultural products in outdoor areas or inside buildings, may be approved subject to conditional use review under Section 540 and the following requirements:

1. Over 50% of the market vendors must sell agricultural produce or other agricultural products, such as vegetables, fruits, meat, cheese, eggs, honey, maple syrup, herbs, plants, and flowers. Hot and cold meals served or sold at the market will not be counted as agricultural products for the purpose of this section. Food and beverage products such as jellies, jams, pickled or canned goods, wine, cider and other beverages will be considered agricultural products for the purposes of this section as long as the product's ingredients are sourced from Vermont.
2. All products sold at such a farmers' market must be grown, prepared or made in Addison County or adjacent counties in Vermont.
3. The DRB may require a farmers' market to seek an annual renewal of its application to account for substantial changes in vendors, attendance and other factors.

D. The processing of agricultural by-products within those districts where agricultural uses are permitted shall be permitted as accessory uses. Such uses shall include, but not be limited to, sugaring, moderate sized smoke houses and milk processing for resale at retail on a limited basis. New energy generating and biomass processing facilities, not identified by the VT Secretary of Agriculture as "accepted agricultural practices" may be approved by the DRB subject to conditional review in Section 540.

II. Horses, pigs, goats, sheep, cows and other cattle shall not be kept in the village HDR, MDR, OFA, INS, VRC, CBD, and GC districts. Chicken and other poultry shall be permitted in all districts, provided that poultry shall be kept in an enclosure or a fenced area and confined to the owner's property.

III. Prior to construction of any "farm structure," as that term is defined in 24 V.S.A. 4413, the person who intends to construct the structure must notify the Administrative Officer of such intent and must otherwise comply with all provisions of 24 V.S.A. 4413.

### **Section 782 - Fruit and Vegetable and Christmas Tree Stands**

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The DRB may grant conditional use approval to allow a commercial fruit and vegetable stand for

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the sale of locally-grown fresh agricultural products or Christmas trees, in districts other than the AR or in other commercial zones.

### **Section 784 - Slaughter Houses**

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- I. In addition to other Conditional Use requirements any applicant for a Slaughter House shall comply with the following provisions, which the DRB shall incorporate as conditions for the issuance of any approval:
  - A. The Applicant shall meet and comply with all Federal, State and local Statutes, Regulations and Ordinances.
  - B. Any structure shall have a minimum setback of 50 feet to the front, back, and side lot lines. If an existing residential dwelling is located within or near the proposed use the distance shall extend the setback of the slaughter house structure to 200 feet from such dwelling.
  - C. The applicant shall construct adequate, separated parking for animal transporting vehicles and non-animal transporting customer vehicles.
  - D. The applicant shall unload all animal transporting vehicles immediately upon arrival at the slaughter house and place the newly arrived animals in holding pens within the slaughter house.
  - E. The Town may require the use of municipal water and sewage facilities. The Town may impose such restrictions as it deems appropriate on the water and sewage service and connections, consistent with the Town Sewer Ordinance and other Town Ordinances and policies.
  - F. The use shall not emit any detectable odor beyond the exterior walls of the slaughter house or other structures.
  - G. The structure shall include sufficient inside storage area for all by-products retained for sale, or disposal, including blood, fat, and internal organs.
  - H. The applicant shall slaughter all animals within twenty-four (24) hours of the time of their arrival. The applicant shall feed and water all animals as prescribed by appropriate Federal and State Statutes and Regulations for the humane treatment of animals.
  - I. A slaughter house may retail inspected meats and meat-by-products in a separate sales room within the slaughter house.
  - J. The Town shall retain the right to inspect a slaughter house in order to determine compliance with all conditions of this use.

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### **Section 786 - Soil, Sand or Gravel Removal**

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Any new commercial sand, soil, or gravel removal operations, where allowable in specified Zoning Districts, or any extension of any existing commercial soil, sand, or gravel operation shall be subject to the following definitions, standards and conditions:

- I. "Extension" means continuation of a preexisting operation onto an adjacent parcel of land, or any substantial increase in the rate of extraction, or substantial change in the type of operation, or of traffic or equipment associated with a preexisting operation. A substantial change is one which could have an adverse effect on the criteria in Section 540. No new sand, soil or gravel removal operation shall be considered in the Forest Conservation District unless the operation will have a direct access to a State Highway.
- II. The applicant shall submit to the DRB the application and study information required under Section 788 II along with an acceptable master plan to insure that upon completion of the excavation operations the site will be left in a safe and useful condition in conformance with the Town Plan.
- III. The removal of all material shall be conducted in stages that limit area of exposed earth and provide for progressive restoration of permanent vegetative cover. Adequate fencing or an approved alternative deterrent to unauthorized access shall be maintained by the applicant. The days, hours and intensity of operations including trucking and haul routes shall be prescribed by the DRB so as to ensure reasonable quiet and compatibility with other uses in the area.
- IV. The removal operation sites shall be graded smooth and left in a neat condition with all slopes fertilized, mulched and reseeded so as to establish a firm cover of grass or other vegetation sufficient to prevent erosion.
- V. All surface drainage courses affected by removal operations shall be protected to prevent erosion and siltation.
- VI. No power-activated crushing or sorting machinery or equipment shall be located within 100 ft. of any street or other property line. All such machinery, as well as excavating equipment and trucks, shall be equipped with satisfactory noise and dust control devices.
- VII. No sand and gravel pits or soil extraction operations shall have stockpiles greater than 50 feet high.
- VIII. In all cases an undisturbed buffer shall be maintained around all property lines, with no removal of vegetation or other alterations in a minimum buffer which shall be no less than:

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- i. 100 feet from all existing public rights-of-way;
  - ii. 200 feet from all existing dwellings and camps; and
  - iii. 100 feet from all abutting property lines, subject to the following exceptions.  
First, if there is no existing dwelling or camp on an abutting property within 400 feet of the property line in question, the buffer from that line may be reduced to 50 feet. Second, if the primary land use on the abutting property is a gravel pit, with written consent of the abutting owner, the buffer from that property line may be further reduced to 0 feet, such that the excavation may extend to the common line with the abutting property.
- IX. The operation site shall be effectively screened from view from any existing or approved dwelling, camp or public right-of-way within 2,000 feet.
- X. In any approval, the DRB may establish conditions for closeout, monitoring and escrow as provided in Section 788.

### **Section 788 - Quarrying**

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#### I. General

- A. This section shall apply to any new or extended quarrying, including marble, granite, or other stone extraction operations and any land development incidental thereto. "Extended quarrying" shall include the enlargement of any existing quarry excavations on or in lands, beyond that expressly approved for quarrying, or otherwise existing, on the effective date of this section (March 16, 1982). Extended quarrying shall also include the enlargement of a quarry excavation beyond that approved under this section.
- B. New or extended quarrying may be approved only in the area bounded by Foote Street, Quarry Road, Case Street, and Cady Cross Road.

#### II. Application

An application for new or extended quarrying shall be filed with the DRB as a Planned Unit Development under the following standards and conditions:

- A. Study plans of the property at a scale of not less than 1" to 100' showing the boundary lines, acreage, adjacent owners and the following features, existing and proposed:

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1. site contours (at 2' to 5' contour intervals), site drainage and the horizontal and vertical limits of the quarry, stockpiles and berms (including typical cross-sections); and
  2. structures, roadways, equipment, materials, explosives and fuel storage, test wells (minimum of 4 required to determine water tables), water supply, sewage disposal, trees, landscaping and screening.
- B. Area maps, showing the general project location in the Town and the following features within 5,000 feet of the proposed quarry; roads, lands uses and principal structures, surface waters, soils, and the location and depth of all water supplies.
- C. Project description, including details of:
1. each phase of quarrying, stockpiling and the volumes involved;
  2. operations, including the nature, location and times of: blasting, drilling, crushing and operation of other major equipment on the site, safety measures, dust, sedimentation and erosion controls, water table monitoring and site dewatering, truck routes to be used; and
  3. the anticipated cost of complying with subsection III(G) of this Section concerning closing out of the operation.

The DRB may reasonably require such additional information as it deems necessary to determine whether the new or extended quarrying will be located and performed in accordance with these regulations.

### III. Standards

#### A. Isolation Distances and Setbacks

1. No part of any quarry pit shall be within 2,000 feet of any of the following uses existing or approved: Any dwelling, private or public water supply or water line, public building, park, or other community or institutional facility. Existing or approved: means, as used in this section, unless otherwise specified, existing as of the date an application is filed under this section, or approved on that date by issuance of a zoning permit, conditional use or PUD approval, or a subdivision regulations approval.
2. No part of any quarry pit shall be within 500 feet of the permit holder's property lines, or within 500 feet of any natural stream or pond.
3. No stockpiling of quarried rock shall be within 100 feet of the permit holder's property lines, or within 100 feet of any natural stream or pond.
4. No truck access road to the quarry shall be within 250 feet of the permit holder's property lines, except at the connection to the public road.

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### B. Maintenance Buffer

1. The land within 500 feet of the permit holder's property line shall be maintained as a buffer or conservation area by the permit holder.
2. There shall be no land development on this buffer except for stock piling of quarried material and truck access roads.
3. There shall not be any partition of ownership or control of the buffer land from the permit holder, unless and until the DRB determines, after public hearing, that all the requirements of Subsection G have been met. Upon any such partition, all excavation shall stop until such violation is cured.

### C. Vibration and Dust Control

1. The vibration level resulting from any blasting or equipment operation shall not exceed 0.5 ips on frequencies of less than 40 HZ, nor 2.0 ips on frequencies of greater than 40 HZ, measured at any property line of the permit holder.
2. The permit holder shall implement positive and effective dust control measures which will meet the requirements in the State of Vermont Air Quality Regulations. This shall apply to all on-site operations as well as to all vehicular traffic leaving the site.

### D. Traffic and Noise

1. The days, hours and levels of the quarrying operation shall be prescribed by the DRB so as to ensure reasonable quiet and compatibility with other uses in the area.
2. Any property being utilized for quarrying shall be limited to one truck access to any public right-of-way. No truck access within 1,000 feet of a dwelling (existing or approved) shall have a grade exceeding 5% with 250 feet of public road.

### E. Landscaping, Screening and Signs

1. Natural screening, such as vegetated berms, trees and shrubs, shall be provided and maintained so that no stockpiles of quarried rock shall be visible from any existing or approved dwelling or public right-of-way within 2,000 feet as of the filing of the quarry application. No stockpile shall exceed 35 feet in height.
2. The quarry access road shall be hidden from view from existing or approved dwellings and public roads by natural topography, vegetated berm or evergreen trees, either existing or to be planted, at least every 10 feet on both

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sides of the road.

3. Adequate fencing or an approved alternative deferent to unauthorized access shall be maintained around potentially hazardous areas, including but not limited to the quarry pit, storage and waste piles and explosives storage areas.
4. Signs shall be posted and maintained at frequent intervals around the site indicating danger and presence of the quarry.

### F. Terracing and Contouring

Terracing or contouring shall be used so as to minimize hazards. In no case shall the slope of a line from any edge of the pit to the edge of the next terrace down, or from the edge of the lowest terrace to the bottom of the pit, or 10 feet below mean water level (whichever is higher) exceed 20% (meaning 20 feet of vertical rise for every 100 feet of horizontal distance). No vertical face shall exceed in height that permitted by the U.S. Bureau of Mines.

### G. Closing-Out the Operation

1. As much as practical during the active quarry operation, and within one year of the stoppage of active rock extraction, the site shall be reclaimed.
2. Disturbed areas, except the underwater exposed rock, shall be recovered with the stockpiled overburden (subsoil and topsoil) reseeded to establish a permanent vegetative cover.
3. The reclamation of the site (including both the quarry pit and ground level surrounding the area affected by the operation) shall be completed so that the land will be left in a safe, attractive and readily usable condition for the types of land uses allowable in the district.
4. Upon failure of the permit holder, or the permit holder's successors or assigns, to complete the reclamation of the site as required above, the Town may take such actions as may be necessary to complete the work, and may enter onto the property for such purposes. The Town's reasonable cost of completing these requirements shall be a lien on the quarry property, including the buffer, and may be foreclosed by the Town in the same manner as provided for the foreclosure of mortgages.

## IV. DRB Review Procedures and Decision

- A. The DRB shall hold one or more public hearings, upon public notice.
- B. The DRB may modify the provisions of this Section to reduce the buffer required by III(B)(1) if satisfactory reclamation of the excavation has been

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completed as required herein as to a particular phase.

- C. If the DRB grants approval, the applicant shall file a record plan, consisting of:
  - 1. A survey of the applicant's property, within which the quarrying or extended quarrying is proposed, prepared by a surveyor licensed to practice in Vermont, of a size and material so as to be acceptable for filing with the Town Clerk and showing:
    - a. all boundary lines, abutting owners, the acreage; existing and proposed structures, roadways, major equipment circulation, storage areas;
    - b. the perimeter of the quarry pit(s), by metes and bounds;
    - c. the maximum depth of the proposed excavation and distances from the perimeter lines to the property lines; and
  - 2. Such additional information from the application as the DRB shall require to be filed with the survey.
- D. There shall be no excavation until approval of the record plan.
- E. The DRB shall hold a final public hearing, upon public notice, to act on the final application and record plan. The DRB shall approve or disapprove within 45 days of that hearing; failure to so act within that period shall be deemed approval. The DRB may attach such reasonable conditions and safeguards as may be necessary in order to implement the provisions of 24 V.S.A., Chapter 117, this Zoning By-Law, and in order to protect the public health, safety and welfare.

### V. Escrow Agreement

- A. The permit holder shall, prior to commencing excavation, designate a bank having an office in the State of Vermont, as escrow agent for the Town and the permit holder, to receive funds on account of the anticipated cost of complying with subsection III(G) of this Section, after the volume of material approved for excavation is removed. Such amount shall be paid over at least semi-annually, commencing six months from the date of the first excavation, based upon the amount of material removed in the preceding six-month period.
- B. The Escrow agreement shall provide:
  - 1. That the fund shall be invested in a savings account or certificate of deposit, at the permit holder's option.
  - 2. That all interest shall be payable to the permit holder.
  - 3. That the escrow agent shall account semi-annually to the Town, and at such other more frequent intervals as the Town may require.

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4. That the fund shall be available to the permit holder to reimburse it for the cost of complying with subsection III(G) of this Section, or upon failure of the permit holder to so comply the fund shall be available to the Town to reimburse it for any costs it incurs in closing out the operation.
  5. That any remaining amount shall be paid over to the permit holder.
- C. If the permit holder fails to make a payment into the escrow fund, as required herein, and such failure continues for thirty days from due date, then there shall be no excavation of materials until such default is cured. The applicant shall make available to the Town such records as the Town may reasonably request in order for it to determine compliance with this paragraph.
- D. At five year intervals, the anticipated cost of compliance with subsection III(G) of this Section shall be re-evaluated by the DRB, after public hearing, and the payment to the escrow funds shall be adjusted accordingly.
- E. At any time the permit holder may withdraw any amount which is in the escrow account, upon filing with the Town a bond, issued by a good and sufficient bonding or surety company authorized to do business in Vermont, for the benefit of the Town, in an amount sufficient to cover the cost of implementing Section III(G), but not for more than the amount then in the escrow account, and being withdrawn. Similarly, in lieu of any deposit in the escrow account, the permit holder may file a similar bond in the amount required to be deposited. If a bonding company should become insolvent, go out of business, or lose it's right to do business in Vermont, that shall be deemed a default under (C) above and shall be remedied by a new bond or deposit before excavation is continued.

#### VI. Monitoring

As provided in 24 V.S.A. 4417(g), the DRB may, at any time, upon public notice, hold a public hearing concerning new or extended quarrying operations approved under these regulations. Following such a hearing, the DRB may adopt supplementary rules and regulations not inconsistent with these regulations where it deems necessary to ensure compliance with the performance standards herein, or to mitigate unforeseen and undue adverse impacts.

#### VII. Severability

If any part of this Section shall be held invalid or unconstitutional, such holding shall not affect any other part of this Section.

## **ARTICLE VIII - NONCONFORMING USES AND STRUCTURES**

Nonconforming uses and structures, as defined in Section 320, may be continued subject to the provisions and limitations in this Article.

### **Section 810 - Changes in Non-conforming Uses**

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No nonconforming use may be changed to another nonconforming use without conditional approval in accordance with Section 540 and finding that the change complies with said standards and is no more intensive in nature than the prior nonconforming use.

### **Section 820 – Extensions**

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A nonconforming use shall not be extended to displace a conforming use. A structure which is being used in a manner which constitutes a nonconforming use may be extended or expanded if the following conditions are met:

- i. The expansion is within the existing lot and the expanded area does not exceed 50% of the aggregate floor area existing at the time that the structure first became nonconforming; and
- ii. The expansion does not result in greater noncompliance with respect to dimensional requirements, including setbacks and height limits; and
- iii. Parking requirements for the expanded structure are satisfied; and
- iv. The expansion receives conditional approval in accordance with Section 540.

### **Section 830 - Resumption of Nonconforming Use**

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A nonconforming use which has ceased may only be resumed in accordance with the following provisions:

- i. A nonconforming use which has been discontinued and replaced by a conforming use may not be resumed or re-established.
- ii. A nonconforming use which has temporarily ceased may be resumed without the need for a permit or approval of the Administrative Officer or the DRB unless and until it is deemed to have been discontinued (i.e. ceased for more than one year, as defined in Section 320).

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- iii. A nonconforming use which has been discontinued and has not been replaced by a conforming use may be resumed within four (4) years of the date of discontinuance, but only upon approval by the DRB under the procedure and standards in Section 540. A nonconforming use which has been discontinued for more than four years may not be resumed or re-established.

### **Section 835 – Nonconforming Structures**

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Nothing in this article shall be deemed to prevent normal maintenance and repair, structural alteration, moving, or enlargement of a nonconforming structure, provided that such action does not increase the degree of noncompliance or create any new noncompliance with regard to dimensional or parking regulations pertaining to such structures. Actions which increase the degree of noncompliance shall be deemed to include, but shall not be limited to, enlargements that involve new construction within a required setback, unless a setback waiver is granted in accordance with the provisions of Section 724. If a nonconforming structure is also a nonconforming use, it shall be subject to the provisions of Sections 810, 820 and 830.

### **Section 840 - Replacement after Destruction or Razing**

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If a structure is voluntarily razed, it can only be rebuilt in conformity with the Zoning Ordinance or by obtaining a variance. (NOTE: See Section 690 which requires approval prior to removal or demolition or substantial change to historic structures.)

### **Section 845 – Rebuilding After Catastrophe**

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If a nonconforming use or structure is damaged by fire, explosion, or other catastrophe, and no government investigation determines that the damage resulted from the owner's intentional conduct or gross negligence, the use may be restored or the structure rebuilt subject to the following provisions:

- I. The owner shall obtain a zoning permit.
- II. Any restoration or rebuilding which results in a modification of exterior features shall apply for Conditional Use approval pursuant to Section 540 and Design Advisory Review pursuant to Section 530;
- III. Noncompliance, in terms of dimensional regulations or parking requirements, shall not be increased beyond what existed prior to the catastrophe; and
- IV. Such restoration or reconstruction shall be completed within one year after resolution of insurance or legal disputes.

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### **Section 850 - Junk/Salvage Yards**

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Notwithstanding any other provisions of the Ordinance any automobile junkyard or other junkyard in existence in a MDR, HDR, VRC, OFA, or CBD district at the time of enactment of this Ordinance, or an amendment thereto, shall be discontinued within three years from the date of such adoption or amendment. Note: This section was originally enacted on March 5, 1968

### **Section 860 - Nonconforming Sand, Soil, or Gravel Extraction Operations**

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A nonconforming sand, soil, or gravel extraction operation may be extended within the boundary lines of a parcel or lot existing on March 23, 1973, provided that in so extending the operation, a person shall be subject to the requirements of Section 786 (VIII) and shall not remove or stockpile any materials in such a way as to encroach on the required minimum buffers set forth in that Section.

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### **ARTICLE IX - ADMINISTRATION AND ENFORCEMENT**

#### **Section 910 - Administrative Officer**

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- I. Appointment - An Administrative Officer shall be appointed annually by the Select Board after the annual Town meeting and shall serve for such term as established by the Select Board and until his or her successor is appointed and qualified, as provided in Section 1004 of the Middlebury Town Charter. A vacancy in the office shall be filled by the Select Board for the unexpired term. An acting or assistant administrative officer may be appointed as provided in 24 VSA 4448(b). The Select Board may remove the Administrative Officer at any time for just cause.
- II. Powers and Duties - The Administrative Officer shall administer the provisions of this ordinance literally, and with the administrative review authority granted in 24 VSA 4464(c). The Administrative Officer shall not have the power to permit any land development which is not in conformance with these regulations or any other ordinance of the Town. The Officer and assistants or agents shall have the power to make inspections of structures or land in order to carry out his or her duties in the administration and enforcement of these regulations. The Administrative Officer shall maintain an up-to-date record of all applications for permits and certificates of occupancy/compliance applied for and issued including conditions and copies of all plans approved in the Town Planning and Zoning Office. The Administrative Officer and his assistants shall have authority to take enforcement actions directly, or as the Officer deems necessary, through an attorney representing the Town.
- III. Notices - The Administrative Officer shall cause a weekly notice of permit applications and hearings to be published in the local newspaper and posted publicly in accordance with 24 VSA Chapter 117 and 1 VSA 312(c)(2).  
For major projects, including those that will require a DRB hearing approval, the Administrative Officer shall cause notices of permit applications to be sent or delivered to property owners that adjoin (without regard to rights of way) and may send such notices to other potential interested persons. In accordance with 24 VSA Section 4464, the Administrative Officer may require such applicants to post a notice of a pending application on the subject property within plain view from the public right of way. The Administrative Officer shall establish policies for notices including information for applicants who are required to be responsible for notices and posting consistent with 24 VSA Chapter 117 and these regulations. The Administrative Officer may also post notices on the Town web site as provided in 24 VSA 4464(4). Although additional notice may be provided by the Town beyond statutory requirements, no person may appeal or delay an application on alleged grounds of failure to receive notice beyond the minimum statutory notice provisions in 24

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### **Section 920 - Administrative Procedures**

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- I. Issuance - If a complete application is submitted with the fees due, and is in conformity with the provisions of these regulations and other ordinances of the Town of Middlebury, the Administrative Officer shall issue a permit.
- II. Pending Ordinance Amendment - If a public notice for a first public hearing pursuant to 24 V.S.A. §4442(a) is issued by the Select Board with respect to the amendment of this ordinance, the Administrative Officer, for a period of 150 days following that notice, shall review any new application filed after the date of the notice under both the proposed amendment and under the existing ordinance. If the amendment has not been adopted by the conclusion of the 150-day period, or if the amendment is rejected, then the permit shall be reviewed only under the existing ordinance. An application that has been denied under a proposed amendment that has been rejected, or that has not been adopted within the 150-day period, shall be reviewed again, at no cost, under the existing ordinance, upon request of the applicant. Any determination by the Administrative Officer under this section shall be subject to appeal as provided in 24 VSA Section 4465.
- III. Site & Foundation or Phased Approvals - The Administrative Officer may authorize partial or phased approval, and may approve commencement of site and foundation work consistent with DRB approvals and with these regulations.

Information and referrals regarding State permits –Administrative Officer shall maintain information in the Planning and Zoning Office relative to State Permits and shall refer applicants to the ANR Permit Specialist as provided in 24 VSA 4448(c).

- IV. Denial - If a zoning permit is denied, the Administrative Officer shall state such denial and the cause therefore in writing and shall immediately mail notice of such denial to the applicant at the address indicated on the application.
- VI. Fees - The Select Board shall by resolution establish (and from time to time amend) a schedule of fees and related policies to cover all or a portion of the Town's cost of administration and enforcement. The validity of any permit shall be contingent upon payment of such fees in accordance with the fee schedule and policies. Note: The current schedule of fees adopted by the Select Board is in the Appendix.
- V. Posting - Each zoning permit and permit card or sign issued under this section shall contain a statement of the period of time within which an appeal may be taken. Upon the issuance of a zoning permit the Administrative Officer shall:

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- A. Deliver a copy of the permit to the listers of the Town within three (3) days.
- B. Post a copy of the permit in at least one public place in the municipality until the expiration of fifteen (15) days from the date of issuance of the permit.
- C. Record a notice of municipal land use permit in the land records within 30 days.

Within 3 days following the issuance of a zoning permit, the permittee shall post a permit card or sign issued by the Town in a location that is clearly visible from the public right of way where one would likely enter the property.

- VI. Effective Date: Appeal - A zoning permit issued under this section shall not take final effect until the time for appeal (15 days) from date of issuance has passed, or if a notice of appeal is properly filed, such permit shall not take effect until a final adjudication of the appeal.

Issuance of a zoning permit shall in no case be construed as waiving any provision of this ordinance.

- VII. Term - All permits shall become void 24 months from their effective dates. Reapplication shall be required if the permittee has not made substantial progress on the land development described in the permit. Reapplication shall be subject to regulations then in effect.

- VIII. Failure to Act - If the Administrative Officer fails to act with regard to a completed application for a permit or renewal, within thirty days, such permit shall be deemed issued on the thirty-first day, if it is for a conforming use and complying structure.

### **Section 930 - Certificates of Occupancy and Compliance and Residential Building Energy Standards Certificate**

---

- I. Requirement - It shall be unlawful to use, occupy or permit the use or occupancy of any newly created residential dwelling, any premises converted into residential living space, or any commercial structure or part thereof created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure until a certificate of occupancy is issued by the Administrative Officer.
- II. Issuance - Within five (5) days after notification that a building or structure or premises or part thereof is ready for occupancy or use, it shall be the duty of the Administrative Officer to have made a final inspection thereof and issue a certificate of occupancy if the project is found to conform with the provisions of these regulations, and all other ordinances and regulations of the Town.
- III. Residential Building Energy Standards (RBES) Certificate – A builder, licensed professional

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engineer, licensed architect, or accredited home energy rating organization shall certify that a new residential buildings (single- and multifamily homes, and detached accessory apartments and some residential additions) have been constructed in compliance with the requirements of the Vermont Residential Building Energy Code, as stipulated in 30 VSA 51. The person certifying shall provide a copy of each certificate to the Vermont Department of Public Service and shall assure that a certificate is recorded and indexed in the town land records.

### **Section 940 – Administrative Enforcement Powers**

---

- I. The Administrative Officer may declare a Zoning Permit invalid when the officer finds that the application contained any misrepresentation of the facts.
- II. The Administrative Officer may enter into enforcement agreements or assurances of discontinuance, including but not limited to requiring security in a form and under procedures approved by the Town Attorney. Additional powers shall include but not be limited to:
  - recording notices of violation in the land records of the Town.
  - sending notices of violation to financing agencies or other persons or agencies having an interest in the property.
  - posting or publishing such notices in public places, in the media or on or near the subject property.

## **ARTICLE X - DEVELOPMENT REVIEW BOARD**

### **Section 1010 - Appointment**

---

- I. In accordance with 24 VSA Chapter 117 the Development Review Board (DRB) is established. The number of members and terms and appointment of members and alternates shall be established by resolution of the Select Board in accordance with the Statute and Town Charter. Alternates may be assigned by the Select Board to serve in situations where one or more members are disqualified or are otherwise unable to serve on particular cases or for a particular period.
- II. Removal - Any member may be removed for just cause by the Select Board upon written charges and after public hearing.
- III. Vacancies - Vacancies shall be filled by the Select Board by appointment for the expired term.

### **Section 1020 - Organization and Procedures**

---

- I. Election of Officers - The DRB shall elect its own officers and adopt rules of procedure, subject to this section. The Administrative Officer shall serve ex-officio as the Clerk/Secretary of the DRB.
- II. Meetings - Meetings shall be held at the call of the Chair and at such other times as the DRB may determine. All hearings of the DRB shall be open to the public.

For the conduct of any hearings and taking of any action a quorum shall be not less than a majority of the members, and any action thereof shall be taken by the concurrence of a majority of the full DRB.

- III. Oaths - The DRB chairperson or another officer designated by the Chair may administer oaths, and compel the attendance of witnesses and the production of material germane to any issue under appeal.
- IV. Minutes - The Clerk/Secretary shall keep minutes of all proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating this, and shall keep records of examinations and other official actions, all of which shall be filed in the office of the clerk of the Town as a public record.
- V. Testimony, Proof Material and Examination of Property - The DRB in connection with any

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proceeding under this ordinance, may examine or cause to be examined any property, maps, book, or records bearing upon the matters concerned in such proceeding, may require the attendance of any person having knowledge in the premises, may take testimony and require evidence for its information, and may administer oaths or take acknowledgement in respect of such matters. Any of the powers granted by this subsection may be delegated by the DRB to a specifically authorized agent or representative. This shall include but not be limited to, the power to appoint a Hearing Officer to hear any appeal or case, under such rules and procedures as the DRB shall establish.

### **Section 1030 - Powers**

---

- I The DRB shall act as the Appropriate Municipal Panel for local development review and appeal functions and other responsibilities as provided in 24 VSA Section 4460(e) as now enacted and hereafter provided in State Statute.

The DRB may, in conformity with the provisions of the Ordinance, reverse or affirm wholly or partly, or may modify, the order, requirement or decision appealed from and shall make such order or decision as should be made, and to that end, the DRB shall have all the powers of the Administrative Officer from whom the appeal is taken.

- II. Except as provided herein, the DRB shall **not** have the power to amend, alter, or invalidate the Town Plan or any by-law, regulation, rule or ordinance of the Town of Middlebury or the implementation or enforcement thereof. The DRB may never permit a use prohibited by this Ordinance.

### **Section 1035 - Hearings on the Record – Local Act 250 review of Municipal Impact**

---

In accordance with 24 VSA §§4420 and 4471(b) the Town of Middlebury Select Board has adopted the Municipal Administrative Procedures Act (“MAPA”) [24 V.S.A., Chapter 36] to be applied by the DRB for purposes of hearing development proposals on the record. Accordingly:

- I. Such hearings shall be considered “contested hearings” as defined under the MAPA, to be conducted in accordance with the requirements of MAPA.
- II. The DRB shall comply with the provisions of 24 VSA 1203 and 12 V.S.A. §61(a) regarding conflicts of interest.
- III. Public notice of hearings shall be provided in accordance with these Regulations.
- IV. The chair or vice chair shall preside over the hearing. The presiding officer shall cause

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hearings to be video recorded.

- V. All testimony of any interested person or other party, and witnesses, shall be made under oath or affirmation. “Party” for the purposes of Act 250 municipal impact review, means a person that qualifies under 24 VSA 1201(4) and Act 250.
- VI. The rules of evidence as applied in civil cases in superior court shall be followed. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible to proof under those rules, evidence not admissible under those rules may be admitted if it is of a type commonly relied upon by reasonable prudent people in the conduct of their affairs. Additional procedures regarding submission of evidence shall be as provided in 24 VSA Section 1206(c) and (d).
- VII. The DRB members shall avoid and prevent ex parte communications. No member of the DRB shall communicate on any issue in the proceeding, directly or indirectly, with any party, party’s representative, party’s counsel, or any interested person in the outcome of the proceeding while the proceeding is pending without additional notice and opportunity for all parties to participate. All ex parte communications received by DRB members, all written responses to such communications, and the identity of the person making the communication shall be entered into the record.
- VIII. Members of the DRB shall not participate in the decision unless they have heard all the testimony and reviewed all the evidence submitted in the hearing(s). This includes viewing the video of the hearing, and reading any minutes and testimony they have missed and reviewing all exhibits and other evidence prior to final deliberations.
- IX. All final decisions shall be in writing and shall separately state findings of fact and conclusions of law, based on the findings of fact, and shall follow the issuance and notice procedures in 24 VSA Section 1209.

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### **APPEALS**

#### **Section 1040 - Rights of Interested Persons**

---

Any interested person as defined in 24 V.S.A. 4465(b) may appeal any decision or act taken by the Administrative Officer. Interested persons are as follows:

- I. A person owning title to property affected by these regulations who alleges that the regulations impose on such property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.
- II. The Middlebury Select Board, or the Select Board of any adjoining municipality.
- III. A person owning or occupying property in the immediate neighborhood of a property which is the subject of any decision or act taken under these regulations, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes or terms of the Middlebury Town Plan or these regulations.
- IV. Any ten (10) persons owning real property within Middlebury, or any ten qualified voters of the Town, or any combination of such property owners and voters, who, by signed petition to the DRB, allege that any relief requested by an interested person, if granted, will not be in accord with the policies, purposes, or terms of the Middlebury Town Plan or these regulations. The petition shall designate a single person to serve as the representative of the petitioners regarding all matters or participation in the appeal.
- V. Any department or administrative subdivision of the State of Vermont owning property or any interest therein within Middlebury or in an adjoining municipality, and the Vermont Agency of Development and Community Affairs.

## **ADMINISTRATIVE AND VARIANCE APPEALS TO THE DRB**

### **Section 1050 - Notice of Appeal**

---

To appeal a decision or act of the Administrative Officer, the interested person must file a notice of appeal with the secretary of the DRB within fifteen (15) days of the date of such decision or act. A copy of the notice of appeal shall be filed with the Administrative Officer. All notices of appeal shall be in writing and shall include the name and address of the appellant, a brief description of the property with respect to which the appeal is taken, a reference to the regulatory provisions applicable to that appeal, the relief requested by the appellant and the alleged grounds why such request relief is believed proper under the circumstances.

### **Section 1060 - Stay**

---

In accordance with 24 VSA 4449(a)(3) in the event a notice of appeal is properly filed, no permit shall take effect until adjudication of that appeal by the DRB is complete and the time for taking an appeal to the Environmental Court has passed without an appeal being taken.

### **Section 1070 - Variance**

---

- I. On appeal under Section 1040 of this ordinance, wherein a variance from the provisions of this zoning ordinance is the relief requested by the appellant, the DRB may grant such variance and render a decision in favor of such appellant if all the following facts are found by the DRB and such finding is specified in its decision:
  - A. That there are unique physical circumstances or conditions including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.
  - B. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
  - C. That such unnecessary hardship has not been created by the appellant.
  - D. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property,

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- reduce access to renewable energy resources, nor be detrimental to the public welfare; and
  - E. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of this zoning regulation and the comprehensive plan.
- II. On an appeal under Section 1040 of this ordinance wherein a variance from the provisions of this zoning ordinance is requested for a structure that is primarily a renewable energy resource structure, the DRB may grant such variances, and render a decision in favor of the appellant if all the following facts are found and the finding is specified in its decision:
- A. It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with the regulations; and
  - B. That the hardship was not created by the appellant; and
  - C. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and
  - D. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning ordinance and from the plan.
- III. On appeal, the DRB, after public hearing, may approve the repair, relocation, replacement or enlargement of a non-conforming structure within a regulated flood hazard area, subject to compliance with applicable federal laws and regulations, and provided that the following criteria are met:
- A. The DRB finds that the repair, relocation, or enlargement of the non-conforming structure is required for the continued economically feasible operation of a non-residential enterprise.
  - B. The DRB finds that the repair, relocation, or enlargement of the non-conforming structure will not increase flood levels in the regulatory floodway, threaten the health, safety, and welfare of the public or other property owners.
  - C. The permit so granted states that the repaired, relocated, or enlarged non-conforming structure is located in a regulated flood hazard area, does not conform to the bylaws pertaining thereto, and will be maintained at the risk of the owner; and
  - D. A copy of such permit granted by the DRB shall be indexed to the copy of the deed of the concerned property on file in the municipal clerk's office.

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In rendering a decision in favor of an applicant under this section, the DRB may attach such conditions to such variances as it may consider necessary and appropriate under the circumstances to implement the purposes of 24 V.S.A. Chapter 117 and the Town Plan.

## **DEVELOPMENT REVIEW BOARD HEARING AND DECISION PROCEDURES**

### **Section 1080 - Public Hearing**

---

The Clerk/Secretary of the DRB shall set a date and place for a public hearing on any application or appeal in consultation with the Chair. The Clerk/Secretary shall give notice of the hearing, as provided in Section 1090 below.

All hearings shall be open to the public. Any interested person or party empowered by 24 V.S.A. Section 4465(b) to take an appeal, may appear and be heard in person or be represented by agent or attorney. Citizens or groups who do not qualify as legal interested persons may also be heard and otherwise participate to the extent the Chair or hearing officer deems such participation will be of material assistance and will not prejudice the rights of other parties (See 24 VSA 1202(c) and 1206). Any public hearing may be recessed by the Chair or hearing officer from time to time, provided however, that the date and place of the reconvened hearing shall be announced at the hearing, or communicated in writing to all interested persons who appeared and were heard.

### **Section 1090 - Public Notice**

---

Any public notice required for public hearing under this ordinance shall be given as follows, to comply with the requirements of 24 VSA 4464(a)(1). When an application has been filed and deemed complete, the DRB Clerk/Secretary shall set the date and arrange for the publication of the date, place and purpose of such hearing in a newspaper of general circulation in the Town and the posting of such notice in at least three public places within the Town, as follows, not less than 15 days prior to the date of the public hearing. The notices shall be posted at Town Offices near the Town Clerk's Office and on the Town web site. The third required public notice shall be on a sign card furnished by the Clerk/Secretary and shall be the responsibility of the applicant to post and maintain within view of the public right of way most nearly adjacent to the property for which the application is made.

Notice of the hearing shall be sent by the Clerk/Secretary to the DRB and by certified mail to the applicant and by regular mail sent to property owners that adjoin (without regard to rights of way) at their last known address and to other known interested parties. The notification shall include a description of the proposed project, and shall include for interested persons information that clearly warns the recipient where additional information may be obtained and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal.

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The applicant shall not make any significant alteration to the application or information submitted after the public hearing has been warned, and before the hearing is actually held. A significant change in the application or failure by the applicant to post the hearing notice on the subject property may require that the hearing be rewarned.

After the initial hearing, where interested persons shall be identified by the DRB, the applicant shall be responsible for distribution of copies of application materials as required by the DRB and any subsequent hearing notices and shall demonstrate proof of delivery to such interested persons by certified mail return receipt or by typed notice delivered or mailed, with a sworn certificate of service.

### **Section 1095 - Decisions**

---

- I. The DRB may recess the proceedings pending submission of additional information, but should move to close the evidence promptly after all parties have had a specified, reasonable time to respond. The DRB may at any time during the proceedings conduct deliberations [which may be closed to the public at the discretion of the DRB in accordance with 1 VSA Section 312(e)].

The hearing shall be adjourned and the DRB shall render its decision, which shall include findings of fact within forty-five days after adjournment of the hearing. Failure of the DRB to act within this period may be a deemed approval as provided by law.

The Chair or acting Chair shall sign the decision, and the Clerk/Secretary shall send to the applicant, by certified mail, a copy of the decision. Copies of the decision shall also be mailed or emailed to every person or body appearing and having been heard at the hearing, and a copy thereof shall be filed with the Administrative Officer and the Town Clerk as a part of the public records.

- II. The DRB may reject an appeal without a hearing and render a decision, which shall include findings of fact within ten days of the date of filing if it considers the issues raised have been decided earlier or are based on substantially or materially the same facts by or on behalf of the applicant. Such decision shall be rendered, on notice given, as in the case of a decision under Paragraph I of this subsection, and shall constitute a decision for the purpose of appeal to the Environmental Court.

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### **Section 1098 – Appeal to Environmental Court; On the Record Proceedings**

---

- I. In accordance with 24 VSA Section 4471, an interested person who has participated in a regulatory proceeding of DRB, may appeal a decision of the DRB, within 30 days of such decision, to the Vermont Environmental Court. [Note: certain DRB determinations in the designated downtown district, growth centers and Vermont Neighborhoods are not appealable under 24 VSA 4471(e)].

“Participation in regulatory proceeding of the DRB” shall consist of offering, through oral or written testimony, evidence or a statement of concern related to the subject of the proceeding. “Interested person” shall be limited to parties as defined in Section 1040 and 24 VSA Section 4465 (b).

In accordance with 24 VSA Section 4471(b), the Middlebury Select Board is authorized to establish and amend a policy defining the magnitude and nature of development proposals that shall be subject to production of an adequate record and conduct of local proceedings in accordance with the Municipal Administrative Procedures Act so that an appeal to the Environmental Court will be on the record. This policy has been initially established by resolution of the SelectBoard for any development proposal that is subject to review by the DRB. Additional classifications of development proposals that shall be subject to appeal on the record may be established and modified by resolution of the Select Board from time to time.

For all proceedings that are conducted with a formal record and subject to appeal on the record, appeals to the Environmental Court shall be taken in accordance with the Rules of Civil Procedure.

Transcripts of proceedings shall be made upon the request of any party and after payment of reasonable costs of transcription by the party.

Any Notice of Appeal shall be filed by certified mailing, with fees, to the Environmental Court and by mailing a copy to the Administrative Officer, who shall supply a list of interested persons to the appellant within five (5) working days. Upon receipt of the list of interested persons, the appellant shall by certified mail, provide a copy of the notice of appeal to every interested person.

## **ARTICLE XI - DESIGN ADVISORY COMMITTEE**

### **Section 1110 - Appointment**

---

The Select Board shall appoint up to five (5) persons to serve as the Design Advisory Committee. The Select Board may appoint one or more alternates. It is intended that the Select Board appoint professional persons such as an architect, historic preservation specialist, landscape architect, building contractor or others experienced in design to this Committee. Due to the technical nature of this expertise, the Select Board may appoint members who are not Town residents, but at least a majority of the Committee shall be Town residents. The terms of the members shall be 3 years each, and shall be staggered, so as to provide continuity on the Committee. In the event of a vacancy the Selectmen shall appoint a replacement for the unexpired term. The Select Board may remove any member for just cause, upon written charges and after a public hearing.

The members of the Design Advisory Committee shall annually elect a chairperson. The Town Planner shall be an ex-officio, non-voting member and Clerk/Secretary of the Design Advisory Committee, and shall schedule meetings, and keep minutes, reports and other records of the Committee on file in the Town Offices as public records. The Committee shall maintain rules of procedure including provisions regarding conflicts of interest. With the approval of the Select Board, the Design Advisory Committee may adopt such other rules as are necessary to qualify Middlebury for the Certified Local Government (CLG) program.

### **Section 1120 - Functions**

---

The Design Advisory Committee shall have no regulatory powers but shall function only in advisory capacity, consistent with 24 VSA Sections 4433 (1)-(4) and 4464(d), as follows:

- I. Review development proposals for conditional uses and planned unit developments, and other cases when requested by the DRB, to make recommendations relative to siting of buildings, architectural design, historic preservation, landscaping, conservation, preservation of scenic features and other matters of aesthetics.
- II. To prepare, from time to time, design reports or guidelines for use by the DRB, and to make recommendations to the Select Board regarding Town projects.
- III. To prepare informational or educational materials to assist applicants and citizens relative to the above functions.

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### **ARTICLE XII - ENFORCEMENT, AMENDMENTS, INTERPRETATION, EFFECTIVE DATE**

#### **Section 1210 - Enforcement**

---

The Administrative Officer shall institute in the name of the Town any appropriate action, injunction or other proceeding to prevent, restrain, correct or abate any construction or use, or to prevent, in or about such premises, any act, conduct, business or use constituting a violation of these regulations.

Any person who violates any provision of these regulations may be charged with criminal violations as provided in 24 V.S.A. Chapter 117 and as otherwise provided by law. No action may be brought under this section unless the alleged offender has had at least seven days' warning notice by certified mail. An action may be brought without the seven-day notice and an opportunity to cure if the alleged offender repeats the violation of this ordinance after the seven-day notice and within the next succeeding twelve months. Fines shall be as prescribed in 24 V.S.A. Chapter 117 or as otherwise provided by law and each day that a violation is continued shall constitute a separate offense.

Pursuant to 24 V.S.A. §1974(a), the Town may institute the civil enforcement of zoning violations under these regulations. In such civil enforcement, a civil penalty of not more than \$100 may be imposed for a violation of these regulations and each day the violation continues shall constitute a separate violation. The Town may bring such civil ordinance violations before the Traffic and Municipal Ordinance Bureau pursuant to 23 V.S.A. Chapter 24 and 24 V.S.A. Chapter 59.

The Town shall issue notices of violation through the Administrative Officer (or a designee). The Select Board shall establish, and may amend from time to time, a schedule of penalties and waiver fees for the categories of zoning violations (see Appendix B).

#### **Section 1220 - Amendments**

---

These Regulations shall be amended as provided in 24 V.S.A. Chapter 117.

#### **Section 1230 - Severability**

---

If any section, subsection, paragraph, sentence, clause or phrase in these Regulations shall for any reason be held to be invalid or unconstitutional by a decree or decision of any court of competent jurisdiction, such decree or decision shall not affect or impair the validity of any other

## Middlebury Zoning and Subdivision Regulations

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section or remaining portion of these Regulations.

### **Section 1240 - Application of State Law**

---

Where any of the procedural provisions of these regulations are or become in conflict with the State Statutes regulating such procedure, the mandatory provisions of the State Statutes shall control.

### **Section 1250 - Repeal of Former Zoning Ordinances**

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All prior Zoning and Subdivision Ordinances of the Town of Middlebury and amendments thereto have been (or are hereby) repealed.

#### Appendices

*Note: Appendices are posted on the Town Web site and can be viewed at the Planning & Zoning office. For fee questions call (802) 388-8100 x210.*

- (A) Fee Schedule
- (B) Schedule of Fines and Waiver Fees
- (C) Zoning Maps (same as Town Plan Land Use District Maps)
- (D) Historic Landmarks and Contributing Buildings
- (E) FEH (Fluvial Erosion Hazard) Area Maps

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