

# ARTICLE I – ENACTMENT, INTENT AND DEFINITIONS OF ZONING ORDINANCE

## **Section 101 - Enactment**

In accordance with the Vermont Planning and Development Act, hereinafter referred to as the "Act", 24 V.S.A., Chapter 117, Section 4411, et seq., there are hereby established Zoning Regulations for the Town of Fair Haven which are set forth in the text and maps that constitute these regulations. These regulations shall be known as the "Town of Fair Haven Zoning Regulations."

## **Section 102 - Intent**

It is the intent of these Zoning Regulations to provide for orderly community growth, and to further the purposes established in the "Act", 24 V.S.A., Chapter 117, Section 4302, and to implement the duly adopted Town Plan.

## **Section 103 - Word Definitions**

Except where specifically defined herein, all words used in these Regulations shall carry their customary meanings. Words used in the present tense include the future and the singular includes the plural; the word "lot" includes "plot"; the word "shall" means mandatory; "occupied" or "used" shall be considered as though followed by "or intended, arranged or designed to be used or occupied"; "person" includes individual, partnership, association, corporation, company or organization; "Construction" includes reconstruction, structural alteration, demolition, or erection of a structure. The word "Act" in these Regulations shall be considered as though followed by "as amended from time to time."

## **Section 104 - Interpretation**

Doubt as to the precise meaning of any word used in these regulations shall be clarified by the Zoning Board of Adjustment.

## **Section 105 - Term Definitions**

**Accessory Apartment:** A separate, complete housekeeping unit that is located within or appurtenant to an owner-occupied single family dwelling and has sufficient wastewater capacity, and does not exceed 30 percent of the total habitable floor area of the single family dwelling and meets all applicable setbacks, coverage and parking requirements of the bylaws.

**Accessory Building - Small:** One small accessory building associated with residential use which is less the 64 square feet in floor area, less then eight (8) feet in height and is not located within the required setback areas.

**Accessory Use or Accessory structure:** A use or structure customarily incidental and

subordinate to the principle use or structure and located on the same lot. Examples of accessory structure include, but are not limited to the following: shed, garage, swimming pool, dish antenna. See also Section 917.

**Accepted Agricultural practices:** The use of land for raising crops or animals, as defined by the Secretary of Agriculture, Food and Markets, in accordance with the Act [§4413(d)]. See section 1202.

**Agricultural Structure:** See farm structures.

**Animal Grooming:** A farrier service, pet grooming service, veterinary service or other similar services for care of animals.

**Area of Special Flood Hazard:** The land in the flood plain within a community subject to a one percent or greater chance of flooding in a given year. The area includes all A zone designations on the Flood Insurance Rate Map

**Auto Service Station:** Building or land which is used primarily for the sale of motor fuel and oil, or for lubrication, washing, repair or servicing of vehicles. See also Section 407.

**Bar:** See Night Club.

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

**Basement:** A story partly or wholly underground. A basement shall be counted as a story if the vertical distance between its floor and ceiling at any point is over five feet.

**Bed & Breakfast:** An owner-operated inn for the accommodation of the traveling public providing lodging and meals in a family atmosphere. A country inn may include lodging, housing for owners and employees, and public dining facilities.

**Board:** The Fair Haven Zoning Board of Adjustment.

**Building:** Any structure having a roof (including an awning or other similar covering, whether or not permanent in nature) and intended for the shelter, housing or enclosure of persons, animals or materials.

**Building Area:** Total of area taken on a horizontal plane at the main finished grade level of all buildings exclusive of uncovered porches, terraces and steps, measured between the exterior faces of walls or, where there are no walls, between the exterior face of the outermost roof supports.

**Building Coverage:** The percentage which the total area of all buildings on the lot bears to the area of the lot.

**Building Height:** The vertical distance from the average finished grade surrounding the building to a the highest point of the roof.

**Building Line:** A line parallel to a street at a distance equal to the required front yard or at a greater distance when otherwise legally established by the municipality or by private covenant.

**Cabaret:** See Bar and/or Night Club

**Camp:** A building suitable for seasonal or temporary living purposes and never occupied for more than three (3) months in any twelve (12) month period and without indoor plumbing facilities.

**Changeable copy sign:** A sign or portion thereof with characters, letters or illustrations that can be changed or rearranged without altering the face of the sign.

**Church:** An institution that people regularly attend to participate in or hold religious services, meetings and other activities. The term church shall not carry a secular connotation and shall include buildings in which religious services of any denomination are held or where clergy reside.

**Conflict of Interest** means any one of the following:

1. A direct or indirect personal interest of a commission/board member/zoning officer, his or her spouse, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother or sister in law, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending.
2. A direct or indirect financial interest of a commission/board member/zoning officer, his or her spouse, household member, child, stepchild, parent, grandparent, grandchild, sibling, aunt or uncle, brother or sister in law, business associate, employer or employee, in the outcome of a cause, proceeding, application or any other matter pending.
3. A situation where a commission/board member/zoning officer has publicly displayed a prejudgment of the merits of a particular proceeding before the commission/board. This shall not apply to a member's particular political views or general opinion on a given issue.
4. A situation where a commission/board member has not disclosed ex parte communications with a party in a proceeding before the commission/board.

**Community Care Home:** See Residential Care Home

**Community Center:** A public or private meeting hall, place of assembly, museum, art gallery, library, education facility, or uses of a similar nature, not operated primarily for profit.

**Corner Lot:** Property facing on two streets shall be considered to have two front yards. The remaining acreage shall be considered a side yard when determining set-back requirements.

**Country Inn:** See Bed & Breakfast.

**Dance Hall:** A room, hall, eating place, or building which is open to the public, for which admission is charged at all times and occasions when dancing occurs.

**Development (Outside the Flood Hazard Area):**

- (1) any construction which serves to create or to alter the dimensional aspects of the exterior of any structure. (re-siding, and reshingling shall not be considered alterations.)
- (2) any construction which serves to create, add, expand, or change the use of any structure or land.
- (3) any relocation of a structure, or section of a structure from, to, or upon a lot.
- (4) an activity or use of land or a building (such as quarrying, excavating, road building, or subdivision) which will expand or change its present use.

**Development (Within the Flood Hazard Area):** 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.

**District:** A specific portion of the Town as established by the provisions of these regulations and the zoning map.

**Dwelling:** A building or part of a building which contains living, eating and sleeping accommodations for permanent occupancy.

**Dwelling, Duplex:** Building used as living quarters by two families, living independently of each other. (does not include accessory apartments)

**Dwelling, Single-Family:** A detached building (including a manufactured home) used as living quarters by one family.

**Dwelling, Multi-Family:** Building used as living quarters by three or more families, living independently of each other.

**Dwelling Unit:** A portion of a building occupied or suitable for occupancy as a residence and arranged for the use of one or more individuals living as a single housekeeping unit.

**Family:** One (1) or more persons living, sleeping, cooking and eating on the same premises as a single housekeeping unit, provided that unless all members are related by blood, marriage or adoption, no such single housekeeping unit shall contain more than five (5) members.

**Farm Structure:** A building, enclosure, or fence for housing livestock, raising horticultural or

agronomic plants, or carrying out other practices associated with accepted agricultural or farming practices, including a silo, as “farming” is defined in subsection 6001(22) of Title 10, but excludes a dwelling for human habitation. See also sections 1202 and 923.

**Fence:** Anything constructed or erected to act as a barrier to travel either on foot or by vehicle. A fence is considered a structure for zoning purposes. Temporary garden fences are exempt. A fence will be considered structure unless it is four (4) feet or less in height and is used to enclose a garden or animal pen.

**Floodproofed or Floodproofing:** Any combination of structural and non-structural additions, changes, or adjustments to structures that reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

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

**Flush-mounted sign:** A flush-mounted sign is one that is mounted flat to a wall.

**Free Standing sign:** Any sign which is wholly independent of a building for support.

**Guest House:** The letting of rooms or furnishing of board in a dwelling by the occupant thereof to a total of not more than six (6) persons in addition to the family of such occupant.

**Hazardous Waste Management Facility:** Hazardous waste management facility for which a notice of intent to construct has been received under 10 V.S.A. §6606a.

**Health Care Facility:** Any establishment where human patients are examined and treated by doctors or dentists but not hospitalized overnight.

**Health Club:** A facility where members or non-members use equipment or space for the purpose of physical activity.

**Home Occupation:** The use of a minor portion of a residence and use of a residential accessory building by a resident for an occupation that does not have an undue adverse effect, or change the character of the district. See section 901

**Hotel, Inn, Motel:** A building or portion thereof kept, used, maintained, advertised or held out to the public to provide overnight accommodations to said public for compensation, by the renting of rooms or a bed within a room. The rental of an entire dwelling unit does not constitute a lodging operation.

**Industry:** Includes the following

- a. Manufacturing, including the production, assembling, processing, cleaning, testing, and distribution of materials, goods, foodstuffs, and products in plants.

- b. Wholesaling or storage facilities.
- c. Scientific laboratories or research facilities.
- d. Industrial park.
- e. Laundry or cleaning facilities.
- f. Bulk materials sales or storage.
- g. Machinery sales, storage, rental, or repair.
- h. Trade or construction shops.
- i. Utility plants or facilities.
- j. Transportation facilities.
- k. Earth and/or mineral resource extraction and processing.

**Industry, Light:** includes the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales and distribution of such products but excluding heavy industrial processing. Includes research facilities, storage facilities and similar uses.

**Informational sign board:** A sign board placed on municipal or school property for the purpose of providing information about town and school meetings, events and public notices that have a community wide benefit.

**Impervious Surface:** Means any manmade surfaces including paved and unpaved roads, parking areas, roofs, driveways and walkways from which precipitation runs off rather than infiltrates.

**Lodge:** See Hotel.

**Lot:** A parcel of land held in ownership separate from surrounding properties.

**Lot Area:** Total contiguous area within the property lines of a lot calculated by horizontal projection, but excluding any part thereof lying within the boundaries of any public body of water, or within any public vehicular right-of-way, existing or proposed.

**Lot Depth:** The mean distance between the lot frontage and the rear lot line measured at right angles to the lot frontage.

**Lot Frontage:** The length of any side of a lot which abuts a public or private right-of-way.

**Mobile Home:** A structure or type of manufactured home that is built on a permanent chassis and is designed to be used as a dwelling with or without a permanent foundation, includes plumbing, heating, cooling, and electrical systems, and is:

- Transportable in one or more sections; and
- at least eight feet wide or 40 feet long or when erected has at least 320 square feet or if the structure was constructed prior to June 15, 1976, at least eight feet wide or 32 feet long; or

- any structure that meets all the requirements of this subdivision except for size and for which the manufacturer voluntarily files a certification required by the U.S. Department of Housing and Urban Development and complies with the standards established under Title 42 of the U.S. Code. 10 V.S.A. § 6201(1)

**Modular (or Prefabricated) Housing:** A dwelling unit constructed on-site and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly, but is not constructed or equipped with a permanent hitch or other device allowing it to be attached or towed behind a motor vehicle, and which does not have permanently attached to its body or frame any wheels or axles.

**Mobile Home Park:** Any parcel of land under single or common ownership or control which contains, or is designed, laid out or adapted to accommodate more than two mobile homes. Nothing herein shall be construed to apply to premises used solely for storage or display of mobile homes. Mobile Home Park does not mean any parcel of land under the ownership of an agricultural employer who may provide up to four mobile homes used by full-time workers or employees of the agricultural employer as a benefit or condition of employment or any parcel of land used solely on a seasonal basis for vacation or recreational mobile homes. 10 V.S.A. § 6201(2).

**Mobile Home Lot:** Any parcel of land provided for the placement of a single mobile home for the exclusive use of its occupants.

**Motel:** Building containing individual units with separate outside entrances and which are rented primarily to the traveling public.

**Motor Home:** Vehicle equipped with sleeping accommodations and possible kitchen and other facilities designed for highway travel.

**Night Club:** A place of business whose primary function is serving alcoholic beverages and providing entertainment, including dancing.

**Non-conforming Lot:** A lot or parcel that does not conform to the present bylaws covering dimensional requirements but was in conformance with all applicable regulations at the time of its origin.

**Non-conforming Structure.** A structure or part of a structure 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 structure improperly authorized as a result of error by the administrative officer.

**Non-conforming Use.** A use of land, building or premises 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.

**Nursing Home:** A place, other than a hospital, which maintains and operates facilities, for profit or otherwise, accommodating two or more persons unrelated to the home operator, who are suffering from illness, disease, injury or deformity and require twenty-four hour nursing care. Nursing home shall include Intensive Care, Skilled Care, Intermediate Care, Minimum Nursing Care and Convalescent facilities.

**Office:** See Professional/Business Office.

**On-Premises Sign:** Any accessory sign which directs attention to a business, profession, commodity, service or entertainment carried on, sold, or offered on the same premises.

**Open Space:** The space on a lot not occupied by a structure or building or paved area.

**Outdoor Recreation:** Outdoor sports such as skiing, hiking, tennis, golf, horseback riding, fishing, hunting, swimming, and similar activities which may require structures necessary to and incidental to the actual carrying on of such activities.

**Park, Privately Owned:** An area designed primarily for a specific recreational use such as a skate-park.

**Park, Public Use:** A tract of land set aside for public use and enjoyment.

**Parking Space:** A designated space outside the right-of-way or driveway, used for the parking of one motor vehicle, with practical access to the street or right-of-way, and surfaced sufficiently for year-round use. See Article VII.

**Place of Worship:** See Church.

**Planned Unit Development:** means one or more lots, tracts, or parcels of land to be developed as a single entity. The plan may propose any authorized combination of density or intensity transfers or increases, as well as the mixing of land uses. This plan, as authorized, may deviate from bylaw requirements that are otherwise applicable to the area in which it is located with respect to lot size, bulk, or type of dwelling or building, use, density, intensity, lot coverage, parking, required common open space, or other standards.

**Playground:** An outdoor area set aside for recreation and play, usually equipped with seesaws, swings and the like.

**Premises:** A lot, as defined in this section.

**Principal Building:** A building in which the main, primary or principal use of the property is conducted. Attached garages, sheds, covered porches, or carports open at the sides but roofed, are part of the principal building.

**Private Club:** A building or portion of a building or use open to club members and their

guests, and not to the general public, and not operated for profit.

**Professional / Business Office:** Building or portion of a building used to offer a service of a professional, business, or medical nature.

**Projecting Sign:** A sign that is wholly or partly dependent upon a structure for support and which projects more than 6 inches from such structure.

**Property Line:** The line dividing adjacent parcels of land or a parcel of land from a public highway right-of-way.

**Public Assembly Use:** The use of a building or portion thereof for meeting or gathering such as in an auditorium, theater, public hall, or meeting hall.

**Public Water Supply:** Public water supply areas and associated facilities.

**Rear Lot Line:** A lot line opposite and most distant from any lot frontage.

**Regional Solid Waste Management Facility:** Regional Solid Waste Management Facilities certified under 10 VSA chapter 159.

**Residential Care Home / Group Home.** A facility serving as the primary residence of multiple handicapped or disabled persons and operating as a single housekeeping unit. See also section 919.

**Restaurant:** An establishment that primarily serves food to persons seated within the building and / or adjacent outdoor seating. This includes cafes, tearooms, and outdoor cafes.

**Retail Sales or services:** Includes shop and store for the sale of retail goods, personal service shops, department stores and commercial schools, and shall exclude any drive-up services, free-standing retail stands, auto service stations, motor vehicle repair service shops and motor vehicle sales dealerships.

**Retail sales or services, small:** A building or structure, not exceeding 5,000 square feet in gross square footage, which otherwise meets the definition of retail sales or services.

**School:** A building or portion thereof used for educational purposes including parochial, private or public schools, and institutions of higher learning certified by the Vermont Department of Education.

**Setback:** The distance from the lot frontage or a property line to a building or structure, excepting fences, signs and stone walls, measured to its nearest wall, porch, or deck, but not to steps or normal roof overhang.

Front Setback: Distance between a building or structure and lot frontage.

Rear Setback: Distance between a building or structure and a rear lot line.

**Side Setback:** Distance between a building or structure and a property line other than lot frontage or a rear lot line.

**Sign:** Any structure, display, device or representation which is designed or used to advertise or call attention to any thing, person, business, activity or place and is visible from any highway or other right-of-way. It does not include the flag, pennant or insignia of any nation, state or town. See Article VIII.

**Sign Plaza:** A free standing ladder type structure with individual sign panels of uniform design and size.

**Slate quarrying & other extraction:** a pit in the earth from which slate or other minerals are extracted. See section 410.

**State or Community Owned facilities and institutions:** buildings and facilities owned by the Town of Fair Haven or the State of Vermont.

**Street:** A thoroughfare, road, highway or public way open and available to public use. "Street" shall mean the entire width of the right of way.

**Street Line:** The line dividing the street and a lot as dedicated by deed or record. Where the width of a street is not established or can not be determined, the street line shall be considered to be 25 feet on each side of the center line of the traveled portion of the street.

**Structure:** Anything which is constructed or erected on a lot for purposes other than on-site recreational use or aesthetics and which is not easily moved from, to, or upon a lot. Examples of "Structure" include principal buildings, detached accessory buildings, covered porches, decks, signs, dish antennas larger than 48 inches, tennis courts, in-ground swimming pools and pools bounded by decks, and other similar construction. A fence will be considered a structure unless it is four (4) feet or less in height and is used to enclose a garden or animal pen. "Structure" is not intended to include items such as children's playground equipment, tree-houses, trellises, sundials, landscaping ponds/pools, unattached above ground pools, mailboxes, flag poles, bird houses and feeders, basketball hoops whether mounted on buildings or freestanding, buildings used solely for the shelter of household pets (not raised for commercial purposes), and other such construction.

**Subdivision:** A lot which has been divided into two or more lots.

**Substantial Improvement:** Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started or (b) if the structure has been damaged, and is being restored to its condition before the damage occurred. The term does not include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Sites.

**Temporary:** Unless otherwise defined, shall mean up to six (6) months.

**Tourist Cabin:** A residential structure with or without kitchen facilities, and primarily intended for the accommodation of traveling public.

**Trailer:** Any vehicle manufactured for use as sleeping, camping, or living quarters mounted on wheels and any vehicle which is customarily towed by a motor vehicle and used for carrying goods, equipment, machinery, boats or used as an office.

**Travel Trailer:** A mobile vehicle designed for short-term occupancy, overnight lodging, or camping purposes, capable of being towed or self-propelled or a camper body usually mounted on a truck.

**Veterinary Services:** See Animal Grooming

**Wholesale Sales / Services:** An establishment primarily engaged in selling and / or distributing merchandise to retailers, to industrial, commercial, institutional, or business users, or to other wholesalers.

**Yard, Front:** An open space between the principal building and the front lot line, extending the full width of the lot, or in the case of a corner lot, extending along all streets.

**Yard, Rear:** An open space between the principal building and a rear lot line, extending the full width of the lot, except that in the case of a corner lot, there is no rear yard.

**Yard, Side:** An open space between the principal building and a side lot line, extending from the front yard to the rear yard, or in the case of a corner lot, extending along all property lines except street lines. Any yard not a front yard or a rear yard shall be deemed a side yard.

**Yard, Depth or Width of:** The depth of front and rear yards and the width of side yards shall be measured perpendicularly to the respective lot lines.

## **ARTICLE II - ESTABLISHMENT OF ZONING DISTRICTS AND MAP**

### **Section 201 – Zoning Districts**

Fair Haven is hereby divided into the following Zoning Districts as shown on the Town Zoning Map:

- Downtown
- Residential
- River Mixed Use
- Commercial
- Industrial
- Rural

- Recreation
- Watershed
- Flood Hazard Area

The permitted and conditional uses in each district are as specified in Article III: Table of Uses – Table 1.

The minimum lot sizes, set back requirements, lot frontage requirements, and height limitations for each district are as specified in Article III: Table 2 – Dimensional Requirements.

### **Section 202 – Zoning Map**

The location and boundaries of Zoning Districts are established as shown on the Official Zoning Map which is hereby made a part of these zoning regulations. No changes shall be made to the Official Zoning Map except in accordance with the procedures for amending zoning regulations.

Regardless of the existence of copies of the Official Zoning Map which may periodically be made or published, the Official Zoning Map shall be that located in the Town Office and shall be the final authority as to the current zoning status of land and water areas.

### **Section 203 – Zoning District Descriptions**

#### ***1. Downtown***

**Purpose:** To promote renovation and re-use of historic structures in Downtown Fair Haven and to promote the construction of buildings in keeping with the existing built environment and The Fair Haven Green. Regulations for this district are intended to promote commercial and residential activity and maintain the area as the center of activity for the town. Regulations are flexible to allow for creative uses of upper stories for residential, commercial, or entertainment purposes.

#### ***2. Residential***

**Purpose:** To promote single- and multi-family residential neighborhoods within a short distance of Fair Haven Village and allow for uses incidental to or harmonious with the area's character. No commercial or industrial use may be established within the residential district except for permitted home occupations.

#### ***3. River Mixed Use***

**Purpose:** to promote a mix of residential and commercial use of land and buildings immediately adjacent to the Downtown District. Mixed use structures are encouraged to provide for both small-scale commercial and upper-story dwelling units

#### ***4. Commercial***

**Purpose:** To promote commercial activity in the form of retail stores, restaurants, professional and business offices, light industry, and other establishments as detailed in the Table of Uses. Development should be in keeping with the character of the neighborhood and promote ease of access between neighboring parcels and uses for vehicles and pedestrians.

#### ***5. Industrial***

**Purpose:** To allow for light and heavy industry such as slate or stone works, machine shops, textile manufacture, laundry and dry cleaning plants or similar operations as described in the Table of Uses. These areas are separated from residential and natural areas to minimize use conflicts.

#### ***6. Rural***

**Purpose:** To maintain a balance between ongoing agricultural practices, slate quarrying, low density residential settlement, commercial use and light industrial uses in the town. Any residential development in this district should consider the effects of permitted quarries in the area.

#### ***7. Recreation Areas***

There are five areas within the town borders which are set aside as public recreational areas. They are as follows:

- (a) A small area of airport property used as a barbecue picnic recreation area;
- (b) Louis Faryniarz Playground - the area east of the Grade School known as the "playground";
- (c) The area at Fair Haven Union High School;
- (d) The area at the former "South School" on Academy Street
- (e) The area of the Fair Haven Green known as the Park.

#### ***8. Watershed***

**Purpose:** To protect the Town's water supply from contamination by prohibiting potentially threatening activities.

#### ***9. Flood Hazard Area***

**Purpose:** To maintain the flood water carrying capacity of all flood-prone areas in the Town and to ensure that any structures or uses permitted within these areas are properly protected from flood hazards.

### **Section 204 - Interpretation of District Boundaries**

If uncertainty exists with respect to the boundary of any Zoning District on the Zoning Map,

the Administrative Officer shall, upon consultation with the Planning Commission, determine the location of such boundary. The following shall serve as determining guidelines:

1. Zoning District lines following the center or centerline of a highway shall be construed as following to the centerline of the right-of-way of such highway as it exists on the effective date of these regulations.
2. Zoning District lines following property lines, utility easements, or the lines of survey maps on file in the Town Clerk's office shall be construed as following such lines or utility easements, as they exist on the effective date of these regulations.
3. Zoning District lines indicated as approximately following streams shall be construed as following the center line of such streams.

The Administrative Officer shall determine the boundaries of the designated flood hazard area by scaling distances on the Flood Boundary and Floodway Maps. Where interpretation is needed as to the exact location of a boundary, the Board of Adjustment shall upon appeal make the necessary interpretation. A person contesting the location of the boundary shall be given a reasonable opportunity to present his/her case to the Board of Adjustment and to submit his/her own technical evidence.

#### **Section 205 - Application of Regulations**

There shall be no land development except in conformance with these regulations herein specified for the District in which it is located.

### **ARTICLE III – TABLE OF USES**

#### **Section 301 - Zoning Regulations and Districts**

1. A person shall not use any land or structure within the town except in conformance with the use provisions of the Table of Uses in Article III.
2. For each district, permissible uses are given one of four designations:
  - a. **Exempt (E)** uses and structures are permissible without obtaining any permit from the town.
  - b. **Notified (N)** structures are permissible without obtaining any town permit *but* require a written notification to the Administrative Officer of an intent to build.
  - c. **Permitted (P)** uses and structures are permissible upon issuance of a Zoning Permit by the Administrative Officer. Such uses may be required to meet specific local or state requirements or be subject to Site Plan Review (Article V) prior to issuance of a permit.
  - d. **Conditional (C)** uses and structures are permissible only upon issuance of a Conditional Use Permit by the Zoning Board of Adjustment (Article IV)

3. Uses not listed as exempt, *notified*, *permitted*, or *conditional* are prohibited in the district.
4. No use or development of land may commence unless such use or land development conforms to the applicable dimensional requirements set forth in Table II below.
5. In case of a conflict between the requirements in the following tables and other applicable sections containing more stringent requirements, such other sections shall control.

TABLE 1 - TABLE OF USES

USE / DISTRICT	Down town	Res	Com	Ind	Rural	Water shed	Flood Hazard	River Mixed Use	See also
Accepted Agricultural		E	E	E	E		E	E	See Section 1202
Accepted Forestry / Silvicultural Practices		E	E	E	E		E	E	See Section 1202
Accessory Apartment	P	P	P	P	P		C	P	
Accessory Structure or use Use	P	P	P	P	P		C	P	See Section 917
Animal grooming/vet services	P		P	P	C				See Section 924
Auto Service Station	C		C	C	C				See Section 407
Camp					P				
Cemetery		P	P		P				
Child Care Facilities	C	C	C		C		C	C	See Section 921
Churches & Places of Worship	P	P	P		P			P	
Country Inn / B & B		C	P		P			P	
Dwelling, duplex	C	P	P		P			P	
Dwelling, multi-family	C	P	C		P			C	
Dwelling, single family		P	P	C	P		C	P	
Farm Structures (accepted practices)		N	N	N	N		C	N	See Section 923
Financial institution	P		P		C			P	
Free-standing antenna, transmitter, or relay station		C	C	C	C				See Section 909
Guest House (up to 6 guests)		P	C		P			P	
Health Care Facility	C	C	C		C			C	
Health Club	P		P		C			P	
Home occupation	P	P	P	C	P		C	P	See Section 901
Hospital or clinic			P		C			C	
Hotel, Lodge, Inn, Motel	C		P		C			C	
Industry				C	C				See Section 410
Industry, light			C	P	C				See Section 411
Mobile home park		C			C				See Section 408
Night club/bar	C		C		C			C	
Nursing Home	C	C	C		C			C	
Oil and gas exploration and development				C	C		C		See Section 409
Outdoor recreation facility	C	P	P	P	P		C	P	
Park, public use	P	P	P		P		C	P	
Private club	C		C		C			C	
Professional / business office	P		P		C			P	
Public assembly use	C		C						
Public Utilities	C	C	C	C	C			C	See Section 406
Public Water Supply						P			

USE / DISTRICT	Down town	Res	Com	Ind	Rural	Water shed	Flood Hazard	River Mixed Use	See also
PUD – mixed uses			C		C			C	See Article X
PUD – residential		P			P				See Article X
Regional Solid Waste Management Facility				C					See Section 922
Hazardous Waste Management Facility				C					See Section 922
Removal of topsoil / gravel				C	C				See Sections 404/405
Residential Care / Group Home - Up to eight persons		p	p		p		C	p	
Restaurant	P		P	C	C			C	
Commercial Drive Through	C		C	C	C			C	
Retail sales service	P		P	P	C			C	
Retail sales /service, small	P		P	P	C			C	
Schools, public or private	C	P	P		P			C	
Slate quarrying & other extraction				C	C				See Section 412
State or community-owned facilities and institutions	P	C	P	P	C			P	
Wholesale sales / services	C		P	C	C			C	

Table 2 - Dimensional Requirements

Dimensions	Down town	Resident	Comm.	Industry	Rural	Water shed	Flood Hazard	Mixed River Use
Minimum lot size		40,000	20,000	20,000	40,000			<u>20,000</u>
...if connect to water or sewer		20,000			20,000			
..if connect to water AND Sewer		10,000			10,000			
Min lot area per family unit		40,000	40,000	40,000	40,000			<u>40,000</u>
...if connect to water or sewer		20,000	20,000	20,000	20,000			<u>20,000</u>
...if connect to water AND sewer		10,000	10,000	10,000	10,000			<u>10,000</u>
Min lot width		100'	100'	150'	150'			<u>75'</u>
Front yard**	-	30'	40'	40'	30'			<u>15'</u>
Side yards	-	20'	20'	20'	30'			<u>15'</u>
Rear yard	-	30'	30'	30'	30'			<u>30'</u>
Max Building Coverage		30%	30%	30%	-			<u>40%</u>
Max building height	60'	40'	50'	40'	<u>40'</u>			<u>40'</u>
Min setback from shoreline		-	-	-	50'			

\*\* Except as provided for in Section 1001, where the setback may be reduced as detailed.

## **ARTICLE IV - CONDITIONAL USES**

### **Section 400 – Conditional Uses**

No development listed as Conditional in Article III may commence without receipt of a conditional use permit from the Board of Adjustment following a public hearing in accordance with Article XVI. In making its determination, the Board shall consider the provisions of this article and all other relevant requirements from these regulations.

**Section 401** - Reserved for future use.

### **Section 402 – Conditional Use Submission requirements:**

The owner shall submit two (2) sets of a site plan and supporting data to the Zoning Board of Adjustment which shall include the following information presented in drawn form and accompanied by written text.

1. Description of the property giving location, names and addresses of the owners of the property and of the applicant; scale of map, north point, and date.
2. Survey or scale map of the property showing existing features, including structures, floor plans, easements, rights-of-way, streets, access points, zoning classification, existing surface water (brooks, ponds, etc.) if any, and the location of proposed structures with distance from lot lines indicated.
3. Site plan showing proposed structure(s), locations and land use areas; roads, access points, driveways, traffic circulation, parking and loading spaces and pedestrian walks; utilities both existing and proposed, including placement of poles; water wells and wastewater disposal systems; landscaping plans, including site grading, screening or fencing, and gating; surface storm water draining; and existing and proposed equipment such as propane tanks, transformers, etc.
4. The location and size of proposed signs.
5. Construction sequence and anticipated time schedule for completing each phase for construction, parking spaces and landscaping areas of entire development.

### **Section 403 –Standards For Review**

#### ***1. General Standards -***

These general standards require that the proposed conditional use not result in an undue adverse effect on any of the following:

#### **(a) The capacity of existing or planned community facilities, including:**

*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, any permit shall be contingent upon receipt of applicable local and State on-site water supply and wastewater disposal permits).

*School Impact.* The project shall not cause an unreasonable burden on the ability of the Fair Haven Grade School or Fair Haven Union High School to provide educational services.

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

In making its determination on any of the above, the Board may solicit input from town officials, the school board, fire department, rescue squad, police department, public works or recreation.

**(b) The character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the Fair Haven Town Plan.**

Conditional uses are created with the intent of allowing for a diversity of development types in various districts while at the same time retaining the unique character of each neighborhood in the town. 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 area affected", the Board shall consider the following:

- i. Existing neighborhood uses, types of buildings, noise and traffic
- ii. Historic buildings and features; intensity, uniformity or mix of uses and buildings; mass, scale and spacing of buildings; scenic views, aesthetics, open space
- iii. Privacy, security, identity, and cohesiveness.

**(c) Traffic on roads and 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 Board shall consider:

- Existing traffic patterns and volumes; and
- Town traffic plans and studies; and
- Traffic engineering studies that may be required of the applicant.

**(d) Bylaws and municipal ordinances in effect in the town;**

**(e) Utilization of renewable energy resources**

The project shall not substantially interfere with natural air flow or sunlight upon neighboring structures or public / private gathering areas.

**2. *Site Plan Considerations***

The project shall meet the objectives of Section 504 – Site Plan Review Considerations.

**3. *Use-specific requirements***

In addition to the standards set forth above, standards set forth in sections 404-412 shall apply to all applications for conditional use review within the appropriate district.

Conditions may be imposed regarding the timing and phasing of development to minimize the impact on community facilities and services; or the applicant may be required to contribute funds, facilities and or physical improvements toward the provision of new or expanded facilities to mitigate the impacts of the proposed development.

**Section 404 – Removal of Topsoil**

No earth or top soil shall be removed from the premises in any district without first obtaining a conditional use permit, except as surplus material resulting from a bona fide construction, landscape, or agricultural operation being executed on the premises, and provided no permanent damage is done to the landscape.

1. No removal of topsoil shall take place where there are less than four inches of natural topsoil or loam cover.
2. A minimum of four inches of topsoil or loam shall remain in all disturbed areas.
3. All disturbed areas shall be seeded with a suitable (and, where possible, indigenous) cover crop or put into active cultivation.

**Section 405 – Removal of sand, gravel, or clay**

No sand, gravel, or clay shall be removed from the premises in any district without first obtaining a conditional use permit from the Zoning Board of Adjustment, except as surplus material resulting from a bona fide construction, landscape, or agricultural operation being executed on the premises, and provided no permanent damage is done to the landscape.

1. The applicant shall submit a plan showing existing grades in the area from which the above material is to be removed, together with finished grades at the conclusion of

the operation.

2. The plan shall provide for proper drainage of the area of the operation during and after completion and no bank shall exceed a slope of one foot of vertical rise in one and one-half feet of horizontal distance except in ledge rock. No removal shall take place within 20 feet of a property line except that where the grade from a property line rises toward the lot where removal is to take place, material lying above the grade at the property line may be removed.
3. At the conclusion of the operation or of any substantial portion hereof, the whole area where removal takes place shall be covered with four inches of top soil, or an amount equal to the pre-existing depth of same, even if less than four inches and seeded with a suitable cover crop, except where ledge rock is exposed.
4. Before a permit is granted under this section, the applicant shall post a bond with the Treasurer of the Town of Fair Haven in an amount approved by the Board of Adjustment as sufficient to guarantee conformity with the provisions of the permit issued hereunder.

#### **Section 406 – Public Utilities**

*Note: This section shall not apply to public electric power generating plants and transmission facilities, regulated under 30 V.S.A. §248 by the Vermont Public Service Board.*

All setbacks shall be a minimum of 50 feet when a permitted use of an adjacent property (whether upon issuance of a Zoning Permit or in a Planned Unit Development) is one, two, or multi-family dwellings.

#### **Section 407 – Auto Service Station**

1. An auto service station shall not be located within 150 feet of any property line of land occupied by a school, hospital, library, or public assembly building.
2. The minimum lot area shall be 30,000 square feet.
3. There shall be a minimum of 150 feet of lot frontage.
4. The minimum lot depth shall be 150 feet.
5. Pumps and other service devices shall be located at least 50 feet from all other property lines.
6. All storage of fuel and oil shall be at least 50 feet from all property lines.
7. Repair work, excepting minor servicing, shall be performed inside a building.

8. A landscape area shall be maintained along all lot frontage, except where such area is crossed by necessary access roads.
9. The open storage of inoperable or retired vehicles shall be screened from public highway view and from view on adjacent lands by fences or coniferous trees or shrubs. This provision is a continuing requirement and responsibility of the owner.
10. Entrances and exits, a maximum total number of two, shall be constructed so as not to cause unreasonable highway congestion or unsafe traffic conditions, and shall be at least 15 feet in width.

#### **Section 408 – Mobile Home Park**

In addition to the standards set forth in section 403, (Conditional Use- Standards for Review), the Board shall consider the following when reviewing an application for the establishment and/or expansion of a mobile home park:

- A. Mobile home lots in a Mobile Home Park shall not be located within a regulated flood way or flood plain.
- B. All mobile home parks shall have individually marked (not necessarily surveyed) lot lines for units, adequate driveways, and sufficient off-street parking.
- C. All mobile home parks shall provide sufficient drainage to prevent water accumulation during a storm and standing water after a storm on roadways, driveways or individual lots.
- D. A mobile home park shall consist of no more than 20 single wide mobile home lots or 10 doublewide mobile home lots.
- E. Each mobile home lot shall be at least 10,000 square feet in area, and shall have a minimum lot width of at least 80 feet and a minimum lot depth of at least 100 feet.
- F. All structures shall be so built and maintained so that children cannot gain access to the space beneath the structure. If the structure is elevated above the ground, suitable siding shall cover all open spaces under the structure.

Such structures shall be installed on footers or piers or on a reinforced concrete pad or other permanent foundation so as to provide anchorage and stabilization.

If the structure is a mobile home (single-wide or double-wide), it shall be installed on level ground in accordance with the manufacturer's set-up instructions or the generally accepted set-up procedures utilized by local professional mobile home movers and set-up firms.

- G. Minimum side yard setbacks for the mobile home shall be 15 feet from all mobile

home lot edges. All buildings not physically connected to a mobile home shall be at least fifteen (15) feet from all buildings on that lot.

- H. Any road, whether or not that road is proposed to be conveyed to the town shall be constructed according to the “Town Road and Bridge Standards of the Town of Fair Haven”
- I. Dead end roads shall be constructed according to Vermont Agency of Transportation Standards for Development Roads, Standard A-76 (Turn -a-round for dead end streets)
- J. At least two (2) off street parking spaces shall be provided for each mobile home lot. Each parking area shall be a minimum of 9 feet by 25 feet. Minimum surface treatment of such parking spaces shall be gravel. The space may be included in the minimum lot area requirement and shall be indicated on the site plan.
- K. Provisions for the following facilities may be made by the owner: laundry, recreation building, central maintenance shed, central TV antenna system, and underground utilities, including fuel storage.

#### **Section 409 – Oil and Gas Exploration and Development**

See Appendix A for conditions.

#### **Section 410 – Industrial and Related Uses**

1. Expected traffic flow to and from the site must not be beyond the capacity of local roads to handle. Evidence of compliance shall consist of certification from the Town Manager that local roads in the vicinity of the use are either presently adequate or projected to be upgraded to handle the amount and weights of the vehicles expected at the site.
2. The design of the intersection of the access road to the site with local roads must conform with the criteria contained in the Standards for Development roads issued by the Vermont Department of Highways (Document A-76).
3. The development or use must not destroy or significantly alter wetlands or natural areas identified in the Town Plan or by the State of Vermont.
4. No noise which exceeds 70db(A) at the property line, or which represents a significant increase in noise levels in the vicinity of the development so as to be incompatible with the reasonable use of the surrounding area, shall be permitted.
5. No activity shall be permitted which shall cause or result in any noticeable, clearly apparent vibration of or on the property of another landowner under normal conditions.
6. Smoke. No emission shall be permitted of any air contaminant for more than a period or

periods aggregating six minutes in any hour which has:

- a) A shade, or density, greater than no. 2 of the Ringlemann Chart, or
  - b) a shade, or density, of such capacity as to obscure an observer's view to a degree greater than does smoke described in subsection a) above.
7. Fly Ash, Dust, Fumes, Vapors, Gases, and Other Forms of Air Pollution. No emission shall be permitted which can cause any damage to health, to animals, vegetation, or other forms of property which can cause excessive soiling at any point on the property of others.
  8. Odors. No emission of detectable objectionable odor beyond the property line of a premise shall be discharged, caused, allowed, or permitted.
  9. Fire, Explosive, or Safety Hazard. No fire, explosive, or safety hazard shall be permitted which significantly endangers other property owners or which results in a significantly increased burden on municipal facilities.
  10. Storage of Flammable Liquids. The storage of any highly flammable liquid in tanks above ground with unit capacity greater than 550 gallons shall be prohibited, unless such tanks, up to and including 10,000 gallon capacity, are placed not less than 200 feet from all property lines. All tanks with a capacity of greater than 550 gallons shall be properly retained with dikes having a capacity of not less than one and one-half times the capacity of the tanks surrounded.
  11. Hazardous Materials. All generation, handling, and disposing of hazardous materials shall be in compliance with Chapter 6, Subchapter VI of the Environmental Protection Regulations adopted by the Vermont Agency of Environmental Conservation.
  12. Solar Access. No development shall be permitted which would eliminate the year-round use of existing or approved (but not yet constructed) solar power or wind generation devices which are or are proposed to be mounted on residential or commercial structures and access to natural sunlight and natural air flow.
  13. Corner Visibility. Clear vision must be maintained at all times for motorists at all street intersections and private driveways. Nothing shall be erected, placed, planted or allowed to grow in such a manner as to materially impede the vision of motorists.
  14. For mineral and earth resource extraction uses:
    - (a) A plan for ongoing reclamation must be approved prior to the issuance of any land use permit.
    - (b) A bond or other security to insure compliance with the approved reclamation plan may be required by the Board of Adjustment for all extraction uses except mining and quarrying operations. In determining the amount of the bond required, the Board of Adjustment shall consider the past record of the developer and the financial health of

- the developer.
- (c) Fencing of sufficient height and strength to deny access to the public is required around any pit or excavation.
  - (d) Loads per truck shall not exceed the weight limits of the roads over which the truck will travel within Fair Haven.
  - (e) Loads must be covered when off-site or loaded so as not to spill while enroute.
  - (f) Lot line setbacks: In addition to the requirements of the dimensional table, all buildings, outdoor storage areas, paved areas, etc. shall be set back at least 20 feet from any lot line. The Board of Adjustment may waive a setback from one lot line if it finds that such setback would prevent the applicant from necessary location on a railroad siding, river, or public street.

#### **Section 411 – Light Industry**

All the conditions of Section 410: "Industrial and Related Uses" shall be met.

#### **Section 412 – Slate Quarrying and Other Mineral Resource Extraction and Processing:**

All the conditions of Section 410 (14): "Industrial and Related Uses" shall be met.

### **ARTICLE V – SITE PLAN REVIEW**

#### **Section 501 – Site Plan Review**

A prerequisite to the approval of any use, with the exceptions hereafter set forth, is the approval of site plans by the Planning Commission after public hearing in accordance with Article XVI with respect to the adequacy of traffic access, circulation and parking, landscaping and screening, and such other items as may be the subject of site plan approval under Section 504.

#### **Section 502 – Exemptions from Site Plan Review**

The following are exempt from the requirement for the site plan approval:

1. Signs;
2. One and two family dwellings which are not home occupations;
3. Any use requiring a Conditional Use Permit, except Planned Unit Development; and,
4. Minor changes or additions to existing uses, new uses or a change of use which the Planning Commission determines after a review of a properly submitted application, will have no significant impact upon adequacy of traffic access, circulation and parking, or landscaping and screening, protection of renewable energy resources, exterior lighting; the size, location and design of signs.

In the case of a PUD application, the hearing on such application and for site plan approval, if required, shall be warned and held at the same time.

### **Section 503 – Site Plan Filing Requirements:**

The owner shall submit two (2) sets of a site plan and supporting data to the Planning Commission which shall include the following information presented in drawn form and accompanied by written text.

1. Description of the property giving location, names and addresses of the owners of the property and of the applicant, scale of map, north point, and date.
2. Survey or scale map of the property showing existing features, including structures, easements, rights-of-way, streets, access points, zoning classification, existing surface water (brooks, ponds, etc.) if any, and the location of proposed structures with distance from lot lines indicated.
3. Site plan showing all proposed structure(s) locations and land use areas; roads, access points, driveways, traffic circulation, parking and loading spaces and pedestrian walks; utilities both existing and proposed, including placement of poles; water wells and wastewater disposal systems; landscaping plans, including site grading, screening or fencing, and gating; surface storm water draining; and existing and proposed equipment such as propane tanks, transformers, etc.
4. The location and size of proposed signs.
5. Construction sequence and anticipated time schedule for completing each phase for building, parking spaces and landscaping areas of the entire development.

### **Section 504 – Site Plan Review Considerations:**

1. In considering its action, the Planning Commission shall consider and may impose appropriate conditions and safeguards. The following objectives will be taken into consideration during this review:
  - (a) Maximum safety of pedestrian and vehicular circulation between the site and the street network.
  - (b) Adequacy of circulation, parking and loading facilities with particular attention to safety. The applicant shall demonstrate that:
    - (i) Sufficient space has been provided for loading and unloading of materials and for safe circulation on the site
    - (ii) Amenable pedestrian circulation within, to, and from the site has been provided
    - (iii) Wherever possible, on-site storm water drainage has been provided
  - (c) Adequacy of landscaping and screening in regard to achieving maximum compatibility and protection to adjacent property.
    - (i) All commercial and industrial land development may be required to be screened from adjacent properties where one, two or multi-family dwellings

are permitted by Zoning Permit or PUD; such screening to be by a fence or a buffer of natural plantings or coniferous trees or shrubs at least ten (10) feet tall and providing a continuous visual barrier.

- (ii) Industrial land development may be required to be screened from public highway view, such screening to be by a fence or a buffer of natural plantings or coniferous trees or shrubs at least ten (10) feet tall and providing a continuous visual barrier.

- (d) The Planning Commission may issue Site Plan Approval for a proposed development for a specified period of time, not to exceed four (4) years.

- (e) Exterior lighting shall be designed to eliminate direct light or glare directed toward public highways, adjacent properties, and the sky.

- (f) Protection of the utilization of renewable energy resources

- (i) Screening requirements may be varied to protect access to natural airflow and natural sunlight.

- 2. The issuance of Site Plan Approval shall not relieve the applicant, or his successors or assigns, from the obligation to obtain a zoning permit under these Regulations, and that permit shall only be issued if the proposed land development complies with all applicable provisions and conditions of the Site Plan Approval and the applicable requirements of these Zoning Regulations. No land development approved in a Site Plan Review shall be commenced until such zoning permit is obtained.

## **ARTICLE VI - NONCONFORMITIES**

### **Section 601 – Non-conforming Uses**

- 1. A non-conforming use of buildings or premises lawfully existing at the effective date of this ordinance or any pertinent amendment thereto, may be continued, and any building so existing which was designed, arranged, intended for, or devoted to a nonconforming use may be reconstructed, structurally altered, and the non-conforming use therein changed, all subject to the following regulations:
  - (a) A non-conforming use may be changed to a conforming use. A nonconforming use may be changed to another non-conforming use only with the approval of the Planning Commission and then only to a use which in the judgment of the Commission is of a lesser or no more nonconforming nature.
  - (b) No non-conforming use shall, if once changed into a conforming use, be changed back to a non-conforming use.
  - (c) No non-conforming use shall be extended or expanded except with the approval of the Planning Commission, which shall have determined that no greater detrimental effect upon the community will result.

- (d) No non-conforming use which has been discontinued for a period of one year shall be thereafter resumed.

### **Section 602 – Non-conforming Structures**

1. No building which does not conform to the requirements of this ordinance regarding building height limit, area, and width of lot, percentage of lot coverage, and required yards and parking facilities shall be enlarged unless such enlarged portion conforms to the ordinance regarding the forgoing building and lot requirements applying to the district in which it is located.
2. A nonconforming structure damaged by fire, accident, the act of God, or of the public enemy may be reconstructed to its condition prior to such damage to no more than its original dimensions except when a structure is located in a regulated flood or other hazard area.
3. Where a non-conforming structure is located in the Flood Hazard Area District, any repair, relocation, reconstruction, or enlargement shall conform to the requirements of Appendix B.

### **Section 603 – Development on a Non-conforming Lot or Parcel**

An existing nonconforming lot or parcel may be normally developed provided that all provisions of these regulations, except those which create the nonconformity, are complied with. See also existing small lots (Section 911).

### **Section 604 – Alteration of a Nonconforming Lot or Parcel**

The boundaries of a nonconforming lot or parcel may be altered only in a manner that decreases or does not increase its degree of nonconformity. See also existing small lots (Section 911).

## **ARTICLE VII: PARKING AND LOADING**

### **Section 701 – Required Off-Street Parking**

For all development hereafter authorized by Zoning Permit there shall be provided off-street parking spaces at least as set forth below:

1. Residential uses: Two parking spaces per dwelling unit. The parking spaces required for all residential dwellings shall be located on the same lot as the dwellings. The front yard shall not be used for designated parking spaces.
2. Lodging facilities: Hotel, motel, lodge, country inn, guest house: One parking space per lodging unit.

3. Places of public assembly: Every structure used as a theater, amusement facility, auditorium, community center, club, stadium, library, museum, church, hall, or other place of public or private assembly, one parking space for every three seats.
4. Commercial business use: Four parking spaces for every one thousand (1000) square feet of area used for business.
5. Restaurant, eating, and drinking establishments: One parking space for each three seats and each three employees.
6. Industrial, Wholesale, Warehouse, Storage, Freight and Trucking Uses: One parking space for every motor vehicle used in the business, plus one parking space for every two employees employed on the premises in the maximum shift.
7. Home Occupations: At least one parking space must be provided for each full time or full-time equivalent employee in addition to the requirements of paragraph 1 (above). The front yard shall not be used for designated employee parking.
8. Park – Privately Owned: All parking site plans must be reviewed and approved by the Planning Commission based on the maximum estimated use with one parking space required for every three projected patrons.

#### **Section 702 – Parking in the Downtown and Mixed Use Districts**

Within the Downtown District, parking requirements under Section 701 may be met by demonstrating during site plan or conditional use review that adequate public or commercial parking is available in the vicinity for the time of day the activity is expected to operate.

#### **Section 703 – Reduction of minimum parking requirements**

An applicant may request that minimum parking standards established in Section 701 be reduced during Site Plan or Conditional Use Review but not both. The applicant shall submit the request to the review Board in writing. The request shall include the number of expected full and part-time employees, if applicable, and the expected numbers of customers at peak weekday and weekend hours during standard weeks and months.

#### **Section 704 – Impervious surface requirements**

Impervious surface shall not exceed 75% of the total lot area to include any structures.

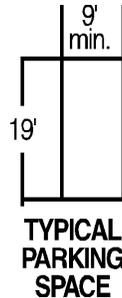
#### **Section 705 – Design and Standards for Off-Street Parking**

Parking spaces shall, at a minimum, meet design standards set forth in the *ITE Parking Generation* manual.

The requirement for parking space shall be a continuing obligation of the owner. All off

street parking shall be constructed and maintained in such a manner that provides for year-round use. These required parking spaces shall be located on the same lot as the principal use or on a lot which is within 500 feet of the principal use.

*Standard Parking Space:*



## **ARTICLE VIII – SIGNS**

### **Section 800 – Signs, general**

The intent of this section is to promote signs and advertising features which are:

- a. Compatible with surroundings
- b. An enhancement to the town's visual environment
- c. Orderly, readable and safe
- d. Harmonious in color, material and lighting with the building to which it relates
- e. Non-distracting to motorists

No person may erect or maintain outdoor advertising visible to the traveling public except as provided herein. A person shall not construct, erect, or display a sign, or enlarge, extend, change, or move a sign, without first obtaining a Zoning Permit, except as hereafter set forth.

All exterior signs shall be regulated according to the provisions of this regulation or to 10 VSA § 21 as amended, whichever is the more restrictive.

An applicant shall complete a sign application form and shall specify legend, size, shape, colors, location, materials, height, lighting, and such other information as may be necessary to determine compliance with these regulations and provide for the enforcement of these regulations.

When a sign application does not accompany a Zoning Permit application the applicant shall pay such sign application fee as prescribed.

A legally erected sign which has been taken down, damaged or destroyed may be replaced in the same form at the same location without a Zoning Permit within one year of the date of removal, damage, or destruction.

A sign for any use which has been discontinued shall be removed within thirty days.

No internally illuminated signs shall be allowed in the residential zoning districts.

### **Section 801– Definitions**

**For purposes of this Article all definitions in Article 1 Section 105 –Term Definitions apply.**

### **Section 802 – Non-Conforming Sign**

- A. Except as provided for below, every sign lawfully existing on the effective date of this ordinance shall not be altered, including character or color alteration, or moved unless the sign shall be made to comply with the provisions of this ordinance. This clause is not intended and shall not be construed to restrict a person from repairing and maintaining a sign in compliance with the provisions hereof or construed to prohibit character alterations on signs which are designed to change a message on a regular basis, such as reader boards, theater marquees and pricing signs.
- B. A non-conforming sign must be brought into conformance if the business use for the property changes. A non-conforming sign may be changed to another non-conforming sign only with the approval of the Planning Commission and then only to a sign which in the judgment of the Commission is of a lesser or no more non-conforming nature.
- C. A non-conforming sign shall be relocated on a lot if the relocation is involuntary. Involuntary relocation is any relocation caused by street widening or other local, state or federal activity beyond the control of the sign owner.

### **Section 803 – Exempt signs**

The following are exempt from receiving a local permit:

- a. **One (1) sign per residential unit with the name given the house or property or the name of its occupants.** Such signs shall not have an area of more than two (2) square feet each. One additional sign is permitted, if needed to identify a housing complex.
- b. **One (1) sign** for a home occupation, attached to a building or on a signpost. Such sign shall not have an area of more than three (3) square feet per side and may be one-sided or two-sided.
- c. **Up to two (2) signs advertising the sale or lease of real estate by the owner or his agent.** Such signs shall not have an area of more than six (6) square feet each.
- d. **One (1) sign erected in conjunction with a construction project.** Such signs shall not have an area of more than sixteen (16) square feet nor be displayed for more than one hundred twenty (120) days. Such signs must be

removed within twenty four (24) hours of the completion of the construction project.

- e. **Signs restricting trespassing and signs posting lands to restricting hunting, fishing, trapping and the like.** Such signs shall not have an area of more than one and one-half (1 1/2) square feet.
- f. **Signs displayed for the direction, instruction or convenience of the public, meaning signs which identify rest rooms, freight entrance, customer parking, restricted areas and the like.** Such signs shall not have an area of more than two (2) square feet each.
- g. Official Directional Signs Erected and maintained by the State of Vermont.
- h. Official Traffic Control Signs approved by the Vermont Agency of Transportation or the Town of Fair Haven.
- i. Up to two (2) signs/banners to be displayed for not more than four (4) weeks announcing an auction, a campaign, drive or an event of a civic, philanthropic or religious organization and must be removed within forty-eight hours of the close of the event.
- j. Signs/banners advertising locally held carnivals, circuses, fairs, expositions, farmer's market and the like. Such signs shall be displayed no longer than four (4) weeks and must be removed within forty-eight hours of the close of the event.
- k. One nameplate per public entrance per business of no more than two square feet per face which is suspended under a canopy or mounted on the face of the building.
- l. Historical site or historical structure signs.
- m. Billboards signs located on the outfield fence of the ball fields at Fair Haven Union High School, Fair Haven Grade School and Fair Haven Air Park.
- n. Fraternal, Service and religious organization signs.

**Section 804 -GENERAL REQUIREMENTS FOR PERMITTED SIGNS**

- A. Signs shall be located on the lot where the advertised business, product or activity is located or sold.
- B. Signs shall not prevent a clear and unobstructed view of official signs or otherwise impede adequate sight distances.

- C. Signs shall not appear to direct the movement of traffic or interfere with, imitate or resemble any official traffic, directional or route sign, signal or device.
- D. Signs shall not contain any animated, flashing, fluttering, revolving or moving parts nor any profanity or sexually explicit words or phrases nor be tasteless or inciting.
- E. Signs shall not be within or over the right-of-way to a public road, except for signs in the downtown Commercial District.
- F. Signs shall not be erected, attached, or maintained upon trees or drawn or painted on rock outcroppings or other natural features or upon utility poles.
- G. Maintenance of a sign and its related structure shall be a continuous obligation of the property owner.
- H. No sign shall incorporate a public address system or other audio system.
- I. Lighting of signs shall be shielded to prevent glare off-site, into the sky, or onto adjoining properties or roads.

**SECTION 805 - REMOVAL OF PERMITTED SIGNS**

Unless otherwise indicated, when a use terminates or moves, or an advertised product ceases to be offered, all signs pertaining to that use, service, or product, must be removed from the abandoned location within 30 days unless an extension of time is approved by the Zoning Administrator. The Zoning Administrator may allow sign structures without advertising messages to remain in place where appropriate and usable by a subsequent business.

**SECTION 806 - SIGN PERMIT APPLICATION PROCEDURE**

- A. An application for a Sign Permit shall be filed with the Zoning Administrator on a form furnished by the Zoning Administrator and shall be signed by the person filling out the application and the property owner.

All information needed to evaluate the application and determine that the sign meets the requirements of this section must be provided.

- B. A fee in the amount as set by the Select board shall accompany each application.
- C. An application for a sign shall not be deemed complete until it contains all the information required by the Zoning Administrator and/or the Planning Commission.
- D. The Zoning Administrator shall take action on an application for a sign within 30 days of deeming it complete. Such action shall be to approve or refer to the Planning Commission. No application shall be approved unless it conforms to this ordinance.

## **SECTION 807 - CERTIFICATE OF COMPLIANCE**

- A. The permittee shall contact the Zoning Administrator in writing upon completion of the work authorized by the permit.
- B. The Zoning Administrator shall take action within 15 days of receiving written notification of the completion of the work authorized by the permit.
- C. The Zoning Administrator shall issue a Certificate of Compliance when satisfied that the work so authorized conforms to the permit issued.
- D. If the Zoning Administrator, after final inspection, refuses to issue a Certificate of Compliance, within 15 days of receiving written notification of the completion of the work, the Zoning Administrator shall mail notice of such refusal, by certified mail, to the permittee at the address indicated on the application stating specifically the reason(s) for the refusal.

## **SECTION 808 - COMPUTATION OF SIGN AREA**

- A. The area of a sign face shall encompass everything except the structure against which it is placed, supporting framework, bracing, or decorative fence or wall clearly incidental to the display itself.
- B. When two identical sign faces are placed back-to-back, but both faces cannot be viewed from any point at the same time and are part of the same sign structure, the sign area shall be computed by the measurement of one of the faces.

## **SECTION 809 - COMPUTATION OF SIGN HEIGHT**

The height of a sign shall be computed as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign.

Normal grade shall be the established grade after construction, exclusive of any filling, berming, mounding or excavating solely for the purpose of locating the sign.

## **SECTION 810 - REQUIREMENTS BY SIGN TYPE**

- A. Building Signs – Flush Mounted
  - 1. The back of building signs shall protrude no more than six inches from the wall upon which it is mounted and may not extend above the eaves of that part and side of the building to which the sign is attached.
- B. Building Signs – Projecting
  - 1. The end of the sign closest to the building upon which the sign is mounted shall not protrude more than six inches from the wall.
  - 2. The sign shall be a minimum of eight (8) feet above street level.

C. Free-standing Signs

1. The maximum height of a free-standing commercial sign shall be 14 feet
2. No free-standing sign shall be within any easement or right-of-way line.

D. Sign Plaza

1. No free-standing sign may contain more than 120 square feet of area of total signage which may include signs for more than one business located on the property served by the sign.

E. Municipal/school Informational Board

1. No board shall exceed a maximum height of 14 feet
2. No board shall contain more than 20 square feet of total area
3. No board shall be used to advertise a commercial enterprise

**SECTION 811 - REMOVAL OF SIGNS**

1. **Unsafe/damaged signs.** Any sign that, in the judgment of the zoning administrative officer and/or Planning Commission, is unsafe, insecure, or damaged shall be deemed a nuisance and shall be corrected or removed, together with any supporting structure, by the owner of the land or building upon which such a sign is located within thirty (30) days after written notice to remove the sign is mailed by the zoning administrative officer. If in the judgment of the zoning administrative officer, such sign is an immediate peril to persons or property, immediate removal of such sign by the owner of the real property to which the sign is attached may be required.

**ARTICLE IX - GENERAL REGULATIONS**

**Section 901 - Home Occupations**

Notwithstanding anything else in these Regulations, these Regulations shall not prevent a resident from using a minor portion of a dwelling and a full accessory structure for an occupation which does not have an undue adverse effect on the residential character of the district.

A home occupation may be carried on subject to the following:

1. The business shall be operated wholly within the principal building and accessory building. The business shall not exceed 15% of the principal building's gross floor area and 100% of one accessory structure's gross floor area. If only the principal building is used the business shall not exceed 25% of the principal building gross floor area. The gross floor area may include any permanently enclosed living area of the principal building residence.
2. Not more than two persons who are not residents of the dwelling may be employed in the business

3. Obnoxious or excessive noise, smoke, vibration, dust, drainage, glare, odors, electrical interference or heat that is detectable at the boundaries of the lot on which the dwelling is located shall not be generated
4. No traffic shall be generated in substantially greater volume than would normally be expected in the neighborhood
5. A person shall not commence a home occupation without a Zoning Permit. Examples of generally accepted home occupations in Fair Haven are: handicraft shop, workshop, beauty shop, professional office
6. No storage or display of goods shall be allowed outside existing buildings.
7. Off-street parking shall be provided as required in Section 701.
8. Signs shall be regulated according to Article VIII.

#### **Section 902 - Open Storage Requirements**

In a residential area the open storage of building materials which will be used on the premises during the course of construction, not to exceed six (6) months, need not be screened.

#### **Section 903 - Front Setback Modification**

On established streets where the principal buildings are less than 30 feet from the street, the front setbacks of any new principal buildings, additions attached to principal buildings, or additions attached to any accessory buildings may be as close to the existing right-of-way (but not in the right-of-way) as the adjacent building with the shortest setback.

On a corner lot the front setback may be as close to the existing right of way as the building on either side of the lot.

#### **Section 904 - Location of Access Driveways**

All access driveways shall be located more than 100 feet from the intersection of the right-of-way lines of intersecting streets for all uses except one and two family dwelling units. No lot shall be served by more than two access roadways, nor shall any such access roadway be wider than a fifty (50) foot right-of-way. All access driveways shall be constructed and maintained in such a manner that provides for year-round use.

Any new driveway not in compliance with the section shall require site plan review approval.

#### **Section 905 - Divided Parcels**

When calculating minimum lot area, only the portion of a parcel located on one side of a

public highway, river or railroad shall be considered.

### **Section 906 - Exterior Lighting**

All exterior lighting shall be designed to eliminate direct light or glare directed toward public highways, adjacent properties and the sky and shall be of such a type that is compatible with the surrounding area.

### **Section 907 - Abandonment of Structures**

Within six (6) months after a permanent or temporary structure has been demolished, destroyed, or abandoned, all structural materials shall be removed from the site. If the structure is not repaired, rebuilt or replaced within six (6) months the excavation thus remaining shall be covered over or filled to the normal grade by the owners.

### **Section 908 - Travel Trailers and Campers**

A travel trailer or other mobile camping vehicle may be parked on private land within the Town of Fair Haven, with the written permission of the landowner, provided it is not used for living purposes in excess of twenty-one days per year.

### **Section 909 - Radio or Television Antennas, Transmitters, or Relay Stations**

A residential antenna attached to the roof shall not require a permit but shall not extend more than twenty (20) feet above the height of the building.

A dish antenna measuring 49 inches or more shall be considered an accessory structure in any district and shall meet setback requirements.

A free-standing radio or television antenna, transmitter, or relay station shall be considered a conditional use and shall be limited in height to 199 feet.

### **Section 910 - Keeping of Animals**

Raising of livestock and keeping of animals is included in "Agriculture" as a use.

Where a use does not meet the definition of "accepted agricultural practice" as defined by the VT Agency of Agriculture, Foods and Markets, owners may keep not more than two head of livestock and/or poultry up to 25 birds. No livestock or poultry shall be kept on lots of less than one acre in area, except household pets. No new building for the housing of animals or poultry shall be located within 150 feet from any street line or within 75 feet from any other lot line. This paragraph shall not permit the raising of swine or of furbearing animals other than rabbits. No manure or dust producing fertilizer shall be stored in the open within 100 feet from any property line.

### **Section 911 – Existing Small Lots**

Any lot that is legally subdivided and is in individual and separate and non-affiliated ownership from surrounding properties, and is in existence on the effective date of the regulations, may be developed for the purpose permitted in the district in which it is located, even though not conforming to minimum lot size requirements of the new bylaw.

### **Section 912 - More than One Primary Use in a Structure**

A structure may be used for more than one primary use, provided that each use complies both individually and jointly with all the applicable provisions of this ordinance.

### **Section 913 - Fences**

Fences shall not exceed eight feet in height unless specified by the Planning Commission or Zoning Board of Adjustment as conditions for screening, nor shall they be placed closer than two(2) feet from outside edge of the public sidewalk or, where no sidewalk is existing or proposed, they shall not be placed closer than eight (8) feet from the edge of the pavement or the traveled portion of the road.

Fences shall not interfere with sight lines of a highway or the sight line of adjacent properties to access a highway.

Barbed wire or electrified fences shall not be permitted except on an operating farm to contain livestock, or when approved by the Planning Commission in connection with site plan review or by the Zoning Board of Adjustment in connection with a conditional use.

Fences shall be erected around in-ground pools. Aboveground pools which require permits shall have restricted access.

A fence will be considered a structure unless it is four (4) feet or less in height and is used to enclose a garden or animal pen.

All fences shall be constructed so that the finished side faces outward. Any legally existing fence may be replaced in the same location by another fence of no greater height without a zoning permit.

### **Section 914 - Required Frontage on, or Access to, Public Roads or Public Waters**

Land development may be permitted only on lots which either have frontage on a public road or public waters or with the approval of the Planning Commission access to such a road or waters by a permanent easement or right-of-way.

All such access, except legally pre-existing access, must be at least twenty (20) feet in width.

The design of access to Town roads must be approved by the Selectboard or their designee.

**Section 915 - Obstructions at Street**

No obstruction to sightline or vision shall be allowed within the highway right-of-way.

**Section 916 - Lots Adjacent to a Railroad**

In commercial or industrial districts, where a lot is contiguous to a railroad right-of-way, a setback of fifteen feet shall be required adjacent to such right-of-way.

**Section 917 - Accessory Structures**

Accessory Structures located in the rear yard of principal buildings shall have minimum side and rear setbacks of four feet. See also Section 105.

On a corner lot accessory structures may be located in a side yard with a minimum side yard setback of four (4) feet and must be located a minimum of thirty (30) feet from all front yard lot lines.

**Section 918 - Projection Into Open Space**

Nothing in this regulation shall prohibit projection of not more than two (2) feet into a required front, rear, or side yard of pilasters, columns, sills, cornices, or other similar architectural features, nor the planting or landscaping of such open spaces except as provided in Section 915.

**Section 919 - Residential Care / Group Homes**

Residential care homes or group homes, operated under state licensing or registration, and serving not more than eight persons who have a handicap or disability as defined in 9 VSA 4501, are considered by right to constitute a single family residential use of property. Notwithstanding, no such home shall be located within 1,000 feet of another existing or permitted such home. Homes serving more than eight persons shall be subject to conditional use review.

**Section 920 - Height Limit Modification**

Any and all accessories attached to the roof shall not exceed twenty (20) feet in height above the roof.

**Section 921 – Child Care Facility**

Child care facilities are regulated according to the following schedule:

- A. A family child care facility serving six or fewer children shall be considered to constitute a permitted single family residential use of property.

- B. A family child care home serving no more than six full-time children and four part-time as defined in 33 V. S. A. § 4902 (3)(A) shall be considered to constitute a permitted use of property but shall require site plan approval in accordance with Article V.
- C. A child care facility serving more than six full time and four part-time children shall be subject to all applicable municipal bylaws and shall require conditional use approval in accordance with Article IV.

**Section 922 – Municipal/Regional Solid Waste Management Facilities**

- 1. The maximum lot size shall be 10 acres.
- 2. Setbacks shall be 200 feet from all waterways and property lines.
- 3. The maximum height of fill material shall be 15 feet above the lowest grade.
- 4. Landscaping and screening requirements shall be that shrubs and coniferous trees must be used to provide screening sufficient to allow no view of the facility.

Municipal/ Regional Solid Waste Management Facilities shall also be subject to Site Plan Review under Article V.

**Section 923 – Farm Structures**

Pursuant to 24 V.S.A. § 4413(d) farm structures, excluding dwellings, are exempt from local permitting requirements. However, persons intending to erect a farm structure must notify the municipality of the intent to build and abide by setbacks contained in Article III, unless they obtain an approval of lesser setbacks by the Commissioner of Agriculture, Food and Markets.

The notification shall contain a sketch of the proposed structure and include the setback distances from adjoining property lines and the street right-of-way. Additionally, all farm structures within the Flood Hazard Area must comply with the National Flood Insurance Program.

**Section 924 – Animal Grooming and Veterinary Services:**

- 1. The minimum lot size shall be one acre.
- 2. Areas where animals are kept, treated, or exercised shall be appropriately fenced.
- 3. Buildings for the overnight housing of animals shall be set back 150 feet from any street line and 75 feet from any lot line.
- 4. No manure or dust-producing fertilizer shall be stored in the open within 100 feet of any lot line.

## **ARTICLE X - PLANNED UNIT DEVELOPMENT**

### **Section 1001 – General Intent**

The purpose of a Planned Unit Development (PUD) is :

- (1) To encourage compact, pedestrian-oriented development and redevelopment, and to promote a mix of residential uses or nonresidential uses, or both.
- (2) To implement the policies of the municipal plan, such as the provision of affordable housing.
- (3) To encourage any development in the countryside to be compatible with the use and character of surrounding rural lands.
- (4) To provide for flexibility in site and lot layout, building design, placement and clustering of buildings, use of open areas, provision of circulation facilities, including pedestrian facilities and parking, and related site and design considerations that will best achieve the goals for the area as articulated in the municipal plan and bylaws within the particular character of the site and its surroundings.
- (5) To provide for the conservation of open space features recognized as worthy of conservation in the municipal plan and bylaws, such as the preservation of agricultural land, forest land, trails, and other recreational resources, critical and sensitive natural areas, scenic resources, and protection from natural hazards.
- (6) To provide for efficient use of public facilities and infrastructure.
- (7) To encourage and preserve opportunities for energy-efficient development and redevelopment.

A Planned Unit Development (PUD) is intended to permit development of larger parcels of land which will provide a desirable and stable environment in harmony with that of the surrounding area; to permit flexibility that will encourage a more creative approach in the development of land, will result in a more efficient, aesthetic and desirable use of open area, to permit flexibility in design, placement of buildings, use of open spaces, circulation facilities, and off-street parking areas; to utilize best the potentials of sites characterized by special features of geography, topography, size or shape. All PUD's, whether in areas of permitted or conditional use, must be reviewed by the Planning Commission under this section.

So that innovations in design and layout and more efficient use of land may be encouraged, a person may undertake land development upon approval of a Planned Unit Development as authorized by 24 V.S.A. Section 4417. To permit a Planned Unit Development, the Planning Commission may modify these Zoning Regulations in accordance with that section subject to the following standards and conditions:

1. A site plan shall be submitted to the Planning Commission showing the location, height, spacing, uses, and architectural inter-relationships of all buildings, open spaces and their landscaping; utility lines, streets, driveways, off-street parking and unloading spaces, unique or man-made features, and physical conditions of the site, accompanied by a statement setting forth the nature of all proposed modifications, changes or supplements to existing zoning regulations, and such other information as the Planning Commission may deem necessary. A Planned Unit Development application shall also include both maps and a written statement and must show enough of the area surrounding the proposed PUD to demonstrate the relationship of the PUD to adjoining uses, both existing and proposed.
2. The Planning Commission shall hold at least one public hearing, upon public notice, prior to approval.
3. Any permitted and conditional uses allowed in the district where the PUD is located, may be included in the PUD, subject to approval under this section. Dwelling units may be of varied types.
4. The PUD shall be consistent with the Town Plan.
5. The minimum size of a PUD shall be two acres.
6. The overall density of the project shall not exceed the number of dwelling units and other uses which could be permitted, in the Planning Commission's judgment, if the land were conventionally developed in accordance with these regulations.
7. The Planning Commission may increase or decrease the setback requirements in any District if, in its judgment, the special circumstances of a proposed development would make such requirement inappropriate. Side and rear setback requirements, as listed in the Tables of Uses Section 301 and as used in this Section, shall be interpreted as the side and rear setback requirement required for the PUD as a whole and not as the setback requirements for each particular structure placed in such PUD.
8. The Planning Commission may allow for a greater concentration of density, or intensity of residential land use within some section or sections of the development than upon others, which shall be offset by a lesser concentration in another section.
9. The Planning Commission may issue Planned Unit Development approval for a proposed development for a specified period of time, not to exceed four (4) years.
10. Where a PUD is to be located in more than one zoning district, the lot sizes and the number of allowable dwelling units must be separately calculated for each individual zone in the PUD.
11. Mixed commercial and residential uses shall be so arranged as to insure visual and acoustical privacy to residents in the development.

12. Roadways, parking and unloading facilities shall be designed and constructed so as not to cause unreasonable highway congestion or unsafe traffic conditions. The parking requirements of Article VII shall apply in all Districts.
13. Water and utilities shall be demonstrated to be adequate, and all sewage and other effluent disposal shall be designed so it will not become a public health hazard.
14. Unique natural features of the site shall be preserved.
15. If a Planned Unit Development application results in land available for park, recreation, open space or other municipal purposes, the Planning Commission as a condition of its approval may establish such conditions on the ownership, use and maintenance of such lands as it deems necessary to assure the preservation of such lands for their intended purposes.
16. The Planning Commission may attach such reasonable conditions and safeguards as may be necessary to implement the purposes of 24 V.S.A. Chapter 117 and these Regulations, in order to protect the public health, safety and welfare. These may include screening and landscaping.
17. The Planning Commission may require from the owner, for the benefit of the Town, a performance bond with a good and sufficient surety, in an amount sufficient to cover the full costs of public or private roadways and utility lines, in situations where buildings are to be constructed prior to the completion of such roadways or utility lines.
18. The Planning Commission shall also have the same powers in any Planned Unit Development application with respect to adequacy of traffic access, circulation and parking, landscaping and screening, and such other items as it has in a Site Plan Review procedure, to the extent not already provided for in this Section.
19. The issuance of PUD approval shall not relieve the applicant, or his successors or assigns, from the obligation to obtain a zoning permit under Article XII of these Regulations.

## **ARTICLE XI - MUNICIPAL APPOINTMENTS**

### **Section 1101 – Administrative Officer (Zoning Administrator).**

The Select Board shall appoint an Administrative Officer from nominations submitted by the Planning Commission for a term of three (3) years in accordance with the Act [§4448]. The Select Board may remove an Administrative Officer for cause at any time after consultation with the Planning Commission.

An acting Administrative Officer may be appointed by the Select Board, from nominations submitted by the Planning Commission, who shall have the same duties and responsibilities of the Administrative Officer in the Administrative Officer's absence.

The Administrative Officer shall literally administer and strictly enforce the provisions of these regulations, and in doing so shall inspect development, maintain records, and perform other related tasks as are necessary and appropriate.

In addition, the Administrative Officer shall coordinate the municipality's development review programs. If other municipal permits or approvals are required, the Administrative Officer shall provide the applicant with necessary forms. The Administrative Officer may also inform any person applying for municipal permits or authorizations that they should contact the Vermont Agency of Natural Resource's Regional Permit Specialist to assure timely action on any related state permits. The applicant retains the obligation to identify, apply for, and obtain relevant state permits.

### **Section 1102 – Planning Commission**

The Planning Commission shall consist of not less than three (3) or more than nine (9) voting members appointed by the Select Board in accordance with the Act [§ 4323]. Any member of the Commission may be removed at any time by a unanimous vote of the Select Board.

The Commission shall adopt rules of procedure and rules of ethics deemed necessary and appropriate for the performance of its functions as required under the Act [§4323(b) & 4461A] and Vermont's Open Meeting Laws. In accordance with the Act, the Commission shall have the following duties in association with these regulations:

- prepare proposed amendments to these regulations, and consider proposed amendments submitted by others, including amendments submitted by petition;
- prepare and approve a written report on any proposed bylaw, amendment or repeal to these regulations as required by the Act [§4441(c)]; and,
- hold one or more warned public hearings on any proposed bylaw, amendment or repeal to these regulations, prior to submission of a proposed amendment and written report to the Select Board [§4441(d)].

Additionally, the Commission shall have all the powers and duties as set forth in the Act to administer the provisions of these regulations, including but not limited to the power to hear and act upon:

- applications for site plan approval (Article V); and,
- applications for planned unit development (Article X) and
- applications for commercial signs as referred by the zoning administrative officer

### **Section 1103 – Board of Adjustment**

The Board of Adjustment shall consist of not less than three (3) nor more than nine (9) members appointed by the Select Board for specified terms in accordance with the Act [§4460(b) and (c)]. The Select Board may appoint alternates, for specified terms, to serve on

the Board in situations when one or more members of the Board are disqualified or are otherwise unable to serve. Any member of the Board of Adjustment may be removed for cause by the Select Board upon written charges and after public hearing.

The Board shall adopt rules of procedure and rules of ethics with respect to conflicts of interest to guide its official conduct, as required under the Act [§4461(a)] and Vermont's Open Meeting Law. The Board shall have all powers and duties as set forth in the Act to administer the provisions of these regulations, including but not limited to the power to hear and act upon:

- appeals from any decision, act or failure to act by the Administrative Officer (Article XIII), and any associated variance requests (Article XIV); and,
- applications for conditional use approval (Article IV).
- applications for development in a flood hazard area.

## **ARTICLE XII – ZONING PERMITS**

### **Section 1201 – Applicability**

No land development as defined herein, which is subject to these regulations, shall be commenced in the Town of Fair Haven until a zoning permit has been issued by the Administrative Officer, as provided for in the Act [§§4448, 4449].

### **Section 1202 – Exemptions**

No zoning permit shall be required for the following activities unless located in a flood hazard area:

1. Accepted agricultural practices (AAPs), including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets, in accordance with the Act [§4413(d)] and Section 923. Written notification, including a sketch plan showing structure setback distances from road rights-of-way, property lines, and surface waters shall be submitted to the Administrative Officer prior to any construction, as required for AAPs. Such structures shall meet all setback requirements under these regulations, unless specifically waived by the Secretary.
2. Accepted management practices (AMPs) for silviculture (forestry) as those practices are defined by the Commissioner of Forests, Parks and Recreation, in accordance with the Act [§4413(d)].
3. Public electric power generation plants and public electric transmission facilities, which are regulated under 30 V.S.A. §248 by the Vermont Public Service Board. Such facilities, however, should conform to policies and objectives specified for such development in the Municipal Plan.

4. Hunting, fishing, and trapping as specified under 24 V.S.A §2295 on private or public land. This does not include facilities supporting such activities, such as firing ranges or rod and gun clubs, which for the purposes of these regulations are defined as outdoor recreation facilities [or other use].
5. Normal maintenance and repair of an existing structure not located in a flood hazard area which does not result in exterior alterations or expansion or a change of use.
6. Interior alterations or repairs to a structure not located in a flood hazard area which alteration or repairs do not result in expansion or a change in use.
7. Exterior alterations to structures not located in a flood hazard area which alterations do not result in any change to the footprint or height of the structure or a change in use.
8. Residential entry stairs (excluding decks and porches), handicap access ramps, walkways, and fences or walls less than four (4) feet in height which do not extend into or obstruct public rights-of-way, or interfere with corner visibilities or sight distances for vehicular traffic.
9. Minor grading and excavation associated with road and driveway maintenance (e.g., including culvert replacement and resurfacing) and lawn and yard maintenance (e.g., for gardening or landscaping) or activity is otherwise incidental to an approved use. This specifically does not include extraction and quarrying activities regulated under Section 412.
10. Outdoor recreational trails (e.g., walking, hiking, cross-country skiing and snow mobile trails) which do not require the installation of structures or parking areas.
11. One small accessory building associated with residential uses which is less than 64 square feet in floor area, less than eight (8) feet in height, and is not located within required setback areas.

### **Section 1203 – Application**

**Application Requirements.** An application for a zoning permit shall be filed with the Administrative Officer on form(s) provided by the municipality. Required application fees, as set by the Select Board, also shall be submitted with each application. In addition, the following information will be required as applicable:

*Permitted Uses.* Applications for a permitted use shall include a sketch plan, no smaller than 8.5” x 11”, drawn to scale, that depicts the following:

- (1) the dimensions of the lot, including existing property boundaries; and
- (2) the location, footprint, floor plans (each floor including basement), and height of existing and proposed structures or additions; and
- (3) the location of existing and proposed accesses (curb cuts), driveways and parking

- areas; and
- (4) the location of existing and proposed easements and rights-of-way; and wetland areas; and
  - (5) existing and required setbacks from property boundaries, road rights-of-way, surface waters and wetlands; and
  - (6) the location of existing and proposed water and wastewater systems including wells and septic areas; and
  - (7) other such information as required by the Administrative Officer to determine conformance with these regulations.

NOTE: Where the sketch is to scale, the scale must be provided.  
Where the sketch is not to scale, all dimensions and distances must be provided.

*Uses Subject to Development Review.* For development requiring one or more approvals from the Planning Commission and / or Zoning Board of Adjustment prior to the issuance of a zoning permit, application information and fees as required for such approvals shall be submitted concurrently with the application for a zoning permit and referred to the Clerk of the Commission / Board.

*Flood Hazard Area Approval.* Any application for development within the Flood Hazard Area shall include copies of application information as required for referral to the Federal Insurance Administrator at the Vermont Agency of Natural Resources in accordance with the Act [§4424(D)] and these regulations.

### **Section 1204 – Issuance**

A zoning permit shall be issued by the Administrative Officer only in accordance with the Act [§4449] and the following provisions:

1. Within thirty (30) days of receipt of a complete application, including all application materials and fees, the Administrative Officer shall act to either issue or deny a zoning permit in writing, or to refer the application to the Planning Commission or Zoning Board of Adjustment. In accordance with the Act [§§4448, 4449], if the Administrative Officer fails to act within the 30-day period, a permit shall be deemed issued on the 31st day.
2. No zoning permit shall be issued by the Administrative Officer for any use or structure which requires the approval of the Planning Commission / Zoning Board of Adjustment until such written approval has been obtained. For permit applications that must be referred to a state agency for review, no zoning permit shall be issued until a written response has been received from the State, or the expiration of 30 days following the submission of the application to the State.
3. If public notice has been issued by the Select Board for their first public hearing on a proposed amendment to these regulations, for a period of 150 days following that notice the Administrative Officer shall review any new application filed after the date of the hearing notice for compliance with the proposed amendment and applicable existing

bylaws. If the new bylaw or amendment has not been adopted by the conclusion of the 150 day period, or if the proposed bylaw or amendment is rejected, the permit shall be reviewed under existing bylaws and ordinances. An application denied under a proposed bylaw or amendment that has been rejected or that has not been adopted within the 150-day period shall be reviewed again, at no additional cost, under existing bylaws and ordinances only upon written request of the applicant.

4. A zoning permit shall include a statement of the time within which appeals may be taken under Article XIII; and shall require posting of a notice of permit, on a form prescribed by the municipality, within view of the nearest public right-of-way until the time for appeal has expired.
5. The Administrative Officer, within three (3) days of the date of issuance, shall deliver a copy of the zoning permit to the Listers; and shall post a copy of the permit in the municipal offices for a period of fifteen (15) days from the date of issuance.

#### **Section 1205 – Effective Date**

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

Zoning permits and associated approvals shall remain in effect for 2 year(s) from the date of issuance, unless the permit and associated approvals specify otherwise. All development authorized by the permit shall be substantially commenced within nine months of issuance or reapplication and approval shall be required to continue development. The Administrative Officer may administratively renew a permit for a period not to exceed one (1) additional year upon finding that there was reasonable cause for delay in the start of the development.

#### **Section 1206 – Certificate of Compliance**

1. **Requirement:** It shall be unlawful to use, 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 until a Certificate of Compliance is issued by the Administrative Officer stating that the proposed use of the land or structure conforms to the provisions of this Ordinance.
2. **Issuance:** Within fifteen (15) 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 make a final inspection thereof and issue a Certificate of Compliance if the land, building, structure, or part thereof is found to conform with the provisions of this Ordinance. If the Administrative Officer fails to either grant or deny the certificate of occupancy within 15 days of the submission of an application, the certificate shall be deemed issued on the 16th day.
3. **Refusal:** If the Administrative Officer, after such final inspection, refuses to issue a Certificate of Compliance, he shall mail notice of such refusal, by certified mail, to the

applicant at the address indicated on the application stating specifically the reason(s) for the refusal.

## **ARTICLE XIII – APPEALS**

### **Section 1301 – Administrative Officer Actions**

Any interested person as defined under the Act [§4465] may appeal a decision or act of the Administrative Officer within 15 days of the date of the decision or act by filing a notice of appeal with the Clerk of the Board of Adjustment, or the Municipal Clerk if no Clerk has been elected, and by filing a copy of the notice with the Administrative Officer.

- A. The Board shall hold a public hearing on a notice of appeal within 60 days of its filing, as required under the Act [§4468]. The Board shall give public notice of the hearing under Section 1303, and mail a copy of the hearing notice to the appellant not less than 15 days prior to the hearing date.
- B. The Board may reject an appeal or request for reconsideration without hearing and render a decision, which shall include findings of fact, within 10 days of the date of filing of notice of appeal, if the Board considers the issues raised by the appellant in the appeal have been decided in an earlier appeal or involve substantially or materially the same facts by or on behalf of the appellant [§4470].
- C. In accordance with the Act [§4468], all appeal hearings shall be open to the public and the rules of evidence applicable at these hearings shall be the same as the rules of evidence applicable in contested cases in hearings before administrative agencies as set forth in state statutes [3 V.S.A. §810]. Any interested person or body, as defined in Section 1302, may appear and be heard in person or be represented by an agent or attorney at the hearing. The hearing may be adjourned by the Board from time to time, provided that the date, time and place of the adjourned hearing shall be announced at the hearing.
- D. A decision on appeal shall be rendered within 45 days after the final adjournment of the hearing, as required under the Act [§4464(b)]. The decision shall be sent by certified mail to the appellant within the 45 day period. Copies of the decision shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Administrative Officer and the Municipal Clerk as part of the public records of the municipality, in accordance with Section 1701. Failure of the Board of Adjustment to issue a decision within this 45 day period shall be deemed approval and shall be effective on the 46th day.

### **Section 1302 – Interested Persons**

The definition of an interested person under the 24 V. S. A §4465(b)] includes the following:

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

(2) The municipality that has a plan or a bylaw at issue in an appeal brought under this chapter or any municipality that adjoins that municipality.

(3) A person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act 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 violate the municipal plan or bylaw.

(4) Any ten persons who may be any combination of voters or real property owners within the municipality who, by signed petition to the appropriate municipal panel allege that the relief requested, if granted, will violate the municipal plan or bylaw . This petition must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal.

(5) Any department and administrative subdivision of this state owning property or any interest in property within the municipality, and the Vermont Agency of Commerce and Community Development.

### **Section 1303 – Notice of Appeal to the Board of Adjustment**

A notice of appeal filed under this section shall be in writing and include the following information, in accordance with the Act [§4466]:

1. the name and address of the appellant;
2. a brief description of the property with respect to which the appeal is taken;
3. a reference to regulatory provisions subject to appeal;
4. the relief requested by the appellant, including any request for a variance from one or more provisions of these regulations; and,
5. the alleged grounds why the requested relief is believed proper under the circumstances.

### **Section 1304 – Appeals to Environmental Court**

In accordance with the Act [§4471], an interested person who has participated in the municipal regulatory proceeding of the Planning Commission or Board of Adjustment may appeal a decision rendered by the Commission / Board under Section 1701, within 30 days of such decision, to the Vermont Environmental Court. Appeals to Environmental Court shall also meet the following requirements:

1. “Participation” in a Commission / Board proceeding shall consist of offering, through oral or written testimony, evidence of a statement of concern related to the subject of the proceeding.

2. The notice of appeal shall be filed by certified mail, with fees, to the Environmental Court and by mailing a copy to the Municipal Clerk, or the Administrative Officer if so designated, who shall supply a list of interested persons (including the applicant if not the appellant), 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. If any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.

## ARTICLE XIV – VARIANCES

### Section 1401 – Variance Criteria

The Board of Adjustment shall hear and decide requests for variances as required by the Act [§4469(a)] and appeal procedures under Article XIII. In granting a variance, the Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect. **The Board may grant a variance and render a decision in favor of the appellant only if all of the following facts are found in the affirmative**, and the findings are specified in its written decision:

1. There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located; and
2. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations and that the authorization of a variance is necessary to enable the reasonable use of the property; and
3. The unnecessary hardship has not been created by the appellant; and
4. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare; and
5. The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.

In granting a variance, the Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect.

**Renewable Energy Structures.** Where a variance is requested for a structure that is primarily a renewable energy resource structure, in accordance with the Act [§4469(b)], **the Board may grant such variance only if all of the following facts are found in the affirmative** and specified in its written decision:

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

In granting a variance, the Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect.

**Variations within the Flood Hazard Area.** In addition to requirements under Section 1401 and Appendix B variations for development within a Flood Hazard Area District shall be granted by the Board only:

1. in accordance with the Act and the criteria for granting variations found in 44 CFR Section 60.6 of the National Flood Insurance Program;
2. upon determination that during the base flood discharge the variance will not result in increased flood levels; and
3. upon determination that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

In granting a variance, the Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan and Flood Hazard Area Regulations currently in effect.

## **ARTICLE XV – VIOLATIONS AND ENFORCEMENT**

### **Section 1501 – Violations**

The commencement or continuation of any land development [or subdivision] that does not

meet the requirements of these regulations shall constitute a violation. All violations shall be pursued in accordance with the Act [§§4451, 4452]. Each day that a violation continues shall constitute a separate offense. The Administrative Officer shall institute, in the name of the Town of Fair Haven, any appropriate action, injunction or other proceeding to enforce the provisions of these regulations. All fines imposed and collected shall be paid over to the municipality.

**Section 1502 – Notice of Violation**

No action may be brought under this section unless the alleged offender has had at least seven (7) days' warning notice by certified mail that a violation exists, as required under the Act [§4451]. The notice of violation also shall be recorded in the land records of the municipality under Section 1701. The notice shall state that a violation exists; that the alleged offender has an opportunity to cure the violation within the seven days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days. Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of the regulations after the seven-day notice period and within the next succeeding 12 months.

**Section 1503 – Limitations on Enforcement**

An action, injunction or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required municipal land use permit may be instituted against the alleged offender if the action, injunction or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred, and not thereafter, in accordance with the Act [§4454]. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.

No enforcement proceeding may be instituted to enforce an alleged violation of a municipal land use permit unless the permit that received final approval from the applicable municipal panel after July 1, 1998 has been recorded in the land records of the municipality under Section 1701.

**ARTICLE XVI – PUBLIC HEARINGS**

**Section 1601 – Public Notice**

In accordance with the Act [§4464], a warned public hearing shall be required for conditional use review (Article IV), appeals of decisions of the administrative officer, and variances (Article XIV). Any public notice for a warned public hearing shall be given not less than 15 days prior to the date of the public hearing by all of the following:

1. Publication of the date, time, place and purpose of the hearing in a newspaper of general circulation in the municipality; and

2. Posting of the same information in three (3) or more public places within the municipality in conformance with the location requirements of 1 V. S. A. § 312 (c)2 , including the posting of a notice within view from the public right-of-way nearest to the property for which the application is being made;
3. Written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way, which includes a description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal; and

Public notice of all other types of development review hearings, including site plan review (Article V), shall be given not less than seven (7) days prior to the date of the public hearing, and shall at minimum include the following:

1. Posting of the date, place and purpose of the hearing in three (3) or more public places within the municipality in conformance with the location requirements of 1 V. S. A. § 312 (c)2 ; and
2. Written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way, which shall include a description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal.

The applicant shall be required to bear the cost of public warning and the cost and responsibility of notifying adjoining landowners as required above, as determined from the current municipal grand list. The applicant shall be required to demonstrate proof of delivery to adjoining landowners either by certified mail, return receipt requested, or by written notice hand delivered or mailed to the last known address supported by a sworn certificate of service.

No defect in the form or substance of any required public notice under this section shall invalidate the action of the Planning Commission / Board of Adjustment where reasonable efforts have been made to provide adequate posting and notice. However, the action shall be invalid when the defective posting or notice was materially misleading in content. If an action is ruled to be invalid by the Board of Adjustment or the Environmental Court, the action shall be remanded to the Board to provide new posting and notice, hold a new hearing, and take a new action.

### **Section 1602 – Hearings**

In accordance with the Act [§4461], all meetings and hearings of the Planning Commission / Board of Adjustment, except for deliberative sessions, shall be open to the public. For the conduct of any hearing, and the taking of any action, a quorum shall be not less than the majority of members of the Planning Commission / Board of Adjustment and any action of

the Commission/Board of Adjustment shall be taken by the concurrence of the majority of the Commission/Board. The Planning Commission / Board of Adjustment, in conjunction with any hearing under this bylaw, may:

1. examine or cause to be examined any property, maps, books, or records bearing upon the matters concerned in that proceeding;
2. require the attendance of any person having knowledge of the premises;
3. take testimony and require proof material for its information; and,
4. administer oaths or take acknowledgment in respect of those matters.

In any public hearing there shall be an opportunity for each person wishing to achieve status as an interested person to demonstrate that the criteria set forth under Section 1302 are met. The Planning Commission / Board of Adjustment shall keep a written record of the name, address, and participation of each of these persons.

In accordance with the Act [ §§4464(b), 4468], the Planning Commission / Board of Adjustment may recess a hearing on any application or appeal pending the submission of additional information, provided that the next hearing date, time and place is announced at the hearing.

### **Section 1603 – Decisions**

Any action or decision shall be taken by the concurrence of a majority of the members of the Commission / Board. In accordance with the Act [ §4464(b)], the Commission / Board shall issue a written decision within 45 days after the adjournment of the hearing. Failure to issue a written decision within the 45-day period shall be deemed approval and shall be effective on the 46th day. In addition:

1. All decisions shall be issued in writing and shall separately state findings of fact and conclusions of law. Findings of fact shall explicitly and concisely restate the underlying facts that support the decision, based exclusively on evidence of the record. Conclusions shall be based on the findings of fact. The decision shall also include a statement of the time within which appeals may be taken under Article XIII. The minutes of a meeting may suffice, provided that the factual basis and conclusions relating to the review standards are provided in accordance with these requirements.
2. In rendering a decision in favor of the applicant, the Planning Commission / Board of Adjustment may attach additional reasonable conditions and safeguards as it deems necessary to implement the purposes of the Act, these regulations, and the municipal plan currently in effect. This may include, as a condition of approval:
  - (a) the submission of a three year performance bond, escrow account, or surety in a form acceptable to the Fair Haven Board of Selectmen in an amount

sufficient to cover the full cost of new streets and required improvements on or in those streets or highways and their maintenance for a period of two years after completion as is estimated by such municipal departments as the Commission/Board may designate. The performance bond may be extended for an additional three-year period with the consent of the owner, to assure the completion of a project, adequate stabilization, or protection of public facilities that may be affected by a project; and/or

(b) a requirement that no zoning permit be issued for an approved development until required improvements have been satisfactorily installed in accordance with the conditions of approval.

3. All decisions of a Commission / Board shall be sent by certified mail, within the required 45-day period, to the applicant or the appellant on matters of appeal. Copies of the decision shall be mailed to every person or body appearing and having been heard at the hearing and filed with the Zoning Administrator and Clerk as part of the public record of the municipality.

## **ARTICLE XVII – RECORDING REQUIREMENTS**

### **Section 1701 – Recording Requirements**

Within 30 days of the issuance of a municipal land use permit or notice of violation, the Administrative Officer shall deliver either the original, a legible copy, or a notice of the permit or violation to the Municipal Clerk for recording in the land records of the municipality generally as provided in 24 V.S.A. §1154(c), and file a copy in the Municipal Office in a location where all municipal land use permits shall be kept, as required under the Act [§4449(c)]. The applicant may be charged for the cost of the recording fees.

For development within a Flood Hazard Area, the Administrative Officer shall also maintain a record of:

1. all permits issued for development in areas of special flood hazard;
2. elevation certificates that show the elevation, in relation to mean sea level, of the lowest floor, including basement, of all new or substantially improved buildings;
3. the elevation, in relation to mean sea level, to which buildings have been floodproofed; all floodproofing certifications required under this regulation; and
4. all variance actions, including the justification for their issuance.

## **ARTICLE XVIII: OTHER PROVISIONS**

### **Section 1801 – Fees**

Fees shall be established by the Select Board in amounts necessary to cover all costs of the Administrative Officer, the Zoning Board of Adjustment, and the Planning Commission for such items as processing applications, including costs of material, administrative time, reasonable overhead such as postage, telephone, publishing notice of hearings, and the hiring of appropriate professionals to review various aspects of an application, etc.

These fees shall be paid by the applicant upon submission of the application or prior to issuance of permits or certificates of occupancy.

### **Section 1802 – Amendments**

Any provisions of this Regulation, as well as the boundaries of the various zoning districts established herein, may be amended or repealed subject to the provisions of 24 V.S.A. 4442.

### **Section 1803 – Warning of Disclaimer of Liability**

These Regulations do not imply that land outside the areas of special flood hazard or land uses permitted within such districts will be free from flooding or flood damages.

These regulations shall not create liability on the part of the Town of Fair Haven or any local official or employee thereof for any flood damages that result from reliance on this Regulation or any administrative decisions lawfully made thereunder.

### **Section 1804 – Separability**

Should any court of competent jurisdiction judge any provision of this Regulation to be invalid, such judgment shall not affect the validity of the Regulation as a whole or any part other than the part so declared to be invalid.

### **Section 1805 – Effective Date**

This Regulation shall take effect twenty-one (21) days after adoption by a majority of the members of the Select Board in accordance with the procedures contained in 24 V.S.A. 4442.

### **Section 1806 – Precedence of Regulation**

The provisions of this regulation shall take precedence over any conflicting and less restrictive local laws.

**Section 1807 – Repeal of Prior Zoning Ordinance**

Upon the effective date of these By-Laws, the previous Zoning Ordinance (with all amendments thereto) is hereby repealed.

## APPENDIX A

### Conditions for Oil and Gas Exploration and Development

#### Oil and Gas Exploration and Development

##### 1. APPLICATION PROCEDURES

The application for a permit to explore, drill or maintain and operate any oil or gas or disposal well shall be filed with the Secretary of the Board of Adjustment and shall include and be accompanied by the following:

- a. Name, address and telephone number of the applicant and the owner of the property surface rights.
- b. Written legal description of the site.
- c. Scale survey of the ten (10) acres surrounding the drill site with dimensions showing the exact location of the proposed well and all buildings, tanks, pits, pipelines, embankments, fences, and other improvements incident to the drilling of the well, together with all buildings within six hundred (600) feet of the well and the location of all existing oil, gas or fresh water wells within the ten (10) acre tract.
- d. A copy of an approved drilling permit from the Vermont Natural Gas and Oil Resources Board and assurance of compliance with all applicable federal and state laws.
- e. Existing and proposed contours at intervals of two feet.
- f. The exact location and elevations of the one hundred (100) year flood elevation for the lease.
- g. The location of any waterway.
- h. The exact location and character of surface storm drainage.
- i. The location of ingress and egress and use and width of all easements, access roads, interior roads and parking areas for the lease.
- j. The location of the drilling rig and pump, holding tanks and well cellars for oil and gas produced and for waste and drilling materials, treaters, separators and any other drilling or production equipment related to the construction or operation of the well.
- k. A description of all pollution prevention equipment to be utilized.

- l. The location of all public utilities, including but not limited to, water lines, wastewater lines, telephone lines, gas lines, electrical lines and cable television lines.
- m. A description and location of fencing, berming, landscaping and screening to be utilized around the site.
- n. The location of the piping network on-site and off-site.
- o. The type of motors, pumps and valves to be used for drilling and production.
- p. The plan for site restoration once the well is abandoned and a statement of the methods of waste disposal.
- q. An insurance policy in conformance with #2 below.
- r. A corporate security bond in conformance with #2 below.
- s. Certified copies of all leases or contracts with the owners of the property.
- t. Application fee of one thousand dollars (\$1,000).
- u. A statement of how water will be provided for the drilling.

## 2. **INSURANCE AND BOND**

### Liability Insurance

No exploration, drilling or extraction operations shall be commenced until the applicant files with the town clerk a certificate of general liability for bodily injury and property damage in the amount of five million dollars (\$5,000,000).

### Bonds

A corporate security bond for each well in the sum of two hundred fifty thousand dollars (\$250,000) shall be filed with the town clerk to assure conformance by the applicant with all provisions and conditions of this ordinance and all additional conditions or requirements imposed by the Board of Adjustment and plugging of the well and reclamation upon its abandonment.

## 3. **SITE SELECTION AND PREPARATION**

### Well Location: No well shall be located within:

- 1,300 feet of any occupied structure not associated with the well development;
- 1,300 feet of any other drill site;
- 300 feet of any producing fresh water well;

50 feet of a public utility;  
400 feet of a property line of a residential subdivision;  
300 feet of any public street, state highway right-of way or future street  
right-of-way.

Drill Site Area: No drill site shall contain more than two-and-one-half acres.

Number of wells: The number of wells to be drilled shall not exceed one to each five acres in the leased area.

Hours of Operation: If a drill site is located within 2,000 feet of any residence, hospital or institutional housing, all work in preparation of the site for drilling shall be conducted only between the hours of 7:00 am and 7:00 pm.

Access Roads: Lease roads shall be located and maintained to minimize damage to the landscape, minimize erosion and allow for safe and convenient ingress and egress to the installation. Roads shall be surfaced with crushed rock or gravel or oiled to prevent dust and mud. The permittee may not allow the use of any residential street by any equipment or vehicles used in the oil or gas operations in the field unless the well is surrounded by residential property and must be accesses by residential streets which shall be restored to their original condition on completion of the well.

Screening and Fencing: Prior to the commencement of drilling operations or the activation of an idle well in a developed area, the well tanks, and all surface equipment shall be enclosed by a minimum six (6) feet enclosure having at least one locking gate or exit and constructed of one of the following materials:

A solid masonry wall compatible with the facilities, buildings, and structures on and adjacent to the site;

A chain link fence interwoven with wood slatting or other opaque materials of a color compatible with surrounding uses.

Landscaping: For a well visible from a public street, screening and landscaping shall be done:

- a. along the street line except for a distance of up to twenty (20) feet for a necessary access,
- b. along both side lines as far back as a line running parallel to the street and through the center of any well or tank on the site.

Landscaping, shrubs, and fencing shall be maintained in good condition at all times.

Pipelines: All off-site pipelines serving the drill site shall be buried underground.

Off-street parking: A surfaced and maintained off-street parking area containing not less

than five (5) parking spaces shall be provided for each well being drilled.

#### 4. DRILLING

Soundproofing: The derrick and all drilling machinery that produces noise shall be enclosed with soundproofing material, which shall be maintained in a clean and serviceable condition.

Lights: No lights shall be allowed to shine directly on adjacent property or property in the general vicinity of the site.

Delivery of equipment: If a drill site is located within 2,000 feet of any residence, hospital or institutional housing, the delivery or removal of equipment or material from the drill site shall be limited to the hours between 7:00 am and 7:00 pm. except in case of emergency.

Power sources: All power shall be electric motors or muffled internal combustion engines.

Removal of derrick: Within sixty (60) days after the completion of the drilling of a well, the derrick and all other drilling equipment shall be removed from the site.

#### 5. PRODUCTION OPERATIONS

Underground installation: All well head equipment shall be installed in well cellars and no portion of such equipment shall be or project above the surrounding ground surface.

Soundproofing: Motive power for production operations shall be completely enclosed in a structure insulated with soundproofing materials. These structures shall conform in appearance to surrounding structures and shall not exceed sixteen (16) feet in height.

Motive power location: Motive power for production operations shall be located on the drill site.

Height of installation: Unless otherwise specifically permitted by these regulations, no permanent installations at the drilling site shall project more than eight (8) feet above the surrounding ground surface.

Storage of equipment: There shall be no storage of material, equipment, or vehicles not for the immediate use or servicing of an installation at the drill site.

Site and Installation Maintenance: The drill site and all permanent installations shall be maintained in a neat, clean, and orderly condition and all surfaces of permanent installations within the drill site shall be painted and well maintained.

Storage Tank Location: Storage tanks shall be located on the drill site.

Storage Tank Capacity: No more than two vapor tight crude oil storage tanks shall be installed for each producing well, neither of which shall have a capacity exceeding five

hundred (500) barrels exclusive of processing equipment.

Removal of Oil: Oil produced at the drill site shall be removed by an underground pipeline or pipelines 180 days from and after the date the first well in the drill site is complete.

Refineries: No refinery, dehydrating, or absorption plant of any kind shall be constructed, established or maintained on the drill site.

Gas Burning: Natural gas shall not be vented to the atmosphere or burned by open flame.

Well Servicing: If a drill site is located within 2,000 feet of any residence, hospital, or institutional housing, no well servicing shall be done except between the hours of 7:00 am and 7:00 pm, except in the case of an emergency.

Signs: No sign visible from outside the drill site shall be permitted except those required by law or for safety or directional purposes.

Off-site Pipelines: Within 30 days after the completion of the drilling of a well, the work of burying all off-site pipelines shall be commenced and completed within a reasonable time.

## 6. WASTE CONTROL

Receptors: All waste oil, gasoline, brine, drill cuttings, drilling mud or acids produced or used in connection with oil drilling operations or oil production shall be captured and retained in enclosed water tight receptors and within 20 days of the completion of a well transported by pipe or hauled for terminal disposal to a dumping area specifically approve for such disposal by the Board of Adjustment. No such substances shall be permitted to escape by seepage or overflow. No such substances shall be permitted to flow across the surface of the ground or upon any public way, into any storm or sanitary sewer, drainage ditch or paving, or into any stream or tributary.

Waste Receptors in Floodplain: All waste pit receptors shall be one foot above the one hundred (100) year floodplain or properly diked to repel the one hundred year flood waters from the pit.

## 7. ABANDONMENT

Upon approval of abandonment of a well by the Vermont Natural Oil and Gas Resources Board, all drilling and production facilities, equipment, and structures associated with the installation, and all oil or waste material, shall be removed and the site restored to its original conditions and contours.

## 8. DEFINITIONS

Abandonment: The temporary or permanent discontinuation of use and the plugging of a well, removal of equipment, and restoration of the site in compliance with the

provision of this ordinance.

Applicant: The person who represents the owner or operator and applies, on their behalf, for a permit pursuant to the provision of this chapter.

Casing: Steel pipe placed in a well hole as drilling progresses to prevent the wall of the hole from caving in.

Cellar: An excavation around and above the top joint of the casing of a well.

Disposal Well: A well used for injecting brines or mineralized waters into permeable subsurface formations that do not contain fresh water.

Drilling: The digging or boring of a well for the purpose of exploring for, developing, or producing oil, gas, or other hydrocarbons. The term also includes disposal wells and the redrilling of existing exploration and production wells.

Mud: The drilling fluid circulated through the drill hole as a lubricant during drilling operations.

Permittee: The person who represents the owner or operator and receives, on their behalf, a permit pursuant to the provision of this ordinance.

Plugging: The placing of cement in the well bore to prevent the escape of oil, gas, water or other materials.

Production: Bringing the well fluids to the surface and separating, storing, gauging, and preparing them for sale.

Retaining Pit: A plastic lined earthen excavation used for retaining drilling wastes.

Separator: Equipment used to separate oil from waters or other materials.

Well Head: The equipment installed at the surface of the drill hole.

## **APPENDIX B**

### **FLOOD HAZARD AREA REGULATIONS**

#### **I. Statutory Authorization**

To effect the purposes of 10 V.S.A. Chapter 32, and in accordance with 24 V.S.A. § 4424, there is hereby established an ordinance for areas of special flood hazard in the Town of Fair Haven, Vermont.

#### **II. Statement of Purpose**

It is the purpose of this ordinance to:

- A. Minimize and prevent the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flooding and other flood related hazards; and
- B. Ensure that the design and construction of development in flood and other hazard areas are accomplished in a manner that minimizes or eliminates the potential for flood and loss or damage to life and property; and
- C. Manage all flood hazard areas designated pursuant to 10 V.S.A. § 753; and
- D. Make the state, municipalities, and individuals eligible for federal flood insurance and other federal disaster recovery and hazard mitigation funds as may be available.

#### **III. Lands to Which These Regulations Apply**

These regulations shall apply to all areas in the Town of Fair Haven, Vermont identified as areas of special flood hazard in and on the most current flood insurance studies and maps published by the Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), National Flood Insurance Program (NFIP), as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. § 753, which are hereby adopted by reference and declared to be part of these regulations.

#### **IV. Development Permit Required**

A permit is required, to the extent authorized by State law, for all proposed construction or other development, including the placement of manufactured homes, in areas of special flood hazard. Conditional use approval by the appropriate municipal panel is required for:

1. New buildings,
2. Substantial improvement of existing buildings, and
3. Development in a floodway prior to being permitted by the administrative officer. All

development and subdivisions shall be reviewed to assure that such proposals minimize potential flood damage, and that public facilities and utilities such as sewer, gas, electrical, and water systems are constructed so as to minimize flood damage, and adequate drainage is provided to reduce exposure to flood hazards.

The regulatory floodway in the Town of Fair Haven means the floodway identified in and on the most current flood insurance studies and maps published by the Department of Homeland Security, Federal Emergency Management Agency, and the channel of the 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 1. foot at any point.

## **V. Procedures**

A. Prior to issuing a permit a copy of the application and supporting information shall be submitted by the administrative officer to the State National Floodplain Insurance Program Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section in accordance with 24 V.S.A. § 4424. A permit may be issued only following receipt of comments from the Agency or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner.

B. Adjacent communities and the Stream Alteration Engineer at the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section shall be notified at least 30 days prior to issuing any permit for the alteration or relocation of a watercourse and copies of such notification shall be submitted to the Administrator of the National Flood Insurance Program. Any permit issued shall assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

C. Proposed development, including a Vermont Agency of Natural Resources Project Review Sheet for the proposal, shall be reviewed by the administrative officer or the appropriate municipal panel.

The Project Review Sheet shall identify all State and Federal agencies from which a permit approval is required for the proposal, and shall be filed as a required attachment to the Town permit application. The identified permits, or letter indicating that such permits are not required, shall be submitted to the Administrative Officer and attached to the permit application before work can begin.

## **VI. Base Flood Elevations and Floodway Limits**

A. Where available, base flood elevations and floodway limits (or data from which a community can designate regulatory floodway limits) provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps shall be used to administer and enforce these regulations.

B. In areas where base flood elevations and floodway limits have not been provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps,

base flood elevations and floodway data provided by FEMA or available from State or Federal agencies or other sources, shall be obtained and utilized to administer and enforce these regulations.

C. Until a regulatory floodway has been designated, no new construction, substantial improvements, or other development shall be permitted in the Special Flood Hazard Area unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing development and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community.

## **VII. Development Standards**

### **A. Floodway Areas**

1. Development or other encroachments within the regulatory floodway, as determined by Section VI.B, is prohibited unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice by a registered professional engineer certifying that the proposed development will result in no increase in flood levels during the occurrence of the base flood.

2. Junkyards and storage facilities for floatable materials, chemicals, explosives, flammable liquids, or other hazardous or toxic materials, are prohibited within the floodway.

### **B. Floodway Fringe Areas (i.e., special flood hazard areas outside of the floodway)**

1. All Development - All development shall be reasonably safe from flooding and:

- (a) designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure during the occurrence of the base flood,
- (b) constructed with materials resistant to flood damage,
- (c) constructed by methods and practices that minimize flood damage, and
- (d) constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

### **2. Residential Development:**

(a) New construction and existing buildings to be substantially improved that are located in Zones A, A1-30, AE, and AH shall have the lowest floor, including basement, elevated to 1 foot or more above the base flood elevation.

(b) Manufactured homes to be placed and existing manufactured homes to be substantially improved that are:

- (i) located in a new manufactured home park or subdivision, outside of a manufactured home park or subdivision, in an expansion to an existing manufactured home park or subdivision, or in a manufactured home park or subdivision which has incurred substantial damage from a flood shall be elevated on a permanent foundation

such that the lowest floor of the manufactured home is elevated to 1 foot or more above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist floatation, collapse, and lateral movement during the occurrence of the base flood.

(ii) located in an existing manufactured home park, where elevating a replacement home to or above base flood elevation is not possible, the lowest floor shall be supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 48 inches in height above grade and be securely anchored to an adequately anchored system to resist floatation, collapse, and lateral movement.

### 3. Non Residential Development:

(a) New construction and existing buildings to be substantially improved located in Zones A, A1-30, AE, and AH shall have the lowest floor, including basement, elevated to 1 foot or more above the base flood elevation or together with attendant utility and sanitary facilities be designed so that below 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.

(b) A permit for a building proposed to be floodproofed shall not be issued until a registered professional engineer or architect has reviewed the structural design, specifications and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.

### 4. Subdivisions:

(a) New subdivision proposals and other proposed development (including proposals for manufactured home parks and subdivisions) that are greater than 50 lots or 5 acres, whichever is the lesser, shall include base flood elevation data.

(b) Subdivisions (including manufactured home parks) shall be designed to assure:

- (i) such proposals minimize flood damage within the flood-prone area,
- (ii) public utilities and facilities, such as sewer, gas, electrical, and water systems are located and constructed to minimize or eliminate flood damage, and
- (iii) adequate drainage is provided to reduce exposure to flood hazards.

### 5. Enclosed Areas Below the Lowest Floor:

(a) Enclosed areas below the lowest floor which are subject to flooding shall be used solely for parking of vehicles, building access, or storage.

(b) New construction and existing buildings to be substantially improved with fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.

(c) Designs for meeting this requirement must either be certified by a registered professional

engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. 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.

6. Recreational Vehicles: Recreational Vehicles placed on sites with special flood hazard areas shall either:

- (a) be on the site for fewer than 180 consecutive days,
- (b) be fully licensed and ready for highway use, or
- (c) be permitted in accordance with the elevation and anchoring requirements for “manufactured homes” in section B.2.(b).

7. Accessory Structures: A small accessory building that represents a minimal investment need not be elevated to the base flood elevation provided the building:

- (a) shall not be used for human habitation,
- (b) shall be designed to have low flood damage potential,
- (c) shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters,
- (d) shall be firmly anchored to prevent flotation, and
- (f) shall have service facilities such as electrical and heating equipment elevated or floodproofed.

8. Water Supply Systems: New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

9. Sanitary Sewage Systems: New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

10. On-Site Waste Disposal Systems: Replacement On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

10. Watercourse Carrying Capacity: The flood carrying capacity within any altered or relocated portion of a watercourse shall be maintained.

### **VIII. Duties and Responsibilities of the Administrative Officer**

The administrative officer shall maintain a record of:

- (a) All permits issued for development in areas of special flood hazard;
- (b) The elevation (consistent with the datum of the elevation on the NFIP maps for the community) of the lowest floor, including basement, of all new or substantially improved buildings;
- (c) The elevation (consistent with the datum of the elevation on the NFIP maps for the community) to which buildings have been floodproofed;

- (d) All floodproofing certifications required under this regulation; and
- (e) All variance actions, including justification for their issuance.

### **IX. Variances to the Development Standards**

Variances shall be granted by the appropriate municipal panel only in accordance with 24 V.S.A. § 4469 and in accordance with the criteria for granting variances found in 44 CFR, Section 60.6, of the National Flood Insurance Program regulations.

Any variance issued will inform the applicant 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.

### **X. Warning of Disclaimer of Liability**

This ordinance does not imply that land outside of the areas of special flood hazard or land use permitted within such districts will be free from flooding or flood damages. This ordinance shall not create liability on the part of the Town of Fair Haven or any town official or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made thereunder.

### **XI. Validity and Severability**

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

### **XII. Precedence of Ordinance**

The provisions of this ordinance shall not in any way impair or remove the necessity of compliance with any other applicable ordinances. Where this ordinance imposes a greater restriction, the provisions of this ordinance shall take precedence.

### **XIII. Enforcement and Penalties**

It shall be the duty of the Administrative Officer to enforce the provisions of this ordinance. Whenever any development occurs contrary to these flood hazard area regulations, the Administrative Officer, in his/her discretion, shall institute appropriate action in accordance with the provisions of 24 V.S.A. §1974a or pursuant to 24 V.S.A. § 4451 or 24 V.S.A. § 4452 to correct the violation. No action may be brought unless the alleged offender has had at least a seven-day warning notice by certified mail. An action may be brought without the seven-day notice and opportunity to cure if the alleged offender repeats the violation after the seven-day notice period and within the next succeeding twelve months. The seven-day warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days.

If the structure is still non-compliant after the opportunity to cure has passed, the Administrator Officer shall submit a declaration to the Administrator of the NFIP requesting a denial of flood insurance. Section 1316 of the National Flood Insurance Act of 1968, as amended, authorizes FEMA to deny flood insurance to a property declared by a community to be in violation of their flood hazard area regulations. The declaration shall consist of: (a) the name of the property owner and address or legal description of the property sufficient to confirm its identity or location, (b) a clear and unequivocal declaration that the property is in violation of a cited State or local law, regulation, or ordinance, (c) a clear statement that the public body making the declaration has authority to do so and a citation to that authority, (d) evidence that the property owner has been provided notice of the violation and the prospective denial of insurance, and (e) a clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.

#### **XIV. Definitions For Flood Hazard Regulations Only**

Appropriate Municipal Panel means a planning commission performing development review, a board of adjustment, a development review board, or a legislative body performing development review.

Base Flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Base Flood Elevation (BFE) the height of the base flood, usually in feet, in relation to the National Geodetic Vertical Datum of 1929, the North American Vertical Datum of 1988, or other datum referenced in the Flood Insurance Study report, or average depth of the base flood, usually in feet, above the ground surface.

Basement means any area of the building having its floor elevation (below ground level) on all sides.

Development means any man-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.

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

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufacturing homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads)

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 an official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

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

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.

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.

Legislative Body means the selectboard in the case of a town, the trustees in the case of an incorporated village, and the mayor, alderpersons, and city council members in the case of a

city, and the supervisor in the case of an unorganized town or gore.

Lowest Floor means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement 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 means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

New construction means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of the floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

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

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

Special Flood Hazard Area is the land in the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. The area may be designated a Zone A on the Flood Hazard Boundary Map (FHBM). After detailed ratemaking has been completed in preparation for publication of the Flood Insurance Rate Map (FIRM), Zone A usually is refined into Zones A, AH, A1-30, AE, A99, AR, AR/AI-30, AR/AE, AR/AH, AR/A, VO or V1-30, VE, or V. For purposes of these regulations, the term "special flood hazard area" is synonymous in meaning with the phrase "area of special flood hazard".

Start of Construction includes substantial improvement, and means the date the building

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

Structure means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. Structure, for insurance purposes, means: (a) A building with two or more outside rigid walls and a fully secured roof, that is affixed to a permanent site; (b) A manufactured home (“a manufactured home,” also known as a mobile home, is a structure: built on a permanent chassis, transported to its site in one or more sections, and affixed to a permanent foundation); or (c) A travel trailer without wheels, built on a chassis and affixed to a permanent foundation, that is regulated under the community’s floodplain management and building ordinances or laws. For the latter purpose, “structure” does not mean a recreational vehicle or a park trailer or other similar vehicle, except as described in (c) of this definition, or a gas or liquid storage tank.

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

Violation means the failure of a structure or other development to be fully compliant with the community’s floodplain management regulations. 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

## APPENDIX C

### WIRELESS TELECOMMUNICATION FACILITY REGULATION

#### SECTION I: AUTHORITY

Under authority granted by 24 V.S.A. Chapter 117, the Town of Fair Haven adopts this Wireless Telecommunication Facility Zoning Bylaw.

Pursuant to 24 V.S.A. § 4414(12), the Planning Commission shall have the authority to regulate construction, alteration, and development, decommissioning and dismantling of Wireless Telecommunication Facilities in the Town of Fair Haven.

#### SECTION II: PURPOSE

The purpose of this bylaw is to promote the public health, safety, welfare, and convenience of the residents of the Town of Fair Haven, Vermont while accommodating the telecommunication needs of the Town's residents.

#### SECTION III: CONSISTENCY WITH FEDERAL AND STATE LAW; SEVERABILITY

This bylaw is intended to be consistent with the Telecommunications Act of 1996 and Title 24, Chapter 117 of Vermont Statutes Annotated. If any section of this bylaw is held by a court of competent jurisdiction to be invalid, such finding shall not invalidate any other part of this bylaw.

#### SECTION IV: DEFINITIONS

The following terms shall have the meanings indicated:

***Wireless Telecommunication Service*** Any commercial mobile service, wireless service, common carrier wireless exchange service, cellular service, personal communication service (PCS), specialized mobile radio service, paging service, wireless data service, or public or private radio dispatch service.

***Wireless Telecommunication Facility*** any tower or other support structure, including antennae, that will extend 20 or more feet vertically, and any accompanying structure, building, access road, service utility or equipment that broadcasts or receives radio frequency waves carrying Wireless Telecommunication Services.

***Wireless Telecommunication Service Provider*** Any person or entity providing Wireless Telecommunication Services.

#### SECTION V: PERMIT REQUIRED; EXEMPTIONS

Wireless Telecommunication Facilities may be permitted as conditional uses upon compliance with the provisions of this bylaw. See Table of Uses for Zoning Districts. No installation or construction of, or significant addition or modification to, any Wireless Telecommunication Facility shall commence until a permit has been issued by the Planning Commission..

15. However, in accordance with 24 V.S.A. § 4412(9), a permit shall be issued for a Wireless Telecommunication Facility that in, the determination of the Planning Commission will impose no impact or merely a de minimis impact upon any criteria established in Section IX below. The Planning Commission determination regarding no impact or de minimis impact shall be in writing and shall be subject to appeal under 24 V.S.A. § 4471.

No permit shall be required for a Wireless Telecommunication Facility that is used exclusively for municipal radio dispatch service or emergency radio dispatch service and which does not exceed 50 feet in elevation.

This bylaw shall not apply to amateur radio, citizens band radio, AM or FM radio, or broadcast television service.

No permit shall be required for a Wireless Telecommunication Facility that has received a certificate of public good pursuant to 30 V.S.A. § 248a.

6. This ordinance shall not prohibit a property owner's ability to place or allow placement of antennae used to transmit, receive, or transmit and receive communications signals on the property owner's premises if the aggregate area of the largest face of the antennae is not more than eight square feet, and if the antennae and the mast to which they are attached do not extend more than 12 feet above the highest point of the roof of that portion of the building to which they are attached.

## **SECTION VI: PERMIT APPLICATION REQUIREMENTS**

In addition to information otherwise required in the Town of Fair Haven's Zoning Bylaw, applicants shall include the following supplemental information:

1. The applicant's legal name, address and telephone number. If the applicant is a corporation the applicant shall provide the state in which it is incorporated and the name and address of its resident agent.
2. The name, title, address and telephone number of the person to whom correspondence concerning the application should be sent.
3. The name, address and telephone number of the owner or lessee of the property on which the Wireless Telecommunication Facility will be located.
4. The names and addresses of all adjoining property owners. Adjoining property owners shall be determined without regard to any public right-of-way.
5. A vicinity map showing the entire vicinity within a 1,000 foot radius of the Facility, including the location of any tower, topography, public and private roads and driveways, buildings and structures, utilities, water bodies, wetlands, landscape features, historic sites and wildlife habitats. It shall indicate the property lines of the proposed Facility site parcel and all easements or rights of way needed for access from a public way to the Facility.

6. The location of the Facility on a USGS Topographic Map or a GIS-generated map compatible with Vermont Center for Geographic Information (VCGI) standards and encompassing the area within at least a two-mile radius of the proposed tower site.
7. Elevations and proposed site plans of the Facility showing all facades and indicating all exterior materials and colors of towers, buildings and equipment, as well as all landscaping, utility wires, guy wires and screening. (All plans shall be drawn at a minimum scale of 1 inch = 50 feet).
8. In the case of a site that is forested, the approximate average elevation of the existing vegetation within 50 feet of any tower base.
9. Construction sequence and time schedule for completion of each phase of the entire project.
10. A report from a qualified engineer that:
  - a. Describes any tower's design and elevation,
  - b. Documents the elevation above grade for all proposed mounting positions for antennae to be collocated on a tower and the minimum distances between antennae,
  - c. Describes a tower's capacity, including the number, elevation and types of antennae that the tower is proposed to accommodate.
  - d. In the case of new Facilities, demonstrates that existing towers and structures within 5 miles of the site cannot reasonably be modified to provide adequate coverage and adequate capacity to the community.
  - e. Describes potential changes or additions to existing structures or towers that would enable them to provide adequate coverage.
  - f. Describes the output frequency, number of channels and the power output per channel for each antenna. In the alternative, a coverage map may be provided.
  - g. Demonstrates the Facility's compliance with the standards set forth in this bylaw or other applicable standards.
  - h. Provides proof that at the proposed Facility site the applicant will be in compliance with all FCC regulations, standards and requirements, and includes a statement that the applicant commits to continue to maintain compliance with all FCC regulations, standards and requirements for radio frequency radiation (RFR).
  - i. Includes such other information as required by the Planning Commission to evaluate the application.
11. A letter of intent committing the Facility owner and its successors to permit shared use of any tower if the additional users agree to meet reasonable terms and conditions for shared use including compliance with all applicable FCC regulations, standards and requirements and the provisions of this Bylaw and all other applicable laws.

12. In the case of an application for additional antennas or other equipment to be installed on an existing Facility, a copy of the executed contract with the owner of the existing structure.
13. To the extent required by the National Environmental Policy Act (NEPA) and as administered by the FCC, a complete Environmental Assessment (EA) draft or final report describing the probable impacts of the Facility, or a written statement by the applicant that an EA is not required for the facility.

#### **SECTION VII: INDEPENDENT CONSULTANTS**

Upon submission of an application for a Wireless Telecommunication Facility permit, the Planning Commission may retain independent consultants whose services shall be paid for by the applicant. These consultants shall be qualified professionals in telecommunications engineering, structural engineering, monitoring of electromagnetic fields and such other fields as determined by the Planning Commission. The consultant(s) shall work at the Planning Commission's direction and shall provide the Planning Commission such reports and assistance as the Planning Commission deems necessary to review an application.

#### **SECTION VIII: BALLOON TEST**

The Planning Commission may require the applicant to fly a four-foot diameter brightly colored balloon at the location and maximum elevation of any proposed tower. If a balloon test is required, the applicant shall advertise the date, time, and location of this balloon test at least 7 days in advance of the test in a newspaper with a general circulation in the Town. The applicant shall also inform the Planning Commission, in writing, of the date, time and location of the test, at least 15 days in advance of the test.

The balloon shall be flown for at least eight consecutive daylight hours on two days. If visibility and weather conditions are inadequate for observers to be able to clearly see the balloon test, further tests may be required by the Planning Commission.

#### **SECTION IX: CRITERIA FOR APPROVAL AND CONDITIONS**

An application for a Wireless Telecommunication Facility permit shall be approved after a hearing when the Planning Commission finds all the following criteria have been met:

1. The Facility will not be built on speculation. If the applicant is not a Wireless Telecommunication Service Provider, the Planning Commission may require the applicant to provide a copy of a contract or letter of intent showing that a Wireless Telecommunication Service Provider is legally obligated to locate a Wireless Telecommunication Facility on lands owned or leased by the applicant.
2. The Facility will not project more than 20 feet above the average elevation of the tree line measured within 50 feet of the highest vertical element of the Wireless Telecommunication Facility, unless the proposed elevation is reasonably necessary to provide adequate Wireless Telecommunication Service capacity or coverage or to facilitate collocation of facilities.
3. The minimum distance from the base of any tower to any property line is not less than 100 % the total elevation of the tower, including antenna or equipment.

4. The Facility will not be illuminated by artificial means and will not display any lights or signs except for such lights and signs as required by Federal Aviation Administration, federal or state law, or this bylaw.
5. The applicant will remove the Facility, should the Facility be abandoned or cease to operate. The Planning Commission may require the applicant to provide a bond, or other form of financial guarantee acceptable to the Planning Commission to cover the cost of removal of the Facility, should the Facility be abandoned or cease to operate.
6. The applicant demonstrates that the facility will be in compliance with all FCC standards and requirements regarding radio frequency radiation.
7. The applicant will maintain adequate insurance on the Facility.
8. The Facility will be properly identified with appropriate warnings indicating the presence of radio frequency radiation. The Planning Commission may condition a permit on the provision of appropriate fencing.
9. The proposed equipment cannot be reasonably collocated at an existing Wireless Telecommunication Facility. In determining whether the proposed equipment cannot be reasonably collocated at an existing facility, the Planning Commission shall consider the following factors:
  - A. The proposed equipment would exceed the structural or spatial capacity of the existing facility and the existing facility cannot be reinforced, modified or replaced to accommodate planned equipment at a reasonable cost.
  - B. The proposed equipment would materially impact the usefulness of other equipment at the existing facility and such impact cannot be mitigated or prevented at a reasonable cost.
  - C. The proposed equipment, alone or together with existing equipment, would create radio frequency interference and/or radio frequency radiation in violation of federal standards.
  - D. Existing towers and structures cannot accommodate the proposed equipment at an elevation necessary to function reasonably or are too far from the area of needed coverage to function adequately.
  - E. Collocation of the equipment upon an existing tower would cause an undue aesthetic impact.
10. The Facility provides reasonable opportunity for collocation of other equipment.
11. The Facility will not unreasonably interfere with the view from any public park, natural scenic vista, historic building or district, or major view corridor.
12. The Facility will not have an undue adverse aesthetic impact. In determining whether a facility has an undue adverse aesthetic impact, the Planning Commission shall consider the following factors:
  - A. The results of the balloon test, if conducted.

- B. The extent to which the proposed towers and equipment have been designed to blend into the surrounding environment through the use of screening, camouflage, architectural design, and/or imitation of natural features.
  - C. The extent to which access roads have been designed to follow the contour of the land and will be constructed within forest or forest fringe areas and not open fields.
  - D. The duration and frequency with which the Facility will be viewed on a public highway or from public property.
  - E. The degree to which the Facility will be screened by existing vegetation, topography, or existing structures.
  - F. Background features in the line of sight to the Facility that obscure or make the Facility more conspicuous.
  - G. The distance of the Facility from the point of view and the proportion of the facility that is above the skyline.
  - H. The sensitivity or unique value of a particular view affected by the Facility.
  - I. Any significant disruption of a viewshed that provides context to an important historic or scenic resource.
13. The Facility will not destroy or significantly imperil necessary wildlife habitat or that all reasonable means of minimizing the destruction or imperilment of such habitat or species will be utilized.
14. The Facility will not generate undue noise.

**SECTION X: CONTINUING OBLIGATIONS FOR WIRELESS TELECOMMUNICATION FACILITIES**

The owner of a Wireless Telecommunication Facility shall, at such times as requested by the Planning Commission, file a certificate showing that it is in compliance with all FCC standards and requirements regarding radio frequency radiation, and that adequate insurance has been obtained for the Facility. Failure to file a certificate within the time frame requested by the Planning Commission shall mean that the Facility has been abandoned.

**SECTION XI: REMOVAL OF ABANDONED OR UNUSED FACILITIES**

Unless otherwise approved by the Planning Commission an abandoned or unused Wireless Telecommunication Facility shall be removed within 90 days of abandonment or cessation of use. If the Facility is not removed within 90 days of abandonment or cessation of use, the Planning Commission may cause the Facility to be removed. The costs of removal shall be assessed against the Facility owner.

Unused portions of a Wireless Telecommunication Facility shall be removed within 180 days of the time that such portion is no longer used. Replacement of portions of a Facility previously removed shall require a new permit, pursuant to Section V.