

ARTICLE 5. DEVELOPMENT REVIEW

Section 5.1 Applicability

(A) **Conditional Use Review** standards shall apply to those uses designated as conditional uses in Article 2, or as otherwise specified under Articles 3 (General Regulations) and 4 (Specific Use Standards). Such uses are subject to conditional use review by the Board of Adjustment under Section 5.2.

(B) **Flood Hazard Area Review** standards shall apply to all new construction, the substantial improvement of existing buildings, and other allowed development as determined from the underlying zoning district which falls within the Flood Hazard Area Overlay District. Such development is subject to review under Section 5.3. In the event a use is subject to conditional use review under Section 5.2 and flood hazard area review, the Board of Adjustment may conduct both review processes concurrently.

(C) **Planned Residential Development (PRD)** review procedures and standards may be applied by the Board of Adjustment in accordance with Section 5.4 at the request of the applicant for any parcel which meets the minimum lot size for the district within which it is located.

Section 5.2 Conditional Use Review

(A) **Application Requirements.** In addition to the application requirements under Section 7.1 for a zoning permit, an application for conditional use review by the Board of Adjustment shall include associated fees, and one original and two complete copies of the following information as applicable to the development:

- (1) Applicant information, including the name and address of the applicant, the property owner of record, and the person or firm preparing the application and supporting materials.
- (2) The date of the application (to also be shown on all supporting materials).
- (3) A general location map (on a USGS topographic map or Vermont orthophoto base) showing the location of the proposed development in relation to zoning districts, public highways, drainage and surface waters, and adjoining properties and uses.
- (4) A site plan, drawn to scale, which shows:
 - a. north arrow, scale, title (project name), date, and the name of the preparer;
 - b. property lines, dimensions and required setback distances;
 - c. existing site features, including ridgelines, hill tops and areas of steep slope (greater than 25%); drainage, surface waters, wetlands, and associated setback areas; vegetation and tree lines; historic features (e.g., structures, cellar holes, stone walls), and designated critical habitat, flood hazard and source protection areas;
 - d. the location (footprints) of existing and proposed structures, including all buildings, other structures, signs, and/or walls;
 - e. existing and proposed rights-of-way and easements,
 - f. existing and proposed roads, driveways, parking and loading areas, and pedestrian paths;
 - g. existing and proposed utility lines, water supply and wastewater disposal areas;
 - h. proposed site grading (cut and fill), stormwater management, and erosion control measures; and
 - i. proposed outdoor lighting, landscaping and screening.
- (5) Additional information as may be requested by the Board of Adjustment to determine conformance with these regulations, including one or more of the following:

- a. elevation contours, at intervals to be specified by the Board;
- b. existing and proposed structural elevations;
- c. an “elevation certificate” as required under the National Flood Insurance Program for development within flood hazard areas;
- d. stormwater, erosion control, lighting, landscaping, buffer, forest or wildlife management plans; and/or
- e. traffic, visual, and fiscal impact assessments.

(B) **Waivers.** The application will not be considered complete by the Board of Adjustment until all required materials have been submitted. One or more application requirements may be waived by the Board, at the request of the applicant, should the Board determine that the information is unnecessary for a comprehensive review of the application. Waivers shall be issued by the Board in writing at the time the application is accepted and deemed complete.

(C) **Technical Review.** To assist in its evaluation of an application, the Board may require the submission of technical analysis of one or more aspects of a proposed development, prepared by a qualified professional, to be funded by the applicant.

(D) **Review Procedures.** At the time an application is deemed complete, the Board of Adjustment shall schedule a public hearing, warned in accordance with Section 7.6. The Board may recess the hearing (adjourn to a time and date) as needed to allow for the submission of testimony and evidence by the applicant or other interested parties. The Board shall act to approve, approve with conditions, or deny an application for a conditional use within 60 days of the date of adjournment of the final public hearing. The written decision shall include findings, any conditions of approval or reasons for denial, and provisions for appeal to the Environmental Court. The failure of the Board to act within this 60 day period shall be deemed approval.

(E) **General Review Standards.** Conditional use approval shall be granted by the Board of Adjustment upon finding that the proposed development will not result in an undue adverse effect on any of the following:

- (1) **The capacity of existing or planned community facilities and services.** The Board shall consider the demand for community facilities and services that will result from the proposed development in relation to the existing and planned capacity of such facilities and services, and any adopted capital budget and program currently in effect. The Board may request information or testimony from other local officials to help evaluate potential impacts on community facilities and services. To minimize adverse impacts to community facilities and services, the Board may impose conditions as necessary on the provision of facilities, services or related improvements needed to serve the development, and/or the timing and phasing of development in relation to planned municipal capital expenditures or improvements.
- (2) **Character of the area affected.** The Board shall consider the design, location, scale, and intensity of the proposed development in relation to the character of the neighborhood or area affected by the proposed development, as determined from zoning district purpose statements, municipal plan policies and recommendations, and evidence submitted in hearing. The Board may impose conditions as necessary to eliminate or mitigate adverse impacts to the area, neighboring properties and uses, including conditions on the design, scale, intensity, or operation of the proposed use.
- (3) **Traffic on roads and highways in the vicinity.** The Board shall consider the potential impact of traffic generated by the proposed development on the function, capacity, safety, efficiency, and maintenance of roads, highways, intersections, bridges, and other transportation infrastructure in the vicinity of the project. The Board may request information or testimony from the Selectboard, Road Commissioner or state officials to help evaluate potential impacts on town and state highways in the

vicinity of the development. A traffic impact study also may be required to determine potential adverse impacts and appropriate mitigation measures. The Board may impose conditions as necessary to ensure that a proposed development will not result in unsafe conditions for pedestrians or motorists, including the installation of infrastructure improvements or accepted traffic management and control measures as required by the development.

- (4) **Bylaws in effect.** The Board shall determine whether the proposed development conforms to other applicable municipal bylaws and ordinances currently in effect including, but not limited to, town road, health, and facility (e.g., sewer, water) ordinances. The Board shall not approve proposed development that does not meet the requirements of other municipal regulations in effect at the time of application.
- (5) **The utilization of renewable energy resources.** The Board shall consider whether the proposed development will interfere with the sustainable use of renewable energy resources either by diminishing their future availability, or by interfering with access to such resources. Conditions may be imposed as necessary to ensure the long-term availability of, and continued access to, renewable energy resources.

(F) **Specific Review Standards.** In addition to the general standards under Section (E), the Board may also consider and attach specific conditions to conditional use approval as appropriate to avoid, minimize or mitigate the adverse impacts of a proposed development, including:

- (1) **Siting & Dimensional Standards.** All conditional uses shall meet minimum applicable dimensional and density standards as specified for the district in which the use is located (Article 2), the particular use (Article 4), and for the protection of surface waters (Section 3.12). In addition, the Board may specify as a condition of approval lower densities of development, increased frontage or setback distances, increased buffer areas, and/or designated building envelopes that limit the area to be used for structures and parking, as necessary to avoid or minimize adverse impacts to the character of the area, to significant natural and historic resources identified in the town plan or through site investigation, or to adjoining properties and uses.
- (2) **Performance Standards.** All conditional uses shall meet performance standards as specified in Section 3.11. In determining appropriate performance standards for a particular use, the Board may consult with state regulatory officials and consider accepted industry standards. In addition, the Board may limit the hours of operation so that the proposed use is compatible with the character of the neighborhood and area.
- (3) **Access & Circulation Standards.** All conditional uses shall meet applicable access management standards as specified in Section 6.6. The Board, in consultation with the Selectboard and state, may impose conditions as necessary to ensure the safety of vehicular and pedestrian traffic on and off-site, including but not limited to conditions on the location and number of access and intersection locations, requirements for shared access and/or parking, and provisions for emergency access, parking, service and loading area, snow storage, pedestrian paths and transit facilities (e.g., sheltered bus stops), as appropriate.
- (4) **Landscaping & Screening Standards.** The Board may require landscaping, fencing, screening or site grading as necessary to maintain the character of the area, or to screen unsightly or incompatible uses from town highways, other public rights-of-way, or adjoining properties. Particular consideration will be given to the preservation of existing vegetation, visibility of the development from public vantage points (including roads), and the adequacy of landscaping and screening materials to meet seasonal weather and soil conditions. A landscaping management plan, and surety

for up to three years that is acceptable to the Board of Adjustment, may be required to ensure that required landscaping and screening is properly installed and maintained.

- (5) **Stormwater Management & Erosion Control Standards.** All conditional uses shall incorporate accepted stormwater management and erosion control practices as appropriate for the setting, scale and intensity of the existing and planned development. Development shall be sited and designed to minimize stormwater runoff and erosion during all phases of development. The Board may require the submission of a stormwater management and/or erosion control plan, prepared by a qualified professional, that incorporates accepted management practices recommended by the state in the *Vermont Stormwater Management Manual* and the *Vermont Handbook for Soil Erosion and Sediment Control on Construction Sites*, as most recently amended.

(G) **District Standards.** In addition to district standards that pertain to all uses under Article 2, the following standards also shall apply to conditional uses within specified zoning districts:

- (1) **Central Business District.** Within the Central Business District, development shall be designed in accordance with the following standards:
- The use of front yards shall be limited to landscaping, pedestrian paths and associated pedestrian amenities (e.g., street furniture, pedestrian scale lighting and signs) and driveways. Outdoor storage, parking and loading areas shall not be located within front yards unless the Board finds that the property is a pre-existing building or that no other practical alternative exists.
 - Buildings should be oriented toward and relate to, both functionally and visually, public streets and/or common greens, parks or plazas, and not be oriented toward parking lots. The front facade should include a main entry-way and pedestrian access to the street. Buildings located on corner lots shall either be oriented toward the major street or include a corner entrance. The Board may impose a maximum setback, relative to adjacent buildings, to achieve a consistent streetscape.
 - New buildings and additions to existing buildings shall be designed to be compatible with, and not stand in contrast to, historic structures located within the district with regard to building scale, massing, materials, orientation and rhythm of openings.
- (2) **Village Neighborhood District.** Within the Village Neighborhood District development shall be designed in accordance with the following standards:
- The use of front yards shall be limited to landscaping, pedestrian paths and associated pedestrian amenities (e.g., street furniture, pedestrian scale lighting and signs) and driveways. Outdoor storage, parking and loading areas shall not be located within front yards unless the Board finds that the property is a pre-existing building or that no other practical alternative exists.
 - Buildings should be oriented toward and relate to, both functionally and visually, public streets and/or common greens, parks or plazas, and not be oriented toward parking lots. The front facade should include a main entry-way and pedestrian access to the street. The Board may impose a maximum setback, relative to adjacent buildings, to achieve a consistent streetscape.
 - The scale and massing of new buildings, including height, width, street frontage and roof type, shall be compatible and harmonious with surrounding residential structures. Consideration shall be given to buildings serving special civic, social or cultural functions, including places of worship, that may be designed to serve as prominent focal points within the district.
- (3) **Highway Mixed-Use District.** Within the Highway Mixed Use District, development with frontage on state highways (Route 15, Route 14, Route 16) shall be designed in a manner that meets the following standards:
- Within and contiguous to parking areas, landscaping shall emphasize the use of shade trees to provide a tree canopy, provide separation between parking spaces to avoid large expanses of parking and minimize the visibility of parking areas from off-site. Suitable locations for shade trees include along walkways, in center islands, in between parking spaces and clustered in appropriate locations.

- b. A landscaped strip of at least twenty (20) feet shall be provided parallel to the road, which may be crossed by driveways and sidewalks. Form, location, and composition of the landscaped strip shall be shown on the site plan and approved by the Board of Adjustment.
- (4) **Rural Residential and Compact Residential Districts.** Within the Rural Residential and Compact Residential Districts, development shall be designed in accordance with the following standards:
- a. Development shall be designed to minimize loss of agricultural land and natural habitat, impact on water quality, and diminishment of the scenic and rural qualities of the site as experienced both on-site and from other vantage points in the Town.
 - b. Access roads, driveways and utility corridors shall be shared to the extent feasible; and, where sites include linear features such as existing roads, tree lines, stone walls, and/or fence lines, shall follow these features to the extent feasible in order to minimize the loss of productive agricultural and forest land, and to avoid physical and visual impacts.
- (5) **Forest Reserve District.** Development within the Forest District should not detract from the site's scenic qualities, nor obstruct significant views from public vantage points, and should blend in with the existing landscape. Development shall take into consideration existing contours and forest cover to ensure that adequate opportunities exist for the siting and natural screening of development to minimize site disturbance and visual impacts. The Board may require the submission of a visual impact assessment for conditional uses within this district, and/or require additional screening of structures consistent with the natural and built environment.

Section 5.3 Flood Hazard Review

- (A) **Application.** An application for flood hazard review, including a site development plan prepared in accordance with subsection 5.2(A), above, and associated fee, shall be submitted to the Zoning Administrator for consideration at the next available regularly scheduled meeting of the Board of Adjustment.
- (B) **Review Procedure.** The Board of Adjustment shall schedule a public meeting to consider the application submitted to determine whether said application is complete and, upon finding the application to be complete, to determine whether the proposed use or structure conforms to the flood hazard review standards set forth below. The Board of Adjustment shall act to approve, approve with conditions, or disapprove any application within 60 days of the date on which a completed application is received, and shall issue a written decision, to include findings, any conditions, and provisions for appeal. Failure to act within 60 days of receipt of the completed application shall be deemed approval.
- (C) **General Standards.** The Board of Adjustment may consider and impose appropriate safeguards, modifications and conditions for development within the Flood Hazard Area Overlay District in accordance with the following standards:
- (1) Development within floodways is prohibited unless a registered professional engineer certifies that the proposed development will not result in any increase in flood levels during the occurrence of the base flood. Junkyards and storage facilities for floatable materials, chemicals, explosives, flammable liquids, or other hazardous or toxic materials, are specifically prohibited within the floodway.
 - (2) All development shall be designed to minimize flood damage to the proposed development and to public facilities and utilities; and to provide adequate drainage to reduce exposure to flood hazards.
 - (3) Structures shall be:

- 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. be 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.
- (4) New and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate the infiltration of flood waters into the systems and discharges from the systems into flood waters.
 - (5) The flood carrying capacity within any altered or relocated portion of a watercourse shall be maintained.
 - (6) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
 - (7) New and replacement manufactured homes shall be elevated on properly compacted fill such that the top of the fill (the pad) under the entire manufactured home is above the base flood elevation.
 - (8) The lowest floor, including basement, of all new buildings shall be at or above the base flood elevation.
 - (9) Existing buildings to be substantially improved for residential purposes shall be modified or elevated to meet the requirements of subsection (8).
 - (10) Existing buildings to be substantially improved for nonresidential purposes shall either meet the requirements of subsection (8), or be designed to be watertight below the base flood elevation with walls substantially impermeable and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A permit for a building proposed to be flood-proofed shall not be issued until a registered professional engineer or architect has reviewed the structural design, specifications, and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.
 - (11) All new construction and substantial improvements 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. 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 cover coverings or devices provided that they permit the automatic entry and exit of floodwaters.
 - (12) Recreational Vehicles or job site trailers placed on sites within Zones A1-A30, AH and AE, as designated on the FIRM maps, shall either (1) be on the site for fewer than 180 consecutive days, (2) be fully licensed and ready for highway use, or (3) meet all standards of Section 60.3(b)(1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for “manufactured homes” of Section 60.3(c)(6).

- (13) Accessory Structures: An accessory structure that represents a minimal investment may be built below BFE provided the structure:
- 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 which may result in damage to other structures; and
 - e. Shall have service facilities such as electrical and heating equipment elevated or flood proofed.
- (Source: FMA memo dated July 13, 1977.)

Section 5.4 Planned Residential Developments

(A) **Purpose.** In accordance with the Act [§4417], Planned Residential Developments (PRDs) are permitted in all zoning districts to allow for innovative and flexible design and development that will promote the most appropriate use of land, and specifically achieve one or more of the following objectives:

- (1) increase density, reduce lot size and/or facilitate the adequate and economical provision of streets and utilities to provide housing in a cost effective manner;
- (2) cluster residential development to preserve and maintain open space;
- (3) protect significant natural, cultural or scenic features as identified in the Hardwick Town Plan, or through site investigation; and/or,
- (4) allow for creative design and layout of development, an efficient use of land, and to provide for the integrated mix of housing types.

(B) **Review Procedure.** A PRD shall be reviewed concurrently with Major Subdivision Review procedures as set forth in Section 6.3. In addition to the application requirements specified under Section 6.3, an application for PRD approval shall include a statement describing all proposed modifications, changes or supplements to existing bylaw requirements. Modifications of these bylaws approved by the Board of Adjustment shall be noted in writing and appended to a plat depicting the project to be filed in the Hardwick Land Records. All other provisions of these bylaws not specifically modified shall remain in effect and be applicable to the project.

(C) **Coordination with Conditional Use Review.** Review and approval of a PRD involving the development of one or more conditional uses under this Section shall not exempt the proposed development from review under Section 5.2. The Board of Adjustment may review and approve one or more conditional uses concurrently with granting PRD approval, or may require the submission of a conditional use application subsequent to PRD approval.

(D) **General Standards.** The modification of zoning regulations by the Board of Adjustment may be permitted in accordance with the following standards:

- (1) The PRD shall be consistent with the Hardwick Town Plan and all other applicable municipal regulations and ordinances currently in effect. The PRD shall also meet all local and state regulations for sewage disposal and the protection of water quality.
- (2) The PRD shall represent an effective and unified treatment of the development site, including provisions as appropriate for the preservation or protection of surface and ground waters; wetland,

stream bank, floodplain and lake shore areas; significant topographic features, including hilltops and ridgelines; areas of steep slope or shallow soil; significant resource lands, including agricultural and forest land; historic or archaeological sites and structures; natural and critical habitat areas; and open spaces, including scenic views and vistas.

- (3) The Board of Adjustment may allow for a greater concentration or intensity of development within some section(s) of the development than in others, on individual lots which are smaller than the minimum lot size for the district within which the PRD is located, provided that there is an offset by a lesser concentration in other sections, including the reservation of no less than 50% of the remaining land as open space.
- (4) The minimum front, side and rear yard setbacks at the periphery of the PRD shall be as dictated for the particular district unless otherwise specified by the Board of Adjustment. The Board may allow other setback standards, such as zero setbacks from lot lines, as part of PRD approval.
- (5) Provision shall be made for the preservation of open space. Preserved open space shall be dedicated, either in fee or through a conservation easement to the Town, a community association comprising all of the present and future owners of lots or dwellings in the project, or a non-profit land conservation organization. The Board of Adjustment shall approve such easement. Preserved open space may remain in single ownership, subject to easement conditions and appropriate land management (e.g., forestry, agriculture). Land held in common shall be subject to appropriate deed restrictions stipulating the permitted and restricted use of such lot, and establishing the person or entity responsible for maintenance and long term stewardship. The Board shall approve the location, size and shape of lands set aside to be preserved for open space in accordance with the following:
 - a. Open space land shall provide for the protection of identified resources, including farmland, productive forest, wildlife habitat, natural areas, aquifer protection areas, surface waters, stream banks, historic and archaeological sites, and scenic views and vistas;
 - b. Designated open space may include the portion of a single lot which is characterized by one or more of the above referenced features, or may encompass the contiguous boundaries of the above referenced feature located on multiple lots;
 - c. The location, shape, size and character of the open space shall be suitable for its intended use. Generally, open space shall be at least 50% of the total area for projects involving a parcel(s) of twenty-five (25) acres or more. For smaller parcels, open space should be in proportion to the size and scope of the project, and its intended use;
 - d. Open space shall be suitably improved and/or maintained for its intended use, except for open space containing natural or cultural resources worthy of preservation that may be required to be left unimproved. Provisions shall be made to enable lands designated for agriculture and forestry to be used for these purposes. The Board as appropriate may require management plans for forests and/or wildlife habitat;
 - e. Open space land shall be located so as to conform with and extend existing and potential open space lands on adjacent parcels; and
 - f. Sewage disposal areas and utility and road rights-of-way or easements, access and parking areas shall not be counted as open space areas, except where the applicant can prove, to the satisfaction of the Board, that they will in no way disrupt or detract from the values for which the open space is to be protected.
- (6) The total number of dwelling units shall not exceed that which would be permitted in the Board of Adjustment's judgement if the parcel were subdivided into buildable lots in conformance with the district minimum lot area required for single family dwellings. However, the number of dwelling units allowed in a PRD may, at the discretion of the Board of Adjustment, be increased in accordance with the following:

- a. The Board may grant a density increase of up to 25% of the allowable number of units in instances in which a significant portion (50% or greater) of the site is preserved as open space and/or the Board determines that the PRD reflects an exceptional site design that will result in the preservation of important natural resources and the creation such amenities as pedestrian paths, parkland and/or playgrounds; *or*
 - b. The Board may grant a density increase of up to 50% of the allowable number of units in instances in which not less than 50% of the total number of dwelling units created are affordable housing units, as defined in Article 8.
- (7) Where a district boundary line divides a parcel, the Board of Adjustment may allow the development of a single PRD with a total density based on the combined allowable density of each district.
- (8) Two (2) or more contiguous parcels under the ownership or control of the applicant may be combined for review as a PRD. The permitted density on one parcel may be increased as long as the overall density for the combined parcels does not exceed that which could be permitted, in the Board of Adjustment's judgement, if the land were subdivided into lots in conformance with district regulations.
- (9) A PRD shall include only residential uses and associated accessory structures and uses allowed within the district in which the PRD is located. The dwelling units permitted may, at the discretion of the Board of Adjustment, be of varied types, including single-family, two-family, or multi-family construction, and may be attached or detached.
- (F) **District Standards.** Within the Rural Residential and Forest Reserve Districts, dwellings may be comprised of one or more state licensed residential care home serving not more than 6 persons who are developmentally disabled or handicapped, and such dwellings may be clustered so that they are located within 1,000 feet of each other in accordance with the standards set forth in this Section and the approval of the Board of Adjustment under Section 5.2.