

# **TOWN OF ANDOVER**

## **ZONING BYLAWS**

**Adopted SEPTEMBER 10, 2007  
By the Andover Selectboard**

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# **TOWN OF ANDOVER ZONING REGULATIONS**

## **SYNOPSIS**

This page is intended to provide an overview of the requirements, time limits and appeals which apply to the building permit, variance and conditional use applications. References are to these Bylaws.

1. The Town of Andover is zoned "R-1", Residential. Permitted uses in residential districts are listed in Article V.
2. Building permits for permitted uses are issued by the Administrative Officer.
3. A driveway permit and a septic disposal permit are required before a building permit application is deemed to be "a complete application." Only a complete application may be received by the Administrative Officer for consideration.
4. Minimum requirements for "R-1" district are listed in Article IV.
5. Within 30 days after receipt of the completed application, building permits are issued, denied or referred to the Zoning Board of Adjustment for hearing.
6. Building permits expire 2 (two) years from date of issue.
7. Denial of a building permit may be appealed to the Board of Adjustment.
8. A Certificate of Occupancy, issued by the Administrative Officer is required before occupancy and/or use.
9. Requests for variances and conditional use applications must be submitted to the Zoning Board of Adjustment.
10. Variances may be granted only in conformance with the requirements listed in Section 223.
11. Conditional uses are listed in Section 610.
12. Decisions by the Board of Adjustment may be appealed to the Environmental Court

## **ARTICLE I: GENERAL PROVISIONS**

### **Section 100. APPLICABILITY**

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

### **Section 105. EXCEPTIONS**

Except as provide in the Town of Andover Flood Damage Prevention Regulations, which require a permit for all development in the Special Flood Hazard Area, no permit shall be required for the following activities:

- (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 335. 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) Power generation and 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.
- (5) Normal maintenance and repair of an existing structure which do not result in exterior alterations or expansion or a change of use.
- (6) Interior alterations or repairs to a structure which do not result in exterior alterations or expansion or a change in use.
- (7) 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.
- (8) 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 which is otherwise incidental to an approved use. This specifically does not include extraction and quarrying activities regulated under Section 620.4.
- (9) Outdoor recreational trails (e.g., walking, hiking, cross-country skiing and snow mobile trails).

- (10) Small accessory buildings associated with residential uses which are less than 144 square feet of floor area and less than twelve (12) feet in height, and are not located within required setback areas.
- (11) Garage sales, yard sales, auctions, or similar activities that do not exceed three (3) consecutive days, nor more than twelve (12) total days in any calendar year.

**Section 110. ENACTMENT**

In accordance with 24 V.S.A., Chapter 117, (The Act), there are hereby established Zoning Regulations for the Town of Andover. These regulations shall be known and cited as the "Town of Andover Zoning Regulations."

**Section 120. INTENT**

It is the intent of these Zoning Regulations to provide for orderly community growth and for implementation of the municipal development plan of the Town of Andover. In their interpretation and application, the provisions of these regulations shall be held to be minimum requirements adopted for the promotion of the public health, safety, and general welfare.

**Section 150. EFFECTIVE DATE**

These regulations, amendments thereto or repeal thereof shall be accomplished pursuant to Section 4441 et seq. of The Act and shall take effect on the date of their adoption, amendment or repeal pursuant to Section 4441 et seq. of the Act.

**Section 160. SEPARABILITY**

The invalidity of any article or section of these regulations shall not invalidate any other article or section thereof.

## **ARTICLE II: ADMINISTRATION**

### **Section 210. ADMINISTRATIVE OFFICER**

The Board of Selectmen 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 Board of Selectmen 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 Board of Selectmen, from nominations submitted by the Planning Commission, who shall have the same duties and responsibilities of the Administrative Officer in the Administrative Officer's absence. In the event an acting Administrative Officer is appointed, the Board of Selectmen shall establish clear policies regarding the authority of the Administrative Officer relative to the authority of the acting Administrative Officer.

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 is necessary and appropriate.

The Administrative Officer shall provide the applicant with necessary forms, and 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 220 PLANNING COMMISSION**

The Planning Commission shall consist of not less than three (3) or more than nine (9) members appointed by the Board of Selectmen in accordance with the Act [§§4321–4323]. At least a majority of members shall be residents of the municipality. Any member of the Commission may be removed at any time by a unanimous vote of the Board of Selectmen.

The Commission shall adopt rules of procedure deemed necessary and appropriate for the performance of its functions as required under the Act [§4323(b)] 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, include amendments submitted by petition as set forth in the Act [4441(b)];
- prepare and approve written reports on any proposed amendment to these regulations as required by the Act [§4441(c)]; and
- hold one or more warned public hearings on proposed amendments to these regulations, prior to submission of a proposed amendment and written report to the Legislative Body [§4441(d)].

## **Section 221 ZONING BOARD OF ADJUSTMENT**

- (1) A Zoning Board of Adjustment (ZBA) is hereby established. Except as specifically provided herein and in accordance with the provisions of 24 V.S.A., Chapter 117, the ZBA shall not amend, alter, invalidate or affect any bylaw of the Town of Andover or the implementation or enforcement thereof; nor shall it allow any use or structure not permitted by the Zoning Regulations.
- (2) The members of the Zoning Board of Adjustment also serve as members of the Planning Commission. All ZBA members are nominated by the Planning Commission and confirmed by the Board of Selectmen. Appointments are made in December with the term being four years. If a member of the Planning Commission does not want to serve on the ZBA, the Board of Selectmen will appoint another a resident of the town to fill the vacancy. Vacancies shall be filled by the Board of Selectmen for the unexpired term. The Board of Selectmen also may appoint alternates, for specified terms, to serve on the ZBA in situations when one or more members of the Board are disqualified or are otherwise unable to serve. Any member of the ZBA may be removed for cause by the Board of Selectmen upon written charges and after public hearing. [4460 (c)].
- (3) The ZBA shall elect its own officers and adopt rules of procedure subject to the provisions of these Zoning Regulations and the Act. The officers of the ZBA may administer oaths and compel the attendance of witnesses and the production of material pertinent to any issue under appeal.
- (4) Meetings of the Board shall be held at the call of the chairman and at such times as the ZBA may determine. All such meetings shall be open to the public.
- (5) The ZBA 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 ZBA 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 (Section 222), and any associated variance requests (Section 223);
  - applications for rights-of-way or easements for development lacking frontage (Section 370);
  - applications for conditional use approval (Section 620);
  - applications for planned unit development (Section 650);
  - applications for site plan approval (Section 630),
  - applications for subdivision approval (See separate Subdivision Regulations)
  - requests for variances (see Section 223) ; and
  - other reviews required by the bylaws.



## **Section 222. APPEALS**

### **222.1 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 Secretary of the Zoning Board of Adjustment (ZBA), or the Municipal Clerk if no Secretary has been elected, and by filing a copy of the notice with the Administrative Officer.

- (1) The ZBA shall hold a public hearing on a notice of appeal within 60 days of its filing, as required under the Act [§4468]. The ZBA shall give public notice of the hearing under Section 222.3, and mail a copy of the hearing notice to the appellant not less than 15 days prior to the hearing date.
- (2) The ZBA 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 filing of a notice of appeal, if the ZBA determines that the issues raised by the appellant have been decided in an earlier appeal or are based on substantially or materially the same facts by or on behalf of the appellant [§4470].
- (3) 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 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 ZBA from time to time, provided that the date and place of the adjourned hearing shall be announced at the hearing.
- (4) 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 270. Failure of the Zoning Board of Adjustment to issue a decision within this 45 day period shall be deemed approval and shall be effective on the 46<sup>th</sup> day.
- (5) A decision on appeal is final on the 31<sup>st</sup> day after the decision is rendered or deemed approved for failure to render a decision, or, if appealed to the courts, on the completion of the appeal process.

### **222.2 Interested Persons**

The definition of an interested person under the Act [§4465(b)] includes the following:

- (1) the Town of Andover or an adjoining municipality;
- (2) a person owning or occupying property in the immediate neighborhood of a property which is the subject of a decision or act taken under these regulations, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes or terms of the plan or regulations of the municipality;

- (3) any ten (10) voters or property owners within the municipality who, by signed petition to the Zoning Board of Adjustment, allege that any relief requested by a person under this section, if granted, will not be in compliance with the policies, purposes or terms of the plan or regulations of the municipality; and
- (4) any department or administrative subdivision of the state owning property or any interest therein within the municipality or adjoining municipality, and the Vermont Agency of Commerce and Community Development.

### **222.3 Notice of Appeal To The Zoning 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 applicable provisions of these regulations;
- (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 such relief is believed proper under the circumstances.

### **222.4 Appeals to Environmental Court**

In accordance with the Act [§4471], an interested person who has participated in a regulatory proceeding of the Zoning Board of Adjustment may appeal a decision rendered by the panel under Section 222.1, 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 panel 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 mailing, 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.

## **Section 223 VARIANCE**

**223.1 Variance Request.** The Zoning Board of Adjustment shall hear and decide requests for variances as required by the Act [§4469(a)] and appeal procedures under Section 222. In granting a variance, the ZBA 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 ZBA may grant a variance and render a decision in favor of the appellant only if *all* of the following facts are found, 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;

- (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;
- (3) The unnecessary hardship has not been created by the appellant;
- (4) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, 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.

**223.2 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 ZBA 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.

**223.3 Conditions.** In granting a variance, the ZBA 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.

## **Section 240. APPLICATIONS**

**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 Board of Selectmen, also shall be submitted with each application. In addition, the following information will be required as applicable:

Applications for a permitted use shall include:

- A. A sketch plan, no smaller than 8.5" x 11", drawn to approximate scale, that depicts the following:

- (1) the dimensions of the lot, including existing property boundaries;
  - (2) the location, footprint and height of existing and proposed structures or additions;
  - (3) the location of existing and proposed accesses (curb cuts), driveways and parking areas;
  - (4) the location of existing and proposed easements and rights-of-way;
  - (5) existing and required setbacks from property boundaries, road rights-of-way, surface waters and wetlands;
  - (6) the location of existing and proposed water and wastewater systems; and
  - (7) other such information as required by the Administrative Officer to determine conformance with these regulations.
- B. The correct fee for an application established by the Board of Selectmen.
- C. A driveway (access) permit
- D. A septic permit for the proposed land development
- E. Other submission requirements set forth in these Bylaws.

## **Section 241. ISSUANCE OF PERMIT**

### **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, fees, the Administrative Officer shall act to either issue or deny a zoning permit in writing, or to refer the application to the ZBA and/or state for consideration. 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 31<sup>st</sup> day.
- (2) No zoning permit shall be issued by the Administrative Officer for any use or structure which requires the approval of the ZBA or the Board of Selectmen until such 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 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 Board of Selectmen 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 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 all applicable provisions of this bylaw [§4449(d)].
- (4) A zoning permit shall include a statement of the time within which appeals may be taken under Section 222; 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. [§4449].

- (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. [§4449(b)].

#### **Effective Date**

No zoning permit shall take effect until the time for appeal under Section 222 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 two years from the date of issuance, unless the permit and associated approvals specify otherwise. All development authorized by the permit shall be substantially commenced within this two-year period or reapplication and approval shall be required to continue development.

### **Section 242. CERTIFICATE OF OCCUPANCY**

In accordance with the Act [§4449], a certificate of occupancy issued by the Administrative Officer shall be required prior to the use or occupancy of any land or structure, or part thereof, for which a zoning permit has been issued.

- (1) An application for a certificate of occupancy shall be provided with the zoning permit issued by the Administrative Officer. The applicant shall submit a completed application with the fee set by the legislative body to the Administrative Officer prior to the use or occupancy of the land or structure.
- (2) A certificate of occupancy shall not be issued until all necessary approvals and permits required by these regulations have been obtained for the project, and the Administrative Officer determines that the project has been fully completed in conformance with all such approvals and permits.
- (3) Within 30 days of receipt of the application for a certificate of occupancy, the Administrative Officer shall inspect the premises to ensure that all work has been completed in conformance with the zoning permit and associated approvals, including all applicable permit conditions. If the Administrative Officer fails to either grant or deny the certificate of occupancy within 30 days of the submission of an application, the certificate shall be deemed issued on the 31st day.

### **Section 250. VIOLATIONS AND ENFORCEMENT**

#### **Violations**

The commencement or continuation of any land development 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 Andover, 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.

#### **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 270. 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.

#### **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 or duly recorded 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 correction of an alleged violation of a municipal land use permit unless the permit or a notice of the permit has been recorded in the land records of the municipality under Section 270.

### **Section 260. PUBLIC HEARINGS**

#### **Public Notice**

In accordance with the Act [§4464], a warned public hearing shall be required for conditional use review (Section 670), appeals of decisions of the administrative officer and variances (Sections 222, 223) and final subdivision review. 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, place and purpose of the hearing in a newspaper of general circulation in the municipality;
- (2) Posting of the same information in three (3) or more public places within the municipality, 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
- (4) For hearings on subdivision plats located within 500 feet of a municipal boundary, written notification to the clerk of the adjoining municipality.

Public notice of all other types of development review hearings, including site plan review (Section 630), 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, 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 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.

No defect in the form or substance of any required public notice under this section shall invalidate the action of the Zoning 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.

### **Hearings**

In accordance with the Act [§4461], all meetings and hearings of the Zoning 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 Zoning Board of Adjustment. The Zoning Board of Adjustment, in conjunction with any hearing under this bylaw, may:

- (1) examine or caused 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 in the premises;
- (3) take testimony and require proof material for its information; and
- (4) administer oaths or take acknowledgement 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 222.2 are met. The Zoning Board of Adjustment shall keep a record of the name, address, and participation of each of these persons.

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

### **Decisions**

Any action or decision of the Zoning Board of Adjustment shall be taken by the concurrence of a majority of the members of the Board. In accordance with the Act [§4464(b)], the Zoning Board of Adjustment shall issue a decision within 45 days after the adjournment of the hearing. Failure to issue a decision within the 45-day period shall be deemed approval and shall be effective the 46<sup>th</sup> 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 Section 222.

- (2) In rendering a decision in favor of the applicant, the Zoning 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 other form or surety acceptable to the Andover Legislative Body, which 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 the Zoning Board of Adjustment 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 also 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.

#### **Section 270. 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.



## **ARTICLE III: GENERAL REGULATIONS**

### **Section 310. COMPLIANCE WITH REGULATIONS**

Any land, building and premises, or part thereof, may be used only for a purpose listed under Article V or VI of these Regulations. Each lot shall have an area and width and front, side and rear yard as required by these regulations (Article IV). No building or buildings shall occupy in total a greater percentage of the lot area, nor be greater in height, than as provided herein. Any permitted building or permitted use may be located in that portion of the lot not needed to meet the requirement of front, side or rear yards.

### **Section 315. LOW AND MODERATE INCOME HOUSING**

No provision of this bylaw may have the effect of excluding from the municipality housing to meet the needs of the population as determined in accordance with 24 V.S.A. § 4382(c).

### **Section 316. MOBILE HOMES, MODULAR HOUSING, PREFABRICATED HOUSING**

Pursuant to 24 V.S.A. § 4412 (1)(B), No zoning regulation shall have the effect of excluding mobile homes, modular housing, or other forms of prefabricated housing from the municipality, except upon the same terms and conditions as conventional housing is excluded. Provided, however, when such a structure is unoccupied and displayed in a mobile home sales establishment or allowed as a temporary structure under this bylaw.

### **Section 317. MOBILE HOME PARKS**

Mobile homes are allowed in approved mobile home parks subject to the requirements of this section and state law. New mobile home parks and any addition or alteration to an existing mobile home park, requires conditional use and site plan review and approval by the Zoning Board of Adjustment. The following requirements shall apply to mobile home parks:

- (1) All mobile home parks are subject to the State Regulations for mobile home parks.
- (2) All mobile home parks shall be processed under the Planned Unit Development provisions.
- (3) A minimum of 8,000 square feet of lot area per mobile home is required. Each mobile home shall have a plot with a minimum of 5,000 square feet for its individual use. The remaining 3,000 square feet may be in the common area for the use of all the residents of the park.
- (4) Minimum setbacks for the mobile home on each plot are: 20 feet setback from the plot boundary facing the access road or driveway and 15 feet side and rear yard setback from the each side and the rear plot boundaries.
- (5) Site Plan improvements at a minimum must provide for:
  - (a) Facilities and amenities appropriate to the needs of the occupants.
  - (b) Safe, comfortable and sanitary use by the occupants under all weather conditions.
  - (c) Practical and efficient operation and maintenance of all common facilities.
  - (d) Common open space accessible to all residents of the mobile home park.
  - (e) Sufficient landscaping or other screening to provide visual or acoustic privacy for residents of adjacent units.

### **Section 318. TWO-FAMILY DWELLING UNITS**

A two-family dwelling shall be considered a conditional use subject to conditional use and site plan review.

### **Section 319. ACCESSORY DWELLING UNITS.**

- (1) An accessory dwelling unit shall be a permitted use in the town of Andover. (See Definition: "Accessory Dwelling Unit" herein.)
- (2) Notwithstanding the provisions above, the creation of an accessory dwelling unit will require conditional use approval when one or more of the following is involved:
  - (a) A new accessory structure, constructed after the enactment of these bylaws, (b) An increase in the height or floor area of the existing dwelling, or
  - (c) An increase in the dimensions of the parking areas.

### **Section 320. RESIDENTIAL CARE AND GROUP HOMES**

A residential care home or group home, to be operated under state licensing or registration, serving not more than eight persons who have a handicap or disability as defined in 9 V.S.A. § 4501, shall be considered to constitute a permitted single family residential use of property, except that no such home shall be so considered if it locates within 1,000 feet of another existing or permitted home. A residential care home or group home, to be operated under state licensing or registration, serving nine or more who have a handicap or disability as defined in 9 V.S.A. § 4501, shall be reviewed as a multifamily dwelling and shall be subject to conditional use and site plan review.

### **Section 321. FAMILY CHILD CARE**

- (1) **Family Child Care Home:** A family child care home, as defined herein, serving six or fewer children shall be considered to constitute a permitted single family residential use of property. A family child care home, as defined in these bylaws, serving no more than six full-time children and four part-time children, shall be considered to constitute a permitted use of property but requires site plan approval based on local zoning requirements.
- (2) **Family Child Care Facility:** A family child care facility, as defined in these bylaws, shall be considered to be a conditional use and be subject to all applicable municipal bylaws for conditional uses.

### **Section 325. REDUCTION OF LOT AREA OR DIMENSION**

No lot shall be diminished, nor shall any yard, court, or any other open space be reduced except in conformity with this ordinance.

### **Section 330. OBSTRUCTION AT STREET INTERSECTIONS**

No trees, shrubs, fences, walls or hedges shall be placed or allowed to grow, closer than 35 ft. from the center of the public highway.

### **Section 335. LIMITATIONS:**

The following uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise,

lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use:

- State- or community-owned and operated institutions and facilities.
- Public and private schools and other educational institutions certified by the state department of education.
- Churches and other places of worship, convents, and parish houses.
- Public and private hospitals.
- Regional solid waste management facilities certified under 10 V.S.A. Chapter 159.
- Hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. § 6606a.

**Agriculture.** Farm structure means a building, enclosure, or fence for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with accepted agricultural or farming practices, including a silo, as "farming" is defined in subdivision 6001(22) of Title 10, but excludes a dwelling for human habitation. Pursuant to 24 V.S.A. § 4413(d) farm structures (excluding dwellings), accepted agricultural practices and accepted silvicultural practices are exempt from local permitting requirements. However, farmers intending to erect a farm structure must notify the municipality of the intent to build a farm structure, and abide by setbacks contained within the zoning ordinance, unless they provide an approval of lesser setbacks by the Commissioner of Agriculture, Food and Markets. The notification must contain a sketch of the proposed structure and include the setback distances from adjoining property owners and the street right-of-way. Additionally, all farm structures within the Flood Hazard Overlay District must comply with the National Flood Insurance Program. Lastly, the municipality may report violations of Accepted Agricultural Practices or accepted silvicultural practices to the appropriate state authorities for enforcement.

**Silviculture.** This bylaw shall not regulate accepted silvicultural practices, as those practices are defined by the commissioner of forests, parks and recreation under subsection 1021(f) and 1259(f) of Title 10 and section 4810 of Title 6.

#### **Section 340. ACCESSORY BUILDINGS**

Detached accessory buildings not used for human habitation may be located in the required rear yards, and in so much of the required side yard as lies not less than 50 feet from any street line, provided that they are not less than 30 feet from any side or rear lot line and provided further that they occupy in the total not more than 20 percent of the area of the required rear yard.

#### **Section 350. USE OF LAND FOR ACCESS OR PARKING**

The use of land for access or for parking in connection with a use, shall be considered to be accessory to and part of such uses. Except as otherwise provided in this Ordinance, access to or parking in connection with a permitted use may take place in a required front, side or rear yard.

### **Section 360. EXISTING SMALL LOTS, NONCONFORMING LOTS**

A nonconforming lot is any lot that is legally subdivided, is in individual and separate and nonaffiliated ownership from surrounding properties, and is in existence on the date of enactment of any bylaw, including an interim bylaw.

Nonconforming lots may be developed for the purposes permitted in the district in which they are located, even though the lot no longer conforms to the minimum lot size requirements of the new bylaw or interim bylaw. Such development may be prohibited if either of the following applies:

- (1) the lot is less than one-eighth of an acre in size; or
- (2) the lot has a width or depth dimension of less than 40 feet.

If a nonconforming lot comes under common ownership with one or more contiguous lots, the nonconforming lot shall be deemed merged with the contiguous lot. However, a nonconforming lot shall not be deemed merged and may be separately conveyed if all of the following apply:

- (1) The lots are conveyed in their pre-existing, nonconforming configuration.
- (2) On the effective date of any bylaw, each lot was developed with a water supply and wastewater disposal system.
- (3) At the time of transfer, each water supply and wastewater system is functioning in an acceptable manner.
- (4) The deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems, potable water systems, or bot, in case there is a failed system or failed supply as defined in 10 V.S.A. Chapter 64.

### **Section 370. REQUIRED FRONTAGE ON, OR ACCESS TO, PUBLIC ROADS OR PUBLIC WATERS**

No land development may be permitted on lots which do not have either the required minimum frontage, as set for in Section 410, on a public road or access over public waters, or, with the approval of the Zoning Board of Adjustment, access to such a road or waters by a permanent easement or deeded right-of-way at least 50 feet in width. Minimum frontage is established in Section 410. Access on a state highway must be permitted by Vermont Agency of Transportation.

### **Section 380. HOME OCCUPATIONS**

No provision of this bylaw shall infringe upon the right of any resident to use a minor portion of a dwelling that is customary in residential areas, which does not have an undue adverse effect upon the character of the residential area in which the dwelling is located.

### **Section 385. SEPTIC SYSTEMS**

No use shall be made of any land area in any district for human habitation or occupancy, temporary or permanent, unless an on-premise sewer system is first installed. Said system shall comply with the standards and specifications of the State of Vermont.

### **Section 390. REMOVAL OF DAMAGED STRUCTURES**

After any building or structure has burned, collapsed, or otherwise been destroyed or demolished, and not rebuilt, all structural materials shall be removed from the site within three years.

## **ARTICLE IV: MINIMUM REQUIREMENTS FOR R-1 DISTRICT**

No building or premises permitted in Articles V and VI shall be used and no building shall be erected except in conformity with the following requirements:

### **Section 410. LOT SIZE AND FRONTAGE**

A lot shall be at least two acres in area with a minimum of 200 feet frontage on a maintained road or comply with the requirements of Section 370, above.

### **Section 420. BUILDING SIZE**

No building shall be more than 30 feet high from finished grade. The total area of all buildings on a lot shall not exceed 5% of the lot size.

### **Section 430. SETBACKS**

A building shall be placed on a lot at least 75 feet from the road center line and 30 feet from any property line.

### **Section 440. PARKING FACILITIES**

In the case of a professional or personal business office or studio, off-street parking/loading facilities of 900 square feet for every five persons of total planned capacity are required.

### **Section 450. CERTIFICATE OF OCCUPANCY**

Any construction or use approved under a Zoning Permit will also require a Certificate of Occupancy, issued by the Administrative Officer, prior to its use. A fee for such certificate may be established by the legislative body.

## **ARTICLE V: PERMITTED USES FOR R-1 DISTRICT**

The following permitted uses, and none other, are allowed in the R-1 District:

1. Single family and two-family dwellings
2. Farms, including sugar houses
3. Home Occupation
4. Accessory buildings incidental to the permitted use.
5. Accessory Dwelling units, not requiring conditional use approval
6. Family Child Care Home
7. Residential Care and Group Home (8 or less persons – See Section 320)

## **ARTICLE VI: CONDITIONAL USES FOR R-1 DISTRICT**

Applications for conditional use permits require action by the Board of Adjustment. All such requests will be considered in conformance with Section 620 of these Regulations.

### **Section 610. CONDITIONAL USES**

The following conditional uses, and none other, are allowed in the R-1 District:

1. Accessory Dwelling Units, requiring conditional use approval
2. Municipal park or playground
3. Club, including a golf club, public or private
4. Overnight trailer camps
5. School, college, library, museum, or child care facility, public or private
6. Church or parish house
7. Community Center, hall or lodge, public or private
8. Summer camp for children, for adults or for families
9. Public riding stable
10. Carpentry and woodworking shops
11. Retail stores
12. Nursery (greenhouse)
13. Bed & Breakfasts and Inns
14. Nursing home
15. Motor Vehicle Service Station
16. Wireless Telecommunication Facilities
17. Electrical Facilities
18. Sand, Soil and Gravel Extraction and Sales
19. Quarries
20. Professional Office
21. Mobile Home Parks
22. Planned Unit Developments (PUD)
23. Residential Care and Group Homes (9 or more. See Section 320)

### **Section 620. CONDITIONAL USE REQUIREMENTS**

#### **General Requirements**

No zoning permit shall be issued by the Administrative Officer for any use or structure which requires conditional use approval until the Zoning Board of Adjustment grants such approval. In considering its action, the ZBA shall make findings upon specific standards set forth in the regulations and the following general standards as identified in Title 24 VSA Section 4407:

- (1) The capacity of existing and planned community facilities
- (2) The character of the area affected

- (3) Traffic on roads and highways in the vicinity
- (4) Bylaws then in effect
- (5) Utilization of renewable energy resources

Any conditional use shall provide for off-street parking and loading facilities of 900 square feet for every five persons of total planned capacity.

State and Town health ordinances must be complied with.

No level of operation shall be permitted as a conditional use that creates excessive injurious, noxious, flammable, or explosive hazards, as determined by the Board.

The Board of Selectmen may set specific fee requirements for any of the Conditional Uses. Site Plan approval is required (Section 630).

In granting conditional use approval, the ZBA may attach such additional reasonable conditions as it deems necessary to implement the ordinance. The ZBA shall hold a public hearing upon notice of the application and shall act to approve or disapprove the application within sixty (60) days after the final public hearing. Failure to so act within such period shall be deemed approval.

### **Specific Requirements**

#### **Section 620.1 WIRELESS COMMUNICATION FACILITIES DEFINITIONS**

**Purpose:** to regulate the construction, alteration, development, decommissioning or dismantling of wireless communication facilities and ancillary structures and improvements. Activities regarding the decommissioning or dismantling of communication facilities and ancillary structures may include requirements that a bond be posted, or other security acceptable to the Zoning Board of Adjustment, in order to finance the decommissioning or dismantling of all or any portion of the facility.

**Wireless Communications Facility - Definition:** A tower, pole, antenna, guy wire, or related features or equipment intended for use in connection with transmission or receipt of radio or television signals or any other electromagnetic spectrum-based transmission/reception and the construction or improvement of a road, trail, building or structure incidental to a communications facility. Wireless Communication Facilities include Wireless Telecommunication Facilities. A speculative wireless telecommunications facility, that is, one built on speculation that the builder and operator will be able to lease it to a service provider, is considered a wireless communications facility and does not come under the Telecommunications Act of 1996. Applications for such facilities, until a service provider is named and joins in the application, are subject to the review and regulations as a wireless communications facility and not as a wireless telecommunications facility.

**Wireless Telecommunication Facility – Definition:** A facility consisting of the structures, including the towers and antennas mounted on towers and buildings, equipment and site improvements involved in sending and receiving telecommunications or radio signals from a

mobile communications source and transmitting those signals to a central switching computer which connects the mobile unit with land-based or other telephone lines.

#### **Section 620.2 WIRELESS COMMUNICATION FACILITIES STANDARDS:**

- (1) New telecommunications and broadcasting facilities should be sited and constructed only as necessary to meet the changing needs of residents and businesses.
- (2) Before the construction and siting of new towers and facilities is permitted, existing sites and towers must be utilized to the fullest extent possible. Co-location, (the utilization of existing tower space), is strongly recommended. Individuals or companies owning or operating existing facilities should facilitate the sharing of that space to the fullest extent possible.
- (3) The use of existing structures such as water towers, silos, electrical power lines and appropriate existing buildings to support equipment is strongly encouraged when possible and where it will not have a negative impact on significant historic resources and where it blends with its surroundings.
- (4) A preferred site has been determined by the Planning Commission to be located on town-owned property on Boone Road.
- (5) In the siting and design of towers and other facilities (including support, maintenance, and access facilities), every attempt must be made to minimize impacts on cultural, scenic, health and aesthetic resources to the fullest extent possible utilizing "camouflage" techniques when possible.
- (6) Provision of a visual-impact demonstration using photosimulations, elevations and/or other visual or graphic illustrations to determine visual impact shall be required. All costs for this analysis is to be born by the applicant.
- (7) Those installing such facilities shall demonstrate that public exposure to EMR (Electromagnetic Radiation) will not exceed applicable Federal Communications Commission standards for human exposure. Assessment of possible health effects shall be based on the cumulative effects of all facilities and equipment at any given location, and should include both pre-construction estimates and post-construction monitoring.
- (8) Any antenna, tower or facility that is not operated for a continuous period of twelve months shall be considered abandoned and the owner of such facilities shall remove the same within 90 (ninety) days of a receipt of notice. If such facilities are not removed within said ninety days, the town may remove such structures at the owner's expense.

#### **Section 620.3 ELECTRICAL UTILITIES:**

- (1) New electrical facilities and power lines should be sited and constructed only as necessary to meet the changing needs of residents and businesses.
- (2) Because power lines can disfigure the landscape, particularly where they cross ridgelines, no new power lines should be constructed except within current corridors and right-of-ways.
- (3) Existing corridors should be maintained so as to minimize soil erosion, maximize wildlife habitat, and be landscaped so as to minimize the negative impact on scenic and aesthetic



areas. Application of biocides within utility corridors should be according to State regulations.

- (4) Underground placement of electric lines, where possible and practicable, is encouraged, otherwise the use of wood support structures and other landscape compatibility techniques are also encouraged.

#### **Section 620.4 SAND, SOIL AND GRAVEL EXTRACTION AND SALES**

- (1) In accordance with 24 V.S.A., Section 4407(2), (5), and (8), a Conditional Use Permit shall be required for each new operation, re-establishment of a previous operation, or extension of an existing operation.
- (2) Each application shall contain a plan for rehabilitation of the site at the conclusion of each phase of the operation. A permit shall not be issued until the plan has been approved by the Board of Adjustment. Each plan shall illustrate phasing of a project whereby upon completion of the phases, the excavated sections are left in a safe, attractive and useful condition.
- (3) A performance bond may be required to assure proper completion of the rehabilitation plan.
- (4) No blasting shall occur within 100 feet of any property line and no excavation or stockpiling of materials shall be located within 50 feet of any public road, or abutting property line unless a satisfactory written agreement has been reached with the abutting property owner and filed with the Administrative Officer.
- (5) No stationary power-activated crushing or sorting machinery or equipment shall be located within 300 feet of any occupied building without written and filed consent of the occupants, or within 100 feet of any public road, or within 100 feet of any property line without written and filed consent of the abutting property owner.
- (6) The hours, frequency, and duration of operation shall not unduly affect the character of the surrounding area, or cause unreasonable hardship or inconvenience for nearby residents.
- (7) The operation shall not adversely affect water quality or drainage patterns, or create excessive dust, traffic, vibration or noise at the site or in the surrounding area.
- (8) Stripping or removal of topsoil for the purpose of sale or use on other premises is prohibited unless a layer of topsoil of at least four inches will remain over the entire stripped area after removal.
- (9) The Board of Adjustment shall regulate the frequency of any truck traffic for each application.
- (10) Noise levels at the property line shall not exceed 65 Decibels for eight hours in any 24-hour period. Noise levels will be determined by using a decibel meter owned by the municipality.

#### **Section 630. SITE PLAN APPROVAL**

For any Conditional Use other than a one family dwelling, and where indicated in these Regulations, the approval of site plans by the Planning Commission is required. In reviewing site plans, the Commission may impose appropriate conditions and safeguards with respect to adequacy of traffic access, circulation and parking; landscaping and screening; compatibility

with surrounding development; noise, vibration, erosion, and dust; and protection of natural resources. Consideration shall be given to traffic mobility and safety on affected streets, impacts on surrounding uses, and to desired land use patterns as encouraged by the Municipal Plan and the zoning regulations of the affected district(s). Conditions may include, but are not limited to, the following:

- (1) **Compatibility with surrounding development:** The Commission may require the design and placement of structures to conform with the existing relationship of surrounding buildings to the street, the landscape, and to each other, including setback distances, physical orientation, construction materials, and architectural design. Design shall not be limited to any particular style or period, but should be consistent with established trends and patterns in the surrounding area.
- (2) **Traffic access and circulation:** Among other appropriate safeguards and conditions, the Commission may:
  - (a) require the installation of frontage roads, speed change lanes, or other highway design elements on a street or adjacent to any access or connecting roads, if deemed necessary based on current or anticipated conditions.
  - (b) limit the number and width of access drives; require consolidation of existing access points.
  - (c) limit access to a property to a side street or secondary road in order to avoid access to heavily traveled streets and highways.
  - (d) require shared access and/or parking for adjoining properties or for future users of the remainder of a parcel; require the reservation of shared rights-of-way for future roads, parking areas, and pedestrian facilities; allow for consolidation or shared use of required parking spaces between uses.
  - (e) require an applicant to commission a traffic impact study from a qualified consultant.
  - (f) require the location or relocation of access points on one side of a street or highway directly across from existing access points on the opposite sides.
  - (g) prohibit the location of parking facilities between the front line of building(s) and the street.
  - (h) accommodate existing or future facilities for non-vehicular travel.

The Board of Adjustment shall approve or disapprove any such site plan within 60 days after the date upon which it has received the proposed plan, and failure to act within such period shall be deemed approval. Maps and specifications describing the location and use in detail shall be presented with application for site plan approval. Plot plans must include precise measurements of lot lines.

- (3) **Protection of natural resources:** The Commission may require that structures, parking facilities and other development be located so as to avoid impacts to surface waters, wetlands, wildlife habitat, agricultural land, important scenic resources, and significant natural and cultural features. These requirements may include modification of the minimum setback distances of the district.

## **Section 630.1 REQUIREMENTS**

- (1) Site plans shall show or designate the following:
  - (a) The location, height, and spacing of existing and proposed structures.
  - (b) Open spaces and their landscaping.
  - (c) Streets.
  - (d) Driveways.
  - (e) Off-street parking spaces.
  - (f) All other physical features, including surface waters and wetlands, stone walls and fences, and elevations and contours.
  - (g) Acreage of entire parcel, with existing and proposed lot boundaries.
  - (h) Areas designated by the Vermont Agency of Natural Resources as critical wildlife habitat or as known locations of endangered or threatened species.

## **Section 640. NON-CONFORMITIES**

Any legal structure or part thereof, which is not in conformance with the provisions of these bylaws concerning setback, height, size, or other structural requirements (including such things as parking, lighting, buffers, and lowest floor elevation in floodplain zoning) shall be deemed a nonconforming structure. Legal nonconforming structures exist as a result of construction prior to adoption of bylaws, or construction under an earlier set of less restrictive bylaws. Any nonconforming structure may be allowed to exist indefinitely, but shall be subject to the following provisions:

- (1) Subject to conditional use approval the ZBA, a nonconforming structure may be restored or reconstructed after unintentional loss provided the reconstruction is commenced within three (3) years and does not increase the degree of nonconformance that existed prior to the damage. Nothing in this section shall be construed to restrict the authority of the Town of Andover to abate a nuisance or to abate or remove public health risks or hazards.
- (2) A nonconforming structure which has been demolished shall not be reconstructed except in conformance with these bylaws. The ZBA may grant a waiver from this provision if a hardship would be created by rebuilding in strict conformance with the requirements of these bylaws. In considering a waiver from these provisions, the DRB shall take into consideration the ability of the applicant to use remaining features of the property such as foundation, water supply, sewage disposal system, underground utilities, etc.
- (3) A nonconforming structure shall not be moved, altered, extended, or enlarged in a manner which will increase the existing degree of nonconformance.
- (4) The phrase 'shall not increase the degree of nonconformance' shall be interpreted to mean that the portion of the structure which is nonconforming shall not increase in size (or decrease in the event of failing to meet minimum standards such as parking and lighting). Therefore, portions of a structure within a setback area cannot be enlarged, portions above the maximum height cannot be expanded, a nonconforming deck or porch cannot be enclosed, where parking is deficient the number or size of spaces cannot be reduced, etc. This phrase is not intended to prevent existing unfinished space from being finished or other similar scenarios provided there is no increase in size.

- (5) Nothing in this section shall be deemed to prevent normal maintenance and repair of a nonconforming structure provided that such action does not increase the degree of nonconformance.
- (6) The ZBA shall permit the alteration or expansion of a nonconforming structure for the sole purpose of conformance with mandated environmental, safety, health, or energy codes.

Any use, which does not conform to uses allowed in the district in which it is located or is otherwise not in conformance with the provisions of these bylaws, shall be deemed a nonconforming use. Nonconforming uses are those that exist legally as a result of existing prior to adoption of bylaws, or permitted under an earlier set of less restrictive bylaws. Any nonconforming use may be continued indefinitely, but shall be subject to the following provisions:

- (1) The nonconforming use shall not be changed to another nonconforming use without approval by the ZBA, and then only to a use that, in the opinion of the ZBA, is of the same or of a more conforming nature.
- (2) The nonconforming use shall not be re-established if such use has been discontinued for a period of at least two-years or has been changed to, or replaced by, a conforming use. Intent to resume a nonconforming use shall not confer the right to do so.
- (3) The nonconforming use shall not be expanded, extended, moved or enlarged unless the ZBA finds that such expansion, extension, movement, or enlargement does not increase the degree of non-conformance. Examples of enlarged or expanded uses can include increased hours of operation, increased numbers of tables, number of employees or an increase in the size of the operation through the expansion of a conforming structure.

The ZBA shall permit the alteration or expansion of a nonconforming use for the sole purpose of conformance with mandated environmental, safety, health, or energy codes.

#### **Section 650. PLANNED UNIT DEVELOPMENT**

**Purpose.** In accordance with the Act [§4417], Planned Unit Developments (PUDs) are allowed in the Town of Andover to permit flexibility in the application of land development regulations for the purposes of Section 4302 of this title and in conformance with the municipal plan. The purposes of the Planned unit Development in Andover are:

- (1) To encourage compact, pedestrian-oriented development and redevelopment, and to promote a mix of residential uses or nonresidential uses, or both, especially in downtowns, village centers, new town centers, and associated neighborhoods.
- (2) To implement the policies of the Andover Town 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.

**Review Procedure.** A PUD shall be reviewed concurrently with subdivision and conditional use review, including site plan review, in this Article VI. In addition to the conditional use, subdivision and site plan application requirements, an application for PUD approval shall include a statement describing all proposed modifications, changes or supplements to existing bylaw requirements. Modifications of this bylaw approved by the Development Review Board shall be noted in writing and appended to a plat depicting the project to be filed in the Windsor Land Records. All other provisions of this bylaw not specifically modified shall remain in effect and be applicable to the project.

**Coordination with Conditional Use Review.** Review and approval of a PUD involving the development of one or more conditional uses under this Section shall not exempt the proposed development from conditional use review. The Zoning Board of Adjustment may review and approve one or more conditional uses concurrently with granting PUD approval, or may require the submission of a conditional use application, to include the terms and conditions of the PUD approval, including any modifications of this bylaw granted in accordance with this Section 650, at a later date.

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

- (1) The PUD shall meet all applicable conditional review standards, and shall be consistent with the Andover Town Plan and all other applicable municipal regulations and ordinances currently in effect, including all local and state regulations for sewage disposal and the protection of water quality.
- (2) The PUD 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, and floodplain 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 Zoning 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 PUD 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) As a minimum requirement each owner-occupied single family dwelling unit and commercial building shall have its own individual well and septic system, which systems may be located in the common area. Each system shall be the responsibility of the owner of the individual unit or commercial building.

- (5) The minimum front, side and rear yard setbacks at the periphery of the PUD shall be as dictated for the particular district unless otherwise specified by the Zoning Board of Adjustment. The Board may allow other setback standards, such as zero lot lines, as part of PUD approval.
- (6) 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 Zoning Board of Adjustment shall approve such easement. 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. Areas preserved for agricultural use should be of a size that retains their eligibility for state and town tax abatement programs;
  - (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) Two (2) or more contiguous parcels under the ownership or control of the applicant may be combined for review as a PUD. 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 Zoning Board of Adjustment's judgment, if the land were subdivided into lots in conformance with district regulations.

- (7) The total number of dwelling units shall not exceed that which would be permitted in the Zoning Board of Adjustment's judgment 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 the PUD may, at the discretion of the Zoning 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 PUD 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 these bylaws.
- (8) The dwelling units permitted may, at the discretion of the Zoning Board of Adjustment, be of varied types, including single-family, two-family, or multi-family construction, and may be attached or detached.
- (9) The total number of allowable commercial or industrial space within the PUD shall not exceed the number which could be permitted in the Zoning Board of Adjustment's judgment, if the land were subdivided into lots in conformance with the zoning regulation for the district in which the project is located.
- (10) A PUD may include any permitted or conditional uses allowed in the district in which it is located. Multiple principal structures and/or uses on a lot, or multiple ownership of a single structure may be permitted.
- (11) Principal buildings and mixed uses shall be arranged to be compatible, and buffered as appropriate to ensure visual and acoustical privacy for the residents of the development and for adjacent properties.

## **ARTICLE VII: DEFINITIONS**

### **Section 710.**

Doubt as to the precise meaning of any word used in these Regulations shall be clarified by the Board of Adjustment. For the purpose of these regulations, words used in the present tense include the future, the singular includes the plural, and vice versa. The word "shall" is mandatory. The word "applicant" includes an individual, partnership, association, corporation or other organization. The word "structure" includes "building".

**ACCESSORY DWELLING UNIT:** An efficiency or one-bedroom apartment, located within or appurtenant to an owner-occupied single-family dwelling, that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:

- The property has sufficient wastewater capacity.
- The unit does not exceed 30 percent of the total habitable floor area of the single-family dwelling.
- Applicable setback, coverage, and parking requirements specified in the bylaws are met. 24 V.S.A. § 4412(1)(E).

**ACCESSORY USE OR BUILDING:** A use or building customarily incidental and subordinate to the principal use or building and located on the same lot.

**AFFORDABLE HOUSING:** "Affordable housing" means either of the following:

- (1) Housing that is owned by its inhabitants whose gross annual household income does not exceed 80 percent of the county median income, or 80 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including principal, interest, taxes, insurance, and condominium association fees is not more than 30 percent of the household's gross annual income.
- (2) Housing that is rented by its inhabitants whose gross annual household income does not exceed 80 percent of the county median income, or 80 percent of the standard metropolitan statistical area income if the municipality is located in such an area, as defined by the United States Department of Housing and Urban Development, and the total annual cost of the housing, including rent, utilities, and condominium association fees, is not more than 30 percent of the household's gross annual income.

**AFFORDABLE HOUSING DEVELOPMENT:** A housing development of which at least 20 percent of the units or a minimum of five units, whichever is greater, are affordable housing units. Affordable units shall be subject to covenants or restrictions that preserve their affordability for a minimum of 30 years or longer as provided in municipal bylaws.

**AGRICULTURAL USE:** Land (containing at least two acres) which is used for raising livestock, agricultural or forest products, and including farm structures and the storage of agricultural products raised on the property shall be considered in agricultural use.

**ALTERATION:** Structural changes, rearrangement, change of location or addition to a building, other than repairs and modification in building equipment.



**BUILDING:** Structure having a roof supported by columns or walls and intended for the shelter or enclosure of persons, animals or chattel.

**BUILDING HEIGHT:** Vertical distance measured from the average elevation of proposed finished grade at the front of the building to the highest point of the roof for flat and mansard roofs, and to the average height between eaves and ridge for other types of roofs.

**BYLAWS:** These Andover Zoning Regulations.

**CAMP:** Land on which are located one or more cabins, trailers, shelters or other accommodations suitable for seasonal or temporary living purposes.

**CERTIFICATE OF OCCUPANCY:** A finding by the Administrative Officer that a structure which required a zoning permit is in compliance with that permit and with all town regulations before occupancy is permitted.

**DWELLING UNIT:** Building or part thereof used as living quarters for one family. The terms "dwelling", "one-family dwelling", or "two-family dwelling" shall not include a motel, hotel, tourist home or similar structure.

**DWELLING, ONE-FAMILY:** Detached building used as living quarters by one family.

**DWELLING, TWO-FAMILY:** Building used as living quarters by two families independently of each other.

**FAMILY CHILD CARE FACILITY:** A facility where the owner or operator is to be licensed or registered by the state for child care and which provides care on a regular basis for more than six full-time and four part-time children.

**FAMILY CHILD CARE HOME:** A home where the owner or operator is to be licensed or registered by the state for child care, and which provides for care on a regular basis in the caregiver's own residence for not more than ten children at any one time. Of this number, up to six children may be provided care on a full-time basis and the remainder on a part-time basis. Care of a child on a part-time basis shall mean care of a school-age child for not more than four hours a day. These limits shall not include children who reside in the residence of the caregiver; except:

- (1) these part-time school-age children may be cared for on a full-day basis during school closing days, snow days and vacation days which occur during the school year; and
- (2) during the school summer vacation, up to 12 children may be cared for provided that at least six of these children are school age and a second staff person is present and on duty when the number of children in attendance exceeds six. These limits shall not include children who are required by law to attend school (age 7 and older) and who reside in the residence of the caregiver. 33 V.S.A. § 4902((3)).

**FRONT:** The front of a building shall be the side facing the street line along a maintained road.

**FRONTAGE:** Length of the lot boundary measured along the public road right-of-way or mean watermark of a public waterway.

**GROUP HOME:** Any residential facility operating under a license or registration granted or recognized by a state agency, that serves not more than eight unrelated persons, who have a handicap or disability as defined in 9 V.S.A. § 4501, and who live together as a single housekeeping unit. In addition to room, board and supervision, residents of a group home may receive other services at the group home meeting their health, developmental or educational needs.

**HOME OCCUPATION:** An occupation that is customary in a dwelling in a residential area and that does not have an undue adverse effect upon the character of the residential area in which the dwelling is located.

**LAND DEVELOPMENT:** The division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining excavation or landfill, and any change in the use of any building or other structure, or land or extension of use of land.

**LOT:** Land occupied by or capable of being occupied by one principal structure and the accessory structure or uses customarily incidental to it, including such yards and open spaces as are required by the ordinance.

**LOT LINE:** The established division line between lots or between a lot and the right-of-way of a public street.

**LOT FRONTAGE:** Distance measured across the width of the lot at the building front line, or the proposed building front line.

**MOBILE HOME:** A prefabricated dwelling unit which:

1. is designed for long-term and continuous residential occupancy
2. is designed to be moved on wheels, as a whole or in sections
3. on arrival at the site, is complete and ready for occupancy, except for incidental unpacking, assembly, connections with utilities, and placing on support or a permanent foundation, or installation as a unit in a previously prepared structure
4. contains the same water supply and waste disposal as immovable housing

**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).

**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 on a permanent foundation.

**MOTOR VEHICLE SERVICE STATION:** Building or land that is used for the sale of motor fuel, oil and motor vehicle accessories, and which may include facilities for lubricating, washing or servicing motor vehicles.

**TWO-FAMILY DWELLING:** A building designed for occupancy by two families living independently of each other in individual dwelling units.

**NONCONFORMING LOTS OR PARCELS:** Lots or parcels that do not conform to the present bylaws covering dimensional requirements but were in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a lot or parcel improperly authorized as a result of error by the administrative officer.

**NONCONFORMING STRUCTURE:** A structure or part of a structure that does not conform to the present bylaws but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a structure improperly authorized as a result of error by the administrative officer.

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

**NONCONFORMING:** A nonconforming use, structure, lot, or parcel.

**PARKING SPACE:** Off-street space which is at least ten (10) feet wide and twenty-two (22) feet long, not including access driveway, and having direct access to a street or approved right-of-way and is used for temporary location of one licensed motor vehicle.

**PREFABRICATED HOUSING:** (See MODULAR OR PREFABRICATED HOME, above)

**PLANNED UNIT DEVELOPMENT:** One or more lots, tracts, or parcels of land to be developed as a single entity, the plan for which 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.

**RENEWABLE ENERGY RESOURCE:** Energy available or collection or conversion from direct sunlight, wind, running water, organically derived fuels including wood, agricultural sources, waste materials, waste heat and geothermal sources.

**RESIDENTIAL CARE HOME:** A place, however named, excluding a licensed foster home, which provides, for profit or otherwise, room, board and personal care to three or more residents unrelated to the home operator. 33 V.S.A. § 7102(1).

**RETAIL STORE:** Includes shop and store for the sale of retail goods. (This definition does not include any drive-up service, free-standing retail stand, gasoline service, motor vehicle repair service, new and used car sales and service, trailer and mobile homes sales and service.)

**SET BACK:** Space on a lot not occupied with a building or structure. Porches, whether enclosed or unenclosed, shall be considered as part of the main building and shall not project into a required yard.

**SET BACK, FRONT:** Yard between the front lot line and the front line of a building extended to the side lot lines of the lot. The depth of the front yard shall be measured from the street line to the front line of the building.

**SET BACK, REAR:** Yard between the rear lot line and the rear line of a building extended to the side lot lines of the lot. The depth of the rear yard shall be measured from the rear lot line to the rear line of the building.

**SET BACK, SIDE:** Yard between the principal building or accessory building and a side lot line, and extending through the front yard to the rear yard.

**STREET:** Public way for vehicular and pedestrian traffic which affords the principal means of access to abutting properties.

**STREET FRONTAGE:** Lot lines which abut a maintained street.

**STREET LINE:** Right-of-way of a street as dedicated by a deed of record. Where width of the street is not established, the street line shall be considered to be twenty-five (25) feet from the center line of the street pavement.

**TRAILER:** Includes any vehicle used as sleeping or camping or living quarters mounted on wheels or a camper body usually mounted on a truck; and any vehicle which is customarily towed by a motor vehicle and used for carrying goods, equipment, machinery, boats, or as an office.

**WIRELESS COMMUNICATIONS FACILITY:** A tower, pole, antenna, guy wire, or related features or equipment intended for use in connection with transmission or receipt of radio or television signals or any other electromagnetic spectrum-based transmission/reception and the construction or improvement of a road, trail, building or structure incidental to a communications facility. Wireless Communication Facilities include Wireless Telecommunication Facilities. A speculative wireless telecommunications facility, that is, one built on speculation that the builder and operator will be able to lease it to a service provider, is considered a wireless communications facility and does not come under the Telecommunications Act of 1996. Applications for such facilities, until a service provider is named and joins in the application, are subject to the review and regulations as a wireless communications facility and not as a wireless telecommunications facility.

**WIRELESS TELECOMMUNICATION FACILITY:** A facility consisting of the structures, including the towers and antennas mounted on towers and buildings, equipment and site improvements involved in sending and receiving telecommunications or radio signals from a mobile communications source and transmitting those signals to a central switching computer which connects the mobile unit with land-based or other telephone lines.

**USE, CONDITIONAL:** Certain specific uses as listed in Article VI Section 610 for which a Conditional Use Permit is required.

**USE, PERMITTED:** Use specifically allowed in the district, excluding illegal uses and non-conforming uses.

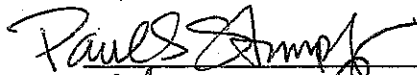
These Zoning Regulations are adopted as permanent bylaws pursuant to 24 VSA Section 4415 this 10<sup>th</sup> day of September, 2007, by the Legislative Body of the Town of Andover, Vermont, and shall become effective this same day.

### Andover Board of Selectmen

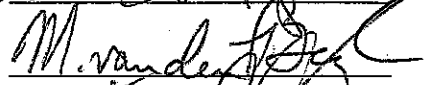
Harold Johnson, Chairman



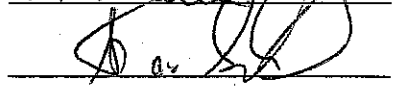
Paul Stumpf



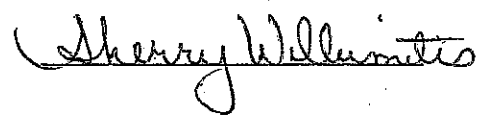
Margaret van den Bergh



Stephen Saunders



Sherry Willumitis



#### RECEIVED & RECORDED

On Sept. 11, 2007 at 8:00 A.M.  
Book 8 Page 148-166  
Andover Proceedings Records  
Jude L. Bagnall  
Town Clerk, Andover, Vermont