

## **Town of Benson, Vermont Public Hearing**

Notice is hereby given that the **Benson Planning Commission** will hold a **Public Hearing on Wednesday, February 7, 2018 at 6:30 pm at the Town Office on Stage Road in Benson, Vermont** to take public comments and to consider for approval and submission to the selectboard, **amendments to the Benson Zoning and Subdivision Bylaw.**

**The proposed amendments primarily clarify the intent and application of the regulations.**

**Amendments are proposed changes to the bylaw last amended September 13, 2013 and include changes to the following sections: 1) 4.1.3 changes the length of time a recreational vehicle can be occupied as a dwelling unit. 2) 4.1.14 and 5.1.9 clarify permit requirements for accessory structures, 3) Article VI allows the Development Review Board to modify general standards for conditional use approval, 4) 7.1 clarifies that subdivision envelopes include setback areas, 5) 8.4.6 clarifies when appeal fees must be submitted, 6) 8.10.3 increases the maximum fine for a violation to \$200, and 7) the secondary dwelling unit definition is modified.**

The full text of the proposed amended Zoning and Subdivision Bylaw is available for public review at the Benson Town office during normal business hours.

**Certified Mail – Return Receipt Requested**

**To:                   Chairperson West Haven Planning Commission**  
**Chairperson Fair Haven Planning Commission**  
**Chairperson Castleton Planning Commission**  
**Chairperson Hubbardton Planning Commission**  
**Chairperson Sudbury Planning Commission**  
**Chairperson Orwell Planning Commission**  
**Executive Director Rutland Regional Planning Commission**  
**Vermont Department of Housing and Community Affairs**

**The Town of Benson has drafted proposed Amendments to the previously adopted Zoning and Subdivision Bylaws which were last amended September 13, 2013.**

**A public hearing will be held February 7, 2018 at the Benson Town office in Benson Village at 6:30 pm.**

**The following are enclosed:**

- 1. A copy of the proposed Amendments.**
- 2. A copy of the written report on the Bylaw as required by Title 24 V.S.A. 4441(c).**
- 3. A copy of the Public Hearing Notice**

**Written comments are requested in addition to oral comment at the Public Hearing and may be mailed to the Planning Commission c/o the Benson Town Office or presented to the Planning Commission at the February 7 Public Hearing.**

**Comments received after February 7, 2018 might not be fully considered and incorporated by the Commission prior to forwarding changes to the select board for their review.**

**Thomas A. Bartholomew**

**Chairperson, Benson Planning Commission**

**Date:**

**Town of Benson Zoning and Subdivision Bylaw Amendment  
January,2018  
Planning Commission Reporting Form  
for Municipal Bylaw Amendments**

This report is in accordance with 24 V.S.A. §4441(c) which states:

*“When considering an amendment to a bylaw, the planning commission shall prepare and approve a written report on the proposal. A single report may be prepared so as to satisfy the requirements of this subsection concerning bylaw amendments and subsection 4384(c) of this title concerning plan amendments. .... The report shall provide(:)*

- (A) *brief explanation of the proposed bylaw, amendment, or repeal and include a statement of purpose as required for notice under §4444 of this title,*

***The Proposed amendments to the Zoning and Subdivision Bylaw provide additional language to clarify the intent and application of specific sections of the regulations, to change the length of time a recreational vehicle may be occupied as a dwelling, to change the maximum daily fine for a violation to \$200 and to allow the Development Review Board to modify general standards for conditional use approval. The changes are being proposed based on our experience with implementing the existing regulations and the need to clarify and make minor modifications but do not change the scope or intent of the current regulations.***

(A)nd shall include findings regarding how the proposal:

1. *Conforms with or furthers the goals and policies contained in the municipal plan, including the effect of the proposal on the availability of safe and affordable housing:*

***The proposed changes do not change the scope or intent of the current regulations with respect to the goals and policies of the Town Plan or the availability of safe and affordable housing.***

2. *Is compatible with the proposed future land uses and densities of the municipal plan:*

***The proposed changes do not change the scope or intent of the current regulations with respect to the proposed future land uses and densities of the Town Plan.***

3. *Carries out, as applicable, any specific proposals for any planned community facilities.”*

***There are no specific proposals for community facilities in the Town Plan.***

**December 2017**

**Draft Changes To**

**Town of Benson**  
**Zoning and Subdivision Bylaw**

**Adopted March 7, 2006**

**Amended October 9, 2006**

**Amended March 8, 2010**

**Amended November 21, 2011**

**Amended September 10, 2013**

**Unified Bylaws**



# Table of Contents

ARTICLE I - OVERVIEW.....	1
1.1 TITLE .....	1
1.2 ENACTMENT.....	1
1.3 EFFECTIVE DATE AND AMENDMENT .....	1
1.4 FLOOD HAZARD AREA REGULATIONS .....	1
1.5 INTENT .....	1
1.6 VALIDITY AND SEVERABILITY .....	1
1.7 INTERPRETATION .....	1
ARTICLE II - ZONING DISTRICTS.....	2
2.1 ESTABLISHMENT OF ZONING DISTRICTS AND MAP .....	2
2.2 AGRICULTURAL AND RURAL RESIDENTIAL DISTRICT .....	2
2.3 VILLAGE DISTRICT .....	2
2.4 LAKE SHORE DISTRICT.....	2
2.5 LAKE CHAMPLAIN SHORELINE DISTRICT.....	2
2.6 FLOODPLAIN OVERLAY DISTRICT .....	3
ARTICLE III - GENERAL STANDARDS THAT APPLY TO ALL NEW DEVELOPMENT IN ALL DISTRICTS .....	3
3.1 GENERAL STANDARDS FOR ALL NEW DEVELOPMENT .....	3
3.2 PROHIBITED DEVELOPMENT .....	3
3.3 MINIMUM SETBACKS AND DIMENSIONS IN THE AGRICULTURAL AND RURAL RESIDENTIAL DISTRICT.....	4
3.4 MINIMUM SETBACKS AND DIMENSIONS IN THE VILLAGE DISTRICT .....	4
3.5 MINIMUM SETBACKS AND DIMENSIONS IN LAKESHORE AND LAKE CHAMPLAIN SHORELINE DISTRICTS.....	4
ARTICLE IV – ALLOWED DEVELOPMENT (NO ZONING PERMIT REQUIRED) .....	5
4.1 ALLOWED DEVELOPMENT .....	5
ARTICLE V – DEVELOPMENT REQUIRING ONLY A PERMIT ISSUED BY THE ZONING ADMINSTRATOR.....	6
5.1 PERMITTED USES .....	6
ARTICLE VI – CONDITIONAL USES, GENERAL AND SPECIFIC STANDARDS .....	7
6.1 GENERAL STANDARDS FOR ALL USES IN CONDITIONAL USE APPROVAL.....	7
6.2 SPECIFIC CONDITIONAL USE STANDARDS FOR BUSINESSES.....	8
ARTICLE VII - SUBDIVISION .....	9
7.1 STANDARDS FOR ALL SUBDIVISION .....	9
7.2 DEVELOPABILITY .....	9
7.3 ACCESS .....	10
7.4 EFFECT ON AGRICULTURE OR SILVICULTURE.....	10
7.5 MINIMIZING IMPACTS .....	10
7.6 LOT SIZE, DIMENSIONS AND DENSITY .....	10
ARTICLE VIII: ADMINISTRATION.....	10
8.1 ZONING ADMINISTRATOR .....	10
8.2 PLANNING COMMISSION .....	11
8.3 DEVELOPMENT REVIEW BOARD (DRB) .....	11
8.4 ZONING PERMIT .....	11
8.4.1 ZONING PERMIT APPLICATION .....	12
8.4.2 COMPLETED PERMIT APPLICATION .....	12

8.4.3	REFERRAL TO STATE AGENCY PRIOR TO ISSUANCE.....	12
8.4.4	APPROVAL OR DENIAL OF PERMIT .....	12
8.4.5	EFFECTIVE DATE OF ZONING PERMIT .....	12
8.4.6	APPEAL OF ZONING ADMINISTRATOR’S ACTIONS OR ZONING PERMIT.....	13
8.4.7	EXPIRATION OF ZONING PERMIT .....	13
8.5	DEVELOPMENT PRIOR TO ADOPTION .....	13
8.5.1	DEVELOPMENT IN PROGRESS .....	14
8.5.2	UNDEVELOPED PRE-EXISTING LOTS .....	14
8.5.3	CONTINUATION OF USE OF NON-CONFORMING STRUCTURE OR NON- CONFORMING USE.....	14
8.5.4	CHANGES TO NON-CONFORMING STRUCTURE OR NONCONFORMING USE .....	14
8.5.5	DISCONTINUANCE AND ABANDONMENT .....	14
8.5.6	PRE-EXISTING VIOLATIONS.....	14
8.6	CONDITIONAL USE APPROVAL .....	15
8.6.1	APPLICATION FOR CONDITIONAL USE APPROVAL .....	15
8.6.2	HEARING FOR CONDITIONAL USE APPROVAL .....	15
8.6.3	PROVISION FOR INDEPENDENT CONSULTANTS.....	15
8.6.4	APPROVAL OR DENIAL.....	15
8.6.5	EXPIRATION OF APPROVAL FOR CONDITIONAL USE APPROVAL .....	15
8.6.6	APPEAL FOR CONDITIONAL USE APPROVAL .....	16
8.7	VARIANCES AND WAIVERS.....	16
8.7.1	APPEAL FOR VARIANCE.....	16
8.7.2	QUALIFYING FOR A WAIVER.....	16
8.7.3	STANDARDS FOR GRANTING WAIVERS .....	17
8.7.4	EXPIRATION OF VARIANCE OR WAIVER .....	17
8.7.5	APPEAL OF VARIANCE OR WAIVER.....	17
8.8	SUBDIVISION APPROVAL.....	17
8.8.1	APPLICATION FOR SUBDIVISION APPROVAL.....	17
8.8.2	HEARING FOR SUBDIVISION APPROVAL.....	18
8.8.3	APPROVAL OR DENIAL OF SUBDIVISION APPROVAL.....	18
8.8.4	EXPIRATION OF SUBDIVISION APPROVAL.....	18
8.8.5	APPEAL OF SUBDIVISION APPROVAL .....	18
8.9	NOTICE OF PUBLIC HEARINGS .....	18
8.10	VIOLATIONS AND ENFORCEMENT .....	19
8.10.1	VIOLATIONS .....	19
8.10.2	NOTICE OF VIOLATION.....	19
8.10.3	ENFORCEMENT AND FINES .....	19
	ARTICLE IX: DEFINITIONS .....	20

## **ARTICLE I - OVERVIEW**

### **1.1 TITLE**

The title of these regulations shall be known and cited as the TOWN OF BENSON ZONING AND SUBDIVISION BYLAW.

### **1.2 ENACTMENT**

In accordance with the Vermont Planning and Development Act (24 V.S.A., Chapter 117), hereinafter referred to as the "Act", there is hereby established a Zoning and Subdivision Bylaw for the Town of Benson, Vermont, which consists of this text and an Official Zoning Map and the latest Special Flood Hazard Areas Maps.

### **1.3 EFFECTIVE DATE AND AMENDMENT**

This Bylaw or any amendments thereto shall become effective upon date of adoption. Any amendment or revision to the provisions of this Bylaw shall be prepared in accordance with the Act.

### **1.4 FLOOD HAZARD AREA REGULATIONS**

The Town of Benson has adopted Flood Hazard Regulations which are attached.

### **1.5 INTENT**

It is the intent of this Bylaw to implement the Town Plan, with emphasis on the following four goals:

- Preserve the rural character and scenic beauty of Benson;
- Preserve open space for current or future agricultural use of all types;
- Ensure that development does not either degrade the environment or exceed the current level of town services; and
- Preserve the historic character of the Village.

### **1.6 VALIDITY AND SEVERABILITY**

If any section or provision of this Bylaw is held to be invalid, such decision shall not affect the validity of the Bylaw as a whole or any part thereof other than the part held to be invalid.

### **1.7 INTERPRETATION**

In their interpretation and application, the provisions of this Bylaw shall be held to be minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Whenever this Bylaw imposes a greater restriction upon the use of a structure or land than are required by any other statute, bylaw, rule, permit, easement or agreement, the provisions of this Bylaw shall control.



## **ARTICLE II – ZONING DISTRICTS**

### **2.1 ESTABLISHMENT OF ZONING DISTRICTS AND MAP**

For the purposes of this Bylaw, the following Districts are hereby established within the Town.

Agricultural and Rural Residential  
Village  
Lake Shore  
Lake Champlain Shoreline  
Floodplain Overlay

The areas and boundaries of the Districts referenced above are delineated on a map that is hereby designated as the Official Zoning Map for the Town of Benson. This map is signed and dated by the Selectboard, and filed with the Town Clerk. This map shall remain at the Town Offices. Copies of this map and small-scale versions of this map are available to the public, as necessary.

In the event of any question regarding the boundaries of any district, the Benson Planning Commission shall have the authority and power, after a public hearing, to make the final determination as to where such lines fall on the ground. Any landowner requesting such a determination shall be obligated to share equally in the costs and expenses of the Planning Commission related to such determination.

Lots with land in more than one district will be considered two lots with the district boundary considered a property line except such lots with one acre or less of land in one of the districts may be considered to be completely in the district where the largest area of the land is located.

### **2.2 AGRICULTURAL AND RURAL RESIDENTIAL DISTRICT**

All lands and waters within the Town of Benson not in other districts are in the Agricultural and Rural Residential District.

### **2.3 VILLAGE DISTRICT**

All lands and waters within the shaded area of Exhibit A of the “Ordinance Regulating the Use of Sewers in the Town of Benson”, also known as the Sewer District, are in the Village District.

### **2.4 LAKE SHORE DISTRICT**

All lands and waters within 500 feet distant measured horizontally from the mean water level of Lake Sunrise, Sunset Lake, Perch Pond and Glen Lake are in the Lake Shore District.

### **2.5 LAKE CHAMPLAIN SHORELINE DISTRICT**

All lands and waters within 500 feet distant measured horizontally from the mean water level of Lake Champlain are in the Lake Champlain Shoreline District.

## **2.6 FLOODPLAIN OVERLAY DISTRICT**

This district encompasses all lands which are covered by “Attachment A, Town of Benson Flood Hazard Area Regulations”. Section III of Attachment A specifies the lands included in this district.

## **ARTICLE III - GENERAL STANDARDS THAT APPLY TO ALL NEW DEVELOPMENT IN ALL DISTRICTS**

### **3.1 GENERAL STANDARDS FOR ALL NEW DEVELOPMENT**

All new development (except as limited by section 4413 of the Act) within the Town must conform to the following:

1. All structures are limited to 40 feet in height, except agricultural structures, telecommunications towers or antennae and windmills. Telecommunications towers or antennae and off-grid windmills require conditional use approval unless otherwise specified in this Bylaw or exempted by law.
2. All principal structures shall have at least 2 parking spaces outside the right-of-way. Multi-unit buildings shall have 2 spaces per unit.
3. Development, including structures, utilities and roads, shall be encouraged to be sited at the edge of fields or in forested areas so as to preserve open lands. Development shall not significantly reduce the agricultural or forestry potential, where such exists, of the lot or inhibit agricultural use of adjoining land or the surrounding area. Deviating from such placement is allowed for lots existing prior to March 7, 2006. For lots created after March 7, 2006, deviation will only be allowed after demonstrating that no other suitable locations exist for such uses or structures on the property.
4. Only one principal use or one principal structure may be located on a lot. A specific number of principle structures or uses are allotted to each lot in existence on the date of adoption in 3.3, 3.4 and 3.5. These may be distributed to newly created lots by subdivision and subsequently redistributed by further subdivision in accordance with these land use regulations. Zoning permits will not be issued for an additional principal structure or use on a lot if there is an existing principal structure or use located on the lot.
5. All accesses onto a Town highway, or changes to an existing access, require an access permit from the Select board.
6. All driveways and private roads shall be designed to allow emergency access to any residential, commercial or industrial buildings.

### **3.2 PROHIBITED DEVELOPMENT**

All development that is not listed as allowed, permitted, or potentially allowed to be permitted following a process such as Conditional Use Approval, is prohibited. The following development is prohibited:

1. Mobile Home Parks in the Village District
2. Multiple Unit Dwellings in all Districts except the Village District
3. Multiple Unit Dwellings of more than four units
4. More than one principal structure on a lot.

### **3.3 MINIMUM SETBACKS AND DIMENSIONS IN THE AGRICULTURAL AND RURAL RESIDENTIAL DISTRICT**

1. The front setback of structures shall be no closer to the center-line of the road than 75 feet. The minimum side and rear yard setbacks shall be 50 feet.
2. All structures, except those that must by their nature (i.e. bridges, docks, etc) be located closer, must be set back at least 75 feet from the top of the bank of the Hubbardton River and the mean water level of Doughty Pond, Parsons Mill Pond, Mud Pond, Bullhead Pond, and Root Pond.
3. There is no minimum lot width, depth or road frontage requirement.
4. The minimum lot size is 1 acre.
5. The number of principal structures or uses allotted to lots in existence on the date of adoption(March 7, 2006) is: a) for lots less than 4 acres on such date, one such (existing or future) structure or use is allotted, b) on all lots with at least 4 acres on such date, but less than 40 acres, two (existing and future) such structures or uses are allotted and c) for lots larger than 40 acres on such date, one principal structure or use(existing or future) is allotted for each 20 acres. .
6. Access to Route 22A for all lots in existence on the date of adoption is: (a) for all lots with less than 750 feet of road frontage one access(existing or future) to 22A is allotted, (b) all lots with at least 750 feet of frontage on such date and less than 1500 feet of frontage, two (existing and future) such accesses are allotted, and c) for all lots with more than 1500 feet of road frontage on such date, one access is allotted for each 750 feet of road frontage. The number of allotted acceses may be distributed by subdivision and redistributed by further subdivision. This access restriction does not apply to access for agricultural purposes.

### **3.4 MINIMUM SETBACKS AND DIMENSIONS IN THE VILLAGE DISTRICT**

1. The front setback of structures shall be no closer to the center-line of the road than 65 feet.
2. The minimum side and rear yard setbacks shall be 20 feet.
3. There is no minimum lot width, depth or road frontage requirement.
4. The minimum lot size is 1 acre.
5. The number of principal structures or uses allotted to lots in existence on the date of adoption is: a) for lots less than 2 acres on such date, one such structure or use (existing or future) is allotted, and b) on all lots with at least 2 acres on such date, but less than 6 acres, two (existing and future) such structures or uses are allotted and c) for lots larger than 6 acres on such date, one principal structure or use(existing or future) is allotted for each 3 acres .

### **3.5 MINIMUM SETBACKS AND DIMENSIONS IN LAKESHORE AND LAKE CHAMPLAIN SHORELINE DISTRICTS**

1. The front setback of structures shall be no closer to the center line of a public road than 65 feet.
2. The minimum side and rear yard setbacks shall be five feet.
3. All structures except those that must by their nature (i.e. bridges, docks, etc.) be located closer must be set back at least 25 feet from the shoreline of Lake Champlain and the Lakes and ponds in the Lake Shore District.
4. There is no minimum lot width, depth or road frontage.
5. The minimum lot size shall be one half acre.
6. The number of principal structures or uses allotted to lots in existence on the date of adoption is: a) for all lots less than 1.5 acres on such date , one such(existing or future) structure or use is allotted and

(b) on all lots with at least 1.5 acres on such date, but less than 4 acres, two(existing and future) such structures or uses are allotted and c) for lots larger than 4 acres on such date,, one principal structure or use(existing or future) is allotted for each 2 acres.’

## ARTICLE IV – ALLOWED DEVELOPMENT (NO ZONING PERMIT REQUIRED)

### 4.1 ALLOWED DEVELOPMENT

The following kinds of development are allowed and do not require any zoning or subdivision permit except as noted:

1. Interior remodeling.
2. Exterior remodeling and additions that meet all setback requirements of 3.3, 3.4 and 3.5, the general standards of 3.1 and applicable subdivision permit requirements.
- 3- A maximum of three (existing and new) motor homes, campers and travel trailers without water and/or sewer connections provided ~~that~~ they are placed in compliance with setbacks and conform to all applicable Town ordinances and subdivision approval requirements. **Temporary habitation of any unit must comply with the State of Vermont Criteria for an exemption from permitting requirements of the Wastewater and Water Supply Rules. Temporary habitation of any unit or combination of units on any lot with a state permitted water and wastewater system shall not exceed 120 days during a calendar year. Temporary habitation of any unit or combination of units on any lot without a State permitted water and wastewater system shall not exceed 60 days during a calendar year. ~~shall not exceed six consecutive months or six months in any calendar year.~~**
4. A maximum of three (existing and new) box trailers, storage containers, and other trailers used for storage which are parked in compliance with setbacks and applicable subdivision approval requirements.
5. Replacement of an existing conforming and/or non-conforming structure destroyed by fire or other disaster provided that it is placed on the same footprint or part of the same footprint plus additional footprint that complies with setback requirements, does not increase in height, and that reconstruction begins within five years of the date of destruction.
6. Farm structures (as defined under Title 24) and the conducting of accepted agricultural practices (AAPs), or accepted management practices (AMPs) for silviculture, including the construction of farm structures, as such practices are defined by the Secretary of Agriculture or Commissioner of Forests, Parks, and Recreation, respectively under subsections 1021(f) and 1259(f) of Title 10 and section 4810 of Title 6. However any person intending to build a farm structure shall notify the Zoning Administrator and shall abide by the setbacks in that district, or as approved by the Secretary of Agriculture.
7. Home Occupation, as defined in the Definitions section, in an existing dwelling and also in compliance with the standards of sections 3.1 and 6.1.
8. Construction of accessory structures that meet the setbacks in section 3.3, 3.4, 3.5 and any applicable subdivision permit requirements and with footprints of 900 square feet or less and not exceeding 20 feet in height.
9. Public utility power generating plants and transmission facilities regulated under 30 VSA, section 248.

10. Accessory dwelling unit within a single family dwelling unit that does not exceed 40% of the total habitable floor area of the single family dwelling.
11. Except as required by the Flood Hazard Regulations no zoning permit is required nor are setbacks applicable for the following when all other general standards are met:
  - A. Fences, hedges, or walls which do not interfere with traffic visibility. Fences, hedges, walls, trees, or shrubs shall not be placed in the highway right of way.
  - B. Docks
  - C. Dog-houses, tree-houses, play- houses, clothes lines, flag poles, barbecue pits and fire places.
  - D. Accessory structures with a floor area of not more than 120 (one hundred twenty) square feet and height of not more than ten (10) feet.
  - E. Landscaping with excavation and fill including construction of driveways and parking areas.
  - F. Utility services including septic systems, wells, springs, water, sewer, heating fuel,, power and communication lines and heating fuel storage tanks(This does not relieve the owner of their responsibility to obtain required state permits),
12. Correction, modification or establishment of a boundary line that does not create an additional lot, does not change the number of principal structures or uses allowed for a lot, does not create a violation of any other requirement of these regulations and does not change the area of a lot by more than five acres . This provision does not change in any way the requirements to comply with state laws and regulations pertaining to land transfers. The number of principal structures or uses allotted to a lot cannot be changed by a lot line adjustment.
13. Signs which meet the state regulatory requirements of Title 10, Chapter 21 except for businesses with sign conditions included in Conditional Use Approval and Home Occupation signs must also comply with the sign requirements under the “Home Occupation” definition. Temporary signs must also comply with the requirements under the “Sign Temporary” definition. Failure to comply with state regulatory sign requirements is a violation of this ordinance and enforceable under this ordinance.
14. A building or structure located on a lot without a primary structure which if located on a lot with a dwelling unit would be considered an accessory structure and meets the requirements of 4.1.8 above.

**ARTICLE V – DEVELOPMENT REQUIRING ONLY A PERMIT ISSUED BY THE ZONING ADMINSTRATOR**

**5.1 PERMITTED USES**

1. New single or two-unit dwellings and secondary dwelling units meeting all the definitions for such and the criteria in Sections 3.1, 3.3, 3.4, 3.5 and any applicable subdivision approval requirements.
2. Accessory structures greater than allowed in Section 4.1 and meeting all the criteria in Sections 3.1, 3.3, 3.4, 3.5 and any applicable subdivision approval requirements.

3. State licensed or registered residential care or group home for not more than 8 persons who have a handicap or disability, per Title 24, section 4412.
4. State licensed or registered child care home or facility serving no more than 10 full-time and 6 part-time children, per Title 24, section 4412.
5. Seasonal shelter (see definition) meeting any applicable subdivision approval requirements.
6. Accessory dwelling unit within an accessory structure.
7. Ponds less than 500,000 cubic feet
8. New structures, building additions or modifications requiring a waiver for reduction of setbacks.
9. New building or structure on a lot without a primary structure which if located on a lot with a dwelling unit would be considered an accessory structure, require a permit and complies with section 5.1.2.

All other structures and uses except those previously specified as allowed or prohibited require conditional use approval.

## **ARTICLE VI – CONDITIONAL USES, GENERAL AND SPECIFIC STANDARDS**

All structures and uses that are not specifically prohibited, allowed or permitted, require a Conditional Use Approval by the Development Review Board prior to the issuance of a Zoning Permit by the Zoning Administrator. No development pertaining to the Conditional Use approval, including preparatory site work, construction of utilities or roads shall begin until a Zoning Permit has been issued. See Article III for General Standards and Article VIII for the administrative process. Setbacks, dimensions, and height requirements specified in Article III and the following Section 6.1 standards may be modified by the DRB for development requiring conditional use approval when warranted.

### **6.1 GENERAL STANDARDS FOR ALL USES IN CONDITIONAL USE APPROVAL**

All development needing Conditional Use Approval must meet the following standards (except as limited by section 4413 of the Act), which may be incorporated as permit conditions.

1. Noise: Persistent discernable noise, except that customary and incidental to residences and farms, beyond the property line is not permitted from 8 PM until 7 AM, or on weekends. From 7 AM to 8 PM, such noise shall be limited to 70 decibels (DbA) at the property line. In the case of uncertainty by the DRB of future or existing noise, the applicant shall hire a qualified engineer at their expense who must certify that the sound levels will be met.
2. Dust/smoke and Odor: No visible dust/smoke or discernable objectionable odor beyond the property line is permitted, excepting as is incidental and customary to residences, farms or permitted burning.
3. Vibration: Continuing vibration which is readily discernable without instruments on adjacent property is prohibited.
4. Emergency access: Development must be designed to allow access by Emergency Services.

5. Character: All conditional uses must demonstrate that the proposed use can be performed without an undue adverse effect on the quality of life or the character and setting of the surrounding neighborhood and the Town, and specific policies and standards of the town plan.
6. Mass and scale: Non-residential structures and multi-unit residential buildings will be evaluated as to their mass and scale to ensure that they resemble the general size, style, and shape of other structures in town.
7. Landscaping: Landscaping, screening or the retention of vegetation may be required of new development, or any expansion of conforming and nonconforming uses, to lessen its visual effect from public roads.
8. Mobile Home Parks: In addition to complying with the provisions of all applicable state statutes, Mobile Home Parks in the Town of Benson shall meet the following requirements.
  - a. The park shall be located on a site graded to insure adequate drainage of surface water, sub-surface water, sewage and freedom from stagnant pools.
  - b. A minimum of 10,000 square feet shall be provided for each mobile home space.
  - c. Each mobile home park or trailer park shall have at least 10 acres.
  - d. A minimum of thirty (30) feet shall be left open between mobile homes.
  - f. All spaces shall abut upon a roadway of 33 feet.
  - g. Roadways shall be well drained, and at least eighteen feet in width shall be graveled, hard surfaced or paved, and maintained in good condition throughout the year.
  - h. Appropriate underground utility service shall be provided for each mobile home by the owner of the park.
  - i. Provision shall be made for proper and adequate trash and garbage collection and disposal. All trash and garbage cans shall be concealed at all times in a properly allotted space.
  - j. Each park shall be enclosed by a properly kept fence or planted densely with bushes or trees.
  - k. Each mobile home shall install skirting to cover all open space under said mobile home. This siding shall be so installed so as not to warp or sag and shall be properly painted if a metal siding is not used.
  - l. No additions shall be built on mobile homes unless they are the manufactured type such as carports, fold out rooms or patio covers.
  - m. No mobile home shall be located closer than 100 feet from the property line or the center line of a public highway.
9. Storm water and erosion control: Appropriate drainage must control storm water run-off, prevent erosion and protect neighboring land and roads from undue impacts. No increase in off-site storm water runoff in terms of volume or peak discharge, or any discharge of any hazardous substances is allowed.
10. The DRB may also require studies at the applicant's expense if needed to adequately review technical issues.
11. If any overlay district has stricter standards than this list, than the most restrictive standards will apply.

12. Development may not have an undue adverse effect on the capacity of existing or planned community facilities.
13. For facilities such as cell phone towers, windmills and similar kinds of facilities, the DRB may require the applicant to remove the facility should the facility be abandoned or cease to operate and the DRB may require the applicant to provide a bond or other form of financial guarantee acceptable to the DRB to cover the cost of removal of the facility should the facility be abandoned or cease to operate.

## **6.2 SPECIFIC CONDITIONAL USE STANDARDS FOR BUSINESSES**

All new businesses that do not meet the definition of home occupation or a protected agricultural or silvicultural practice need a Conditional Use Approval and Zoning Permit. Expansion or change in use of any existing business shall also require Conditional Use Approval and Zoning Permit. Parking, traffic and circulation, signs, exterior storage and the size and scale of the proposed business compared to businesses currently operating in Benson in addition to the requirements of 3.1, 3.3, 3.4, 3.5 and 6.1 will be major review considerations of the DRB. Businesses must state projected number of customers, deliveries, and employees.

Title 10, Chapter 151, 6001(3) (A) (iii) allows the Town to give jurisdiction to the environmental board under Act 250 for the construction of improvements for commercial or industrial purposes on a tract or tracts of land, owned or controlled by a person, involving more than one acre of land within a municipality that has adopted permanent Zoning and Subdivision laws. The Benson select board has taken such action in accordance with Chapter 59 of Title 24. Businesses requiring a zoning permit and Act 250 review will generally obtain the zoning permit prior to Act 250 review.

## **ARTICLE VII - SUBDIVISION**

All division of land, except as specified in this section or Article IV, requires a subdivision plat approval by the Development Review Board prior to sale or transfer. Combination of existing lots into a single lot does not require subdivision approval.

### **7.1 STANDARDS FOR ALL SUBDIVISION**

The review process to obtain subdivision approval is primarily concerned with access requirements, dimensional requirements for lots specific to the district, development locations on the proposed lots and distribution of the number of principal structures or uses allotted to the lot being subdivided to the newly created lots. Zoning permits and other applicable state, federal and local land use regulations control other aspects of development. Additionally permits seek to maintain Benson's traditional settlement patterns of sparsely settled hills, open space and a more densely settled Village; subdivision review and approval seeks to guide future development in this direction through thoughtful planning for building envelopes and the encouragement of "cluster development" techniques to ensure the continued existence of larger unsettled expanses.

Even though plat approval may show a development envelope, new structures or uses that require permits under Articles V and VI still require a separate review and any necessary zoning permits and conditional use approvals. **The development envelope includes setback areas. All setback regulatory requirements are applicable to the development area.**



## **7.2 DEVELOPABILITY**

All new lots, regardless of developability, must meet the dimensional and access requirements. Lots may be created without allotted principal structures or uses and such lots may also be subdivided. Such lots must be preserved as undeveloped land.

If an applicant desires to create a lot with allotted principal structures or uses, but has no proposed development envelope, then the DRB may issue a subdivision permit providing that:

- 1) The lot meets the access and dimensional requirements; and
- 2) The subdivision permit contains a condition that any future development will require an amendment to the permit and the potential extent of such development (number of principle structures or uses for the lot) has been specified per section 8.8.1.

## **7.3 ACCESS**

No lot may be created that does not have a suitable 30 foot direct access onto a public road or access to such by a private right-of-way. Public highway road frontage is not required. Access roads and driveways shall not interfere with public safety, and should not result in excessive curb cuts or storm water runoff. All roads and bridges shall be able to accommodate emergency vehicles in terms of width, grade and load. To these ends, the DRB may impose conditions regarding combination of access locations and configuration, private road layouts and design. Where access to a lot is through a right-of-way, the minimum deeded width of the ROW shall be 30 feet. Lots with frontage on Route 22A must meet the access requirements for 22A access or through permit conditions to be filed with the deed or plat restrict access to 22A from the lot. Lots requiring access to 22A must meet State access requirements prior to subdivision approval. (19VSA@1111)

## **7.4 EFFECT ON AGRICULTURE OR SILVICULTURE AND OPEN LANDS**

Subdivisions shall not significantly reduce significant agricultural or forestry potential of the original lot where such exists or inhibit agricultural use of adjoining land or the surrounding area. Subdivisions must be made in such a way as to preserve lands with agricultural or productive forest potential to the maximum extent feasible. Lots less than 20 acres in size on the date of adoption are not considered to have significant agricultural or forestry potential and building envelopes of less than five contiguous acres are not considered to significantly reduce the agricultural or forest potential of any lot. Development envelopes must to the maximum extent practical be located and sized so as to preserve open lands.

## **7.5 MINIMIZING IMPACTS**

The Town relies on Federal, State and local regulations in addition to zoning permits to protect the natural environment, however for multi lot subdivisions with proposed joint use public or private accesses the

DRB may at its discretion require plans showing how subsequent structures, roads, common land, utilities, septic systems, etc., could be located and constructed to protect the natural environment, prevent damage to neighboring property, and minimize any undue adverse effect on Benson's scenic beauty.

## **7.6 LOT SIZE, DIMENSIONS AND ALLOTTED DEVELOPMENT**

All subdivisions must comply with the minimum lot size and dimensions requirements in sections 3.3, 3.4 and 3.5 and the total number of principal structures or uses allotted to new lots cannot exceed the number allotted to the existing lot being subdivided. When lots are created without allotted principal structures or uses, the DRB shall require that such lots be preserved as undeveloped land through permit conditions to be filed with the deed and plat. This does not restrict further subdivision of such a lot in accordance with these regulations.

## **ARTICLE VIII: ADMINISTRATION**

### **8.1 ZONING ADMINISTRATOR**

A Zoning Administrator is hereby appointed to administer this Zoning Bylaw, as provided for in the Act. The Zoning Administrator shall literally enforce the provisions of these Regulations and in so doing, shall inspect developments, maintain records and perform all other necessary tasks to carry out the provisions of this Bylaw. The Zoning Administrator should provide an applicant with forms required to obtain any municipal permit or other municipal authorization relating to the regulation by the Town of land development. If other municipal permits or authorizations are required, the Zoning Administrator should coordinate a unified effort on behalf of the municipality in administering the development review programs. The Zoning Administrator should also inform any person applying for municipal permits or authorizations that the person should contact the regional permit specialist employed by the agency of natural resources in order to assure timely action on any related state permits; nevertheless, the applicant retains the obligation to identify, apply for, and obtain relevant state permits.

All matters involving discretion not otherwise delegated by these regulations shall be referred to the Development Review Board.

In accordance with Sections 4465 of the Act, an interested person may appeal the decision of the Zoning Administrator by filing notice of appeal to the Development Review Board. Such notice must be filed within 15 days of the date of the decision of the Zoning Administrator.

### **8.2 PLANNING COMMISSION**

There is hereby established a Planning Commission, which shall consist of not less than three, nor more than nine, members, as set by resolution of the select board, appointed by the Select board for a term of three years. Any appointment to fill a vacancy shall be for the unexpired term.

The Planning Commission shall have the authority to conduct those duties established for it under Section 4325 of the Act, including preparing draft zoning bylaws, town plans and a capital budget and program and any amendments thereto. The Planning Commission shall also be charged with the duties allocated to it by these Zoning and Subdivision Regulations.

### **8.3 DEVELOPMENT REVIEW BOARD (DRB)**

There is hereby established a Development Review Board (DRB), some or all of whose members may also be members of the Planning Commission. The Development Review Board shall consist of five members and three alternate members appointed by the Select board for a term of three years. Any appointment to fill a vacancy shall be for the unexpired term.

The DRB shall be charged with the proper interpretation of this bylaw, including the following:

- a. To hear and rule on appeals concerning any order, requirement, decision, or determination made by the Zoning Administrator in the administration and enforcement of this bylaw.
- b. To hear and grant or deny a request for a waiver or variance except as authorized by section 8.7.2.
- c. To hear and approve or deny a request for a Conditional Use Approval
- d. To hear and approve or deny a request for Subdivision Approval

## **8.4 ZONING PERMIT**

No land development or change in use, unless specifically exempted in this Bylaw, may be commenced within the area affected by this bylaw without a Zoning Permit being issued by the Zoning Administrator, unless the development has been specifically exempted by state or federal law, or elsewhere in this Bylaw from requiring a permit. No zoning permit may be issued by the Zoning Administrator, except in conformance with this bylaw.

### **9.4.1 ZONING PERMIT APPLICATION**

Applications for zoning permits shall be made to the Zoning Administrator on forms approved by the Planning Commission. In addition to the information requested on the form, the Zoning Administrator may require additional information, surveys, site plans, or drawings, to document that the proposed development is in compliance with the bylaw. A fee schedule for applications shall be set by the Select board.

When Conditional Use Approval is necessary before acting on a permit, a separate application for such approval will need to be filed with the Zoning Administrator as specified in 8.6 below.

### **9.4.2 COMPLETED PERMIT APPLICATION**

An application for a zoning permit will not be acted upon until it is considered complete by the Zoning Administrator. For an application to be complete, it must include a signed application form, all required information, any necessary approvals (access permit, conditional use approval, flood hazard area zoning permit, etc) and the required application fee. When an application involves a use in the Floodplain Overlay District, an application will not be deemed complete until the Agency of Natural Resources provides comments or the 30 day comment period in 8.4.3 expires.

When additional information is requested from the applicant by the Zoning Administrator in order to consider the permit application complete and such information is not presented within 60 days following a written request from the Zoning Administrator, the application will be deemed rejected.

### **8.4.3 REFERRAL TO STATE AGENCY PRIOR TO ISSUANCE**

Any permit for the development of land within the flood hazard overlay district must comply with the requirements of attachment A, Town of Benson Flood Hazard Area Regulations. No Zoning permit will be issued under provisions of this bylaw for development requiring a permit under the provisions of Attachment A until the permit requirements of attachment A have been met.

#### **8.4.4 APPROVAL OR DENIAL OF PERMIT**

Within 30 days of the completion of an application, and all necessary approvals, the Zoning Administrator shall either issue or deny the zoning permit.

If the permit is denied, the Zoning Administrator shall notify the applicant in writing, stating the reasons for denial, and the procedure for appeal. If the Zoning Administrator fails to act within 30 days, a permit shall be deemed issued on the 31st day.

#### **8.4.5 EFFECTIVE DATE OF ZONING PERMIT**

Zoning Permits shall not take effect until 15 days after issuance by the Zoning Administrator, or in the event that a notice of appeal is properly filed in accordance with the Act, such permit shall not take effect until final adjudication of said appeal.

Each permit or notice of permit issued under this section shall contain a statement of the period of time within which an appeal may be taken.

Within three days following the issuance of a permit, the Zoning Administrator shall:

- a) deliver a copy of the permit to the listers of the municipality,
- b) post a copy of the permit at the Town Office until the time for appeal in has passed; and
- c) post a copy of the notice of permit on a form prescribed by the Planning Commission within view from the public right-of-way most nearly adjacent to the subject property.
- d) for permits that include a ZA approved waiver of setback requirements, provide written notification by first class mail to the owners of all properties adjoining the property subject to development without regard to any public right-of-way. The notification shall include a description of the proposed project, where additional information may be obtained, and a statement on how and when an appeal may be filed.

After the 15-day appeal period has closed, but within 30 days after a zoning permit has been issued, the Zoning Administrator shall deliver the original or a legible copy of the notice of permit to the Town Clerk for recording in the town's land records on a form and in a manner as provided in section 1154 of the Act. The Zoning Administrator shall also file a copy of the effective zoning permit, along with any necessary approvals, conditions, maps or drawings in the Town Office where all municipal land use permits shall be kept.

The Town Clerk may charge the applicant for the cost of the recording fees as required by law.

#### **8.4.6 APPEAL OF ZONING ADMINISTRATOR'S ACTIONS OR ZONING PERMIT**

An interested person as defined §4465 of the Act may appeal any decision or act taken by the Zoning Administrator by filing a notice of appeal with the secretary of the DRB, or with the Town Clerk if no such secretary has been elected. This notice of appeal must be filed within 15 days of the date of that decision or act **with the required appeal and notice publication fees.** A copy of the notice of appeal shall be filed with the Zoning Administrator.

The DRB shall conduct a hearing of the appeal, as provided in §4465-68 of the Act. The DRB shall render its decision within 45 days after completing the final hearing. The decision shall include findings of fact setting forth its basis. Failure to render a decision within the 45 days noted above may result in the appeal being deemed approved. Copies of the decision will be promptly mailed to the applicant and appellant by certified mail, and by first class mail to every person or body appearing and having been heard at the hearing(s), and also filed with the Zoning Administrator and the Town Clerk.

Appeals of DRB decisions must be made to the Environmental Court in accord with section 4471 of the Act, and the Vermont Rules for Environmental Court Proceedings.

#### **8.4.7 EXPIRATION OF ZONING PERMIT**

A zoning permit shall expire three years after the date it was issued by the Zoning Administrator, unless the development or use authorized by its issuance has been substantially commenced.

#### **8.5 DEVELOPMENT PRIOR TO ADOPTION**

This Bylaw has no effect on the continuation of uses or structures predating the adoption of this bylaw that were in compliance with previous regulations. Expansion or alteration to these structures or uses requires a new Zoning Permit, except as provided in section 4.1.

##### **8.5.1 DEVELOPMENT IN PROGRESS**

No Zoning Permit shall be required for any building upon which construction had lawfully begun or within which a use was lawfully established prior to March 7, 2006, provided such construction is substantially completed for its intended use within two (2) years from that date.

##### **8.5.2 UNDEVELOPED PRE-EXISTING LOTS**

Any lot in existence on the March 7, 2006 may be developed for purposes permitted in the District in which it is located, even though not conforming to minimum lot size requirements in these regulations, if such a lot is not less than one-eighth acre in area. All other requirements must be met, including obtaining setback waivers if required.

##### **8.5.3 CONTINUATION OF USE OF NON-CONFORMING STRUCTURE OR NON-CONFORMING USE**

Any valid non-conforming use or non-conforming structure that was in compliance at the time it began may be continued indefinitely without change. Nothing in this section shall be deemed to prevent normal cosmetic maintenance and superficial repair of a non-conforming structure provided that such action does not increase the degree of non-conformity. When there is a question as to whether a use or structure was pre-existing, the burden of proof shall be on the landowner.

##### **8.5.4 CHANGES TO NON-CONFORMING STRUCTURE OR NONCONFORMING USE**

As provided for in the Act, any expansion, extension, enlargement, or relocation of the non-conforming portion of a non-conforming structure or any alteration, expansion, relocation, or change in a non-conforming land use must be approved by the DRB except as specified in 5.1.8 and in accordance with section 8.7, and is subject to this Bylaw. Expansion, extension, enlargement, or

relocation of a non-conforming structure is eligible for a waiver in accordance with Section 8.7 of this bylaw. Changes in a non-conforming land use to another non-conforming land use may only be allowed when they are required for the continued economic use of the property and when the DRB finds that the overall degree of non-conformity will not increase. When there is a question as to what is the current level or degree of use, the burden of proof shall be on the landowner to prove that such use was in compliance when it was established.

#### **8.5.5 DISCONTINUANCE AND ABANDONMENT**

If a non-conforming use is discontinued, or any structure abandoned, for a period of 24 consecutive months, it shall be deemed discontinued or abandoned. A discontinued use shall not resume nor an abandoned structure be used, except subject to the provisions of this Bylaw as if it was a new development. Where the Zoning Administrator determines that discontinuance or abandonment has taken place, the burden of proof shall be on the owner to prove otherwise.

#### **8.5.6 PRE-EXISTING VIOLATIONS**

Adoption of this bylaw has no effect on uses or structures that were or are in violation of current or previous Benson ordinances.

### **8.6 CONDITIONAL USE APPROVAL**

Development requiring Conditional Use Approval must receive such approval before a zoning permit may be granted. As its name implies, Conditional Use Approval will entail written conditions on development in order to achieve certain goals. The DRB shall prepare written findings of fact with each decision setting forth reasons for approval, approval with Conditions, or denial, addressing each of the standards relevant to the proposed development. Such conditions shall be attached to the zoning permit for the properties seeking approval. General and specific standards to be used in this process are found in Articles III and VI.

#### **8.6.1 APPLICATION FOR CONDITIONAL USE APPROVAL**

Applications for Conditional Use Approval shall be made to the Zoning Administrator on forms approved by the Planning Commission with additional information attached as specified on the forms. In addition to the information requested on the form, the Zoning Administrator may require additional information, surveys, site plans, or drawing to document that the proposed development is in compliance with the bylaw. Fees shall be determined by the Select board. The Zoning Administrator shall deem when an application is complete. When additional information is requested from the applicant in order to consider the permit application complete and such information is not presented within 60 days, the application will be deemed rejected. Applications deemed complete shall be transmitted to the Development Review Board for action.

#### **8.6.2 HEARING FOR CONDITIONAL USE APPROVAL**

At least one public hearing is required prior to approval of a conditional use. See section 8.9 for proper notice.

#### **8.6.3 PROVISION FOR INDEPENDENT CONSULTANTS**

To assist the DRB in its review of technical issues in applications under this section, it may, after consultation with the applicant, retain consultants and require the applicant to pay the reasonable cost of their services. Any or all final reports or documents prepared by the consultant shall be made available to the applicant and other parties to the proceeding and are public documents.

#### **8.6.4 APPROVAL OR DENIAL**

The DRB must grant or deny the application for conditional use approval within 45 days of the final hearing. Copies of the decision will be promptly mailed to the applicant by certified mail, and by first class mail to every person or body appearing and having been heard at the hearing(s), and also filed with the Zoning Administrator and the Town Clerk.

#### **8.6.5 EXPIRATION OF APPROVAL FOR CONDITIONAL USE APPROVAL**

Any conditional use approval granted under this Bylaw shall expire six (6) months from the date of the written decision granting such approval unless a zoning permit has been issued by the Zoning Administrator for the approved project.

#### **8.6.6 APPEAL FOR CONDITIONAL USE APPROVAL**

The approval or denial of a conditional use approval by the DRB may be appealed to the Environmental Court in a manner as specified in section 4471 of the Act, and in accordance with the Vermont Rules for Environmental Court Proceedings.

### **8.7 VARIANCES AND WAIVERS**

#### **8.7.1 APPEAL FOR VARIANCE**

Except as specified in §4469(b) of the Act for renewable energy structures, variances may only be granted by the DRB upon a written finding that ALL of the following facts are true:

- 1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of this bylaw in the neighborhood or district in which the property is located.
- 2) That because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- 3) That the unnecessary hardship has not been created by the appellant.
- 4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.

5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

In rendering a decision in favor of an appellant under this section, the DRB may attach such conditions to such variance as it may consider necessary and appropriate under the circumstances to implement the purposes of the Act and the Town Plan. The DRB must grant or deny the variance within 45 days of the final hearing. Copies of the decision will be promptly mailed to the applicant by certified mail, and by first class mail to every person or body appearing and having been heard at the hearing(s), and also filed with the Zoning Administrator and the Town Clerk.

### **8.7.2 QUALIFYING FOR A WAIVER**

Waivers may be granted by the Zoning Administrator for new structures, building additions or modifications requiring a reduction in setbacks. In order to be granted a waiver by the Zoning Administrator, such development must meet one of the criteria of 8.7.2 and the standards of 8.7.3. The Zoning Administrator shall consult with the Road Foreman prior to issuing a waiver for reduction of the front setback. .

Waivers may be considered by the Development Review Board to reduce dimensional and/or setback requirements, but not change the number of principal structures or uses allotted to a lot if the proposed development meets any of the following criteria:

1. The proposed development conforms to the existing development patterns of the immediate neighborhood.
2. The proposed development will more effectively preserve open land or scenic vistas.
3. The proposed development will provide for energy conservation and renewable energy structures.
4. Meeting the dimensional and/or setback requirements will create an undue hardship on the applicant and the hardship was not created by the applicant.

### **8.7.3 STANDARDS FOR GRANTING WAIVERS**

The Development Review Board May grant a conditional use waiver if the Board finds that the proposed development meets ALL the following standards:

1. The proposed development shall not reduce the dimensional and/or setback requirements by more than the minimum amount necessary for the proposed development.
2. The proposed development does not alter the essential character of the neighborhood or district in which the property is located.
3. The proposed development does not substantially or permanently impair the appropriate use or development of adjacent property.
4. The proposed development shall not be detrimental to the public welfare including the safety and maintenance of the Town's highways.

### **8.7.4 EXPIRATION OF VARIANCE OR WAIVER**

Any variance or waiver approval granted under this Bylaw shall expire six (6) months from the date of the written decision granting such approval unless a zoning permit has been issued by the Zoning Administrator for the approved project.



### **8.7.5 APPEAL OF VARIANCE OR WAIVER**

The approval or denial of a variance or waiver by the DRB may be appealed to the Environmental Court in a manner as specified in section 4471 of the Act, and in accordance with the Vermont Rules for Environmental Court Proceedings. The approval or denial of a waiver by the Zoning Administrator may be appealed to the DRB.

## **8.8 SUBDIVISION APPROVAL**

### **8.8.1 APPLICATION FOR SUBDIVISION APPROVAL**

Applications for a subdivision shall be submitted to the Zoning Administrator for presentation to the Development Review Board, and shall include an engineer's plat or an accurate scaled drawing of the proposed subdivision in sufficient detail to determine compliance with this ordinance. The Engineer's plat or scaled drawing for created lots of 20 acres or less in size shall be prepared by a licensed professional such as a land surveyor, professional engineer or on-site septic system designer. The landowner should discuss the subdivision plans with the Development Review Board at a DRB meeting prior to submitting an application for a subdivision permit. The location of any designated or proposed development envelope shall be shown or described on the drawing. Subdivision applications shall also include any conditions from prior permits that apply to the land being subdivided, as well as clearly identify the number of principal structures or uses allotted under section 3.3, 3.4 or 3.5 attached to each new parcel.

### **8.8.2 HEARING FOR SUBDIVISION APPROVAL**

At least one public hearing is required prior to approval of a subdivision plat. See section 8.9 for proper notice.

### **8.8.3 APPROVAL OR DENIAL OF SUBDIVISION APPROVAL**

The DRB must grant or deny the application for a subdivision approval within 45 days of the final hearing. Copies of the decision will be promptly mailed to the applicant by certified mail, and by first class mail to every person or body appearing and having been heard at the hearing(s), and also filed with the Zoning Administrator and the Town Clerk.

### **8.8.4 EXPIRATION OF SUBDIVISION APPROVAL**

Any subdivision approval shall expire 180 days after the date of the written decision granting such approval, unless a Mylar version of the approved plat has been recorded in the Benson Town land records, with an endorsement by the DRB which reads as follows: "This subdivision was duly approved as conditioned by the Benson Development Review Board in its decision dated on Month, Date, Year, and meets the requirements of the Benson Zoning and Subdivision Bylaw. Signed \_\_\_\_\_ (Chair or Vice-Chair of the Benson Development Review Board." Such Mylar plat must be recorded within 180 days of approval unless the zoning administrator has extended the date for filing the plat by an additional 90 days, if final local or state permits or approvals are still pending.

### **8.8.5 APPEAL OF SUBDIVISION APPROVAL**

The approval or denial of a subdivision approval by the DRB may be appealed to the Environmental Court in a manner as specified in section 4471 of the Act, and in accordance with the Vermont Rules for Environmental Court Proceedings.

## **8.9 NOTICE OF PUBLIC HEARINGS**

At least one warned public hearing shall be required for conditional use approval, certain waiver approvals, variance approvals, Zoning Administrator appeals, and final plat review for subdivisions as required by section 4464 of the Act. Notice for a warned public hearing shall be given not less than 15 days prior to the date of the public hearing by all the following:

(A) Publication in a newspaper of general circulation in the Town of the date, place, and purpose of the hearing; and that participation in the hearing is a prerequisite to the right to take any subsequent appeal.

(B) Posting of the same information in three or more public places within the municipality, including the Town Office, and when required within view from the public right-of-way most nearly adjacent to the property for which an application is made. Such outdoors posting shall be of a form as prescribed by the Development Review Board, and if within the town right-of-way shall be posted no closer than 7 feet to the traveled surface. Posting on private property outside the right-of way requires landowner permission.

(C) Written notification by first class mail to the applicant and to owners of all properties adjoining the property subject to development, without regard to any public right-of-way. The notification shall include a description of the proposed project and shall be accompanied by information that clearly informs the recipient where additional information may be obtained, and that participation in the hearing is a prerequisite to the right to take any subsequent appeal.

D) Written notification to any relevant neighboring town's clerk, as described in C above, if the proposed subdivision is within 500 feet of that town.

A record of such notice is required, whether undertaken by the Zoning Administrator or the applicant, and shall include a copy of the newspaper notice and a signed certification as to the postings. Proof of the mailings may be either by certified mail, return receipt requested, written notice hand-delivered, or a sworn certificate of service of first class mailing. Costs for all notices will be paid by the applicant.

If additional hearings are needed for additional information, the first hearing may be recessed to a later date and time specified at the first hearing without requiring new notice.

## **8.10 VIOLATIONS AND ENFORCEMENT**

### **8.10.1 VIOLATIONS**

The commencement or continuation of any land development, subdivision or land use which is not in conformance with any provision of this Bylaw shall constitute a violation.

### **8.10.2 NOTICE OF VIOLATION**

Pursuant to §4451 of the Act, no legal enforcement action may be brought by the Town under this section unless the alleged offender has had at least seven (7) days written notice by Certified Mail from the Zoning Administrator. The seven-day warning notice shall state that a violation exists; that the

alleged offender has an opportunity to cure the violation within the seven days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days. A copy of the warning shall be sent to the Chairs of the Select board, Planning Commission, and DRB and placed in that property's permit file.

Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of this bylaw after the seven (7) day notice period and within the next succeeding twelve (12) months.

### **8.10.3 ENFORCEMENT AND FINES**

The Zoning Administrator shall initiate the appropriate legal action in the name of the Town of Benson to enforce the provisions of this Bylaw, but shall not incur costs without the approval of the Select board. In the prosecution of alleged offenders through the Environmental Court, the Zoning Administrator shall first consult with the Select board and legal counsel, as necessary. The Town shall observe any limitations on enforcement proceedings relating to municipal permits and approvals as set forth in the Act.

Any person who violates this Bylaw shall be fined not more than ~~\$100~~ \$200 for each offense. Each day that a violation is continued shall constitute a separate offense. In default of payment of the fine, such person shall pay double the amount of such fine. All fines imposed by the Court and collected for violations shall be paid to the Town.

In the discretion of the Zoning Administrator, a violations of these regulations may also be enforced as a civil ordinance violations through the Judicial Bureau in accordance with the provisions of 24 V.S.A., §§1974 and 1977 with penalties as described above.

### **ARTICLE IX: DEFINITIONS**

Unless otherwise specifically provided, or unless otherwise clearly required by the context, the words and phrases used herein shall have the meanings indicated below when used in this Bylaw:

- Words, phrases, and terms neither defined herein nor elsewhere in this Bylaw shall have their usual and customary meanings except where the context clearly indicates a different meaning.
- Any interpretation by the Zoning Administrator may be appealed to the Development Review Board. In such cases, the Board shall base its ruling upon the following definitions, State statute, and the need for reasonable and effective implementation of this Bylaw.
- The words and terms used, defined, interpreted or further described in Article IX shall be construed as follows:
  - The particular controls the general;
  - The present tense includes the future tense;
  - Words used in the singular number include the plural, and words used in the plural number include the singular, unless the context clearly indicates the contrary;
  - The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for," and "occupied for;"
  - The words "shall," "must" and "will" are mandatory; the word "may" is permissive.

- The word "person" includes a firm, association, organization, partnership, trust, company or corporation, as well as an individual.
- The word "structure" includes "building."
- The word "lot" includes "parcel."

For the purposes of this Bylaw, the meanings of words, terms, and phrases shall be interpreted as defined below and all other words shall be presumed to have their customary meanings. Any decisions or rulings by the Planning Commission or DRB that provide further definition shall be maintained as a record to ensure consistent and uniform application of the terms of this Bylaw.

**ABANDONED** – A residential building is defined as abandoned if it is uninhabitable for over one year, unless there were legal circumstances that prevented it from being renovated. Other buildings meant for use will be deemed abandoned if lacking any major structural element customary to that building type, such as a roof, windows, water supply, etc. for more than a year, unless there were legal circumstances that prevented it from being renovated.

**ACCESSORY DWELLING UNIT** - An accessory dwelling unit means an efficiency or one-bedroom apartment that is clearly subordinate to a single-family dwelling; and is either within that dwelling, attached, or in a separate but appurtenant building; and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:

- (i) The property has sufficient permitted wastewater capacity.
- (ii) The unit does not exceed 40 percent of the total habitable floor area of the single-family dwelling.
- (iii) Applicable setback, coverage, and parking requirements specified in the bylaws are met.

Accessory dwelling units are not counted in the density requirements.

**ACCESSORY STRUCTURE/USE** - A building or structure customarily incidental and subordinate to the principal structure or building, not suitable for habitation and located on the same lot. A use customarily incidental and subordinate to the principal use.

**Act** – The Vermont Municipal and Regional Planning and Development Act (24V.S.A., Chapter 117)

**AFFILIATED OWNERSHIP** - Properties or buildings owned by the same individual or that individual in partnership with any other person or persons is considered affiliated ownership.

**ANTENNA** – A device attached to a tower or similar structure for transmitting or receiving electromagnetic waves.

**AREA OF SPECIAL FLOOD HAZARD** – The land in the floodplain within a Town subject to a one percent or greater chance of flooding in a given year.

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

**BUILDING HEIGHT** – The vertical distance from the building footprint's average (highest + lowest/2) post construction grade to the highest point on the finished building's roof.

**CENTERLINE** – The centerline of a road shall be the marked centerline if present, and the center of the traveled way if unmarked.

**CHANGE IN USE** – Any alteration in the scale, intensity, type of activity, hours of operation, or physical setting of a use. Examples include, but are not limited to, change from a lumber mill to a lumber retail operation, addition of seating to a restaurant, additional exterior storage of materials, increase in number of employees, etc.

**COMMERCIAL** – see non-residential.

**CONTIGUOUS LAND** – Adjacent parcels of land even if the parcels are separated by a highway right of way.

**DATE OF ADOPTION** – March 7, 2006

**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 fill, the construction of a road or utility, and any change in the use of any building or other structure, or land or extension or use of land.

**DEVELOPMENT ENVELOPE** – A specific area on a lot within which structures are to be located.

**DEVELOPMENT REVIEW BOARD** – A board appointed by the Select board for the purposes of reviewing relevant subdivision and development proposals per the duties described in section 8.3 of these bylaws.

**DISCONTINUED** – A use shall be deemed discontinued if it is changed to any other use for any period of time, ceases operation for more than 2 consecutive years (unless it can be shown to the satisfaction of the DRB there are efforts to resume use), or the building that houses the use is abandoned for more than one year.

**EXCAVATION** – The removal of earthen or stone material by machinery.

**FARM STRUCTURE** - A building, enclosure, or fence for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with accepted agricultural or farming practices, including a silo, as “farming” is defined in subdivision 6001(22) of Title 10, but excluding a dwelling for human habitation.

**FENCE** – Except as is incidental to an accepted agricultural practice, any structure or earth berm over 6 feet in height which has the effect of creating a barrier to visibility or access.

**FILL** – Earthen or stone material placed on the ground over 20 yards in amount.

**FIRM** – The Flood Insurance Rate Map, an official map of a community, on which the Administrator has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

**FLOODWAY** - means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**FOOTPRINT** - That surface area covered by a building, including areas covered by porches or decks.

**FRONTAGE** - That portion of a lot which is adjacent and parallel to a State highway, Town street, Town road or Town right-of-way. In the case of corner lots, it shall be that portion that has, or is proposed to, have access.

**FRONT YARD SETBACK** - The shortest distance from the centerline of the traveled road to the nearest portion of the building. If the applicant can prove that the physical centerline is not the same as that of the right-of-way, then the centerline of the right-of-way may be used.

**HAZARDOUS WASTE** – Those substances defined as hazardous waste by the Agency of Natural Resources under Chapter 7 of the Vermont Environmental Protection Rules.

**HOME OCCUPATION** – Commercial activities conducted within less than 50% of the floor area of a dwelling or accessory building, which is clearly secondary to the dwelling's use as living quarters, is customary in residential areas and does not have an undue adverse effect on the character of the neighborhood. Adherence to the standards in sections 3.1 and 6.1(1-3) is required. The operator of the business must reside on the premises and only up to two other employees are allowed. Parking spaces for employees are required, and at least two additional spaces are required if the business caters to the public. Permanent outdoor storage or display is prohibited. Signs may be no larger than 6 square feet and may not be internally or externally lit.

**LOT** - A single parcel of land, whether created by lease or deed, usually, but not necessarily always, occupied or to be occupied by a building and its accessory buildings. All lots created after the date of adoption of this bylaw must have the required minimum area, dimensions and access for its intended purpose. Where a lot is divided by a town or state highway or the Hubbardton River, it shall be deemed to be separate lots for the purposes of this bylaw if the resulting lots meet the minimum dimensions as described in section 8.5.2. A deed may describe one or more lots. Multiple lots described in a single deed remain separate lots provided they are described as having separate and distinct boundaries and any subsequent deed describing the lot does not eliminate the separate and distinct boundaries.

**LOT AREA** - The total land area within the boundaries of a lot, exclusive of any land area designated for a public road as measured to the boundary of such right of way or easement.

**LOT DEPTH** - The distance, measured at right angles to the centerline, from the centerline of the traveled portion of the Town road, state road or right-of-way to the closest point of the rear lot line.

**LOT LINE** – A line of record bounding one lot from an adjoining lot or from a Town or State highway right-of-way, water body or railroad line. Lot lines are also created when the conditions described in the definition of lot relative to town or state highways or streams exist and when lots have land in two districts as described in section 2.1.

**LOT WIDTH** – the average distance across the lot measured parallel to the frontage side of the lot.

**MANUFACTURED HOME** - see Mobile Home for definition of mobile home. There are no specific requirements applicable only to modular housing or prefabricated housing.

**MEAN SEA LEVEL** - means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a Town's Flood Insurance Rate Map are referenced.

**MOBILE HOME** - A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles, travel trailers or a sectional prefabricated house.

**MOBILE HOME PARK** – Land or contiguous land, under single ownership, on which three or more mobile homes are parked and occupied for living purposes. Mobile Home Park does not mean any parcel of land under 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 land used solely on a seasonal basis for vacation or recreational homes.

**MULTIPLE UNIT DWELLING** - A building designed for occupancy by two, three, or four families living independently of each other in individual dwelling units.

**NEW CONSTRUCTION** - Structures commenced on or after the effective date of this bylaw.

**NONCONFORMING LOTS** - 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** - Any 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.

**NON-RESIDENTIAL USE** - All uses of buildings, structures or land except one-family dwellings, two-family dwellings, multiple family dwellings, home occupational uses and accessory structures to these uses.

**OPEN LANDS** - Meadow, pasture, cropland or other land that is free of substantial woody vegetation and at least 5 acres in size.

**OPEN SPACE** – Undeveloped lands.

**ORIGINAL** – As it existed on the date of adoption of this bylaw.

**PARKING** - Parking spaces outside of the right-of-way used for the temporary location of one or more licensed motor vehicles which allows at least one space ten feet wide by twenty feet long for each

vehicle, not including access driveways, and having direct access to a road or right of way. Handicapped parking spaces shall be at least twelve feet wide by twenty feet long.

**PRINCIPAL STRUCTURE** - A dominant building or structure, the use of which is fundamental and superior to any other use of the land or the lot. This includes single and multifamily dwellings. Secondary dwellings, seasonal shelters and accessory dwellings separate from the principal structure are not included in the determination of the number of principal structures or uses.

**PRINCIPAL USE** - The use dominant on a lot, such use being fundamental and superior to any other use of the land or the lot.

**REAR YARD SETBACK**- The shortest distance between the rear lot line and the nearest portion of any structure on that lot.

**ROAD** - Public or private way for vehicular traffic, which affords the principal means of access to properties.

**SEASONAL SHELTER** - Cabin, trailer, shelter or other accommodation suitable for seasonal or temporary living purposes with no internal plumbing except for a sink. Seasonal shelters cannot be converted to a dwelling unit without a Zoning Permit. Seasonal shelters are not considered primary structures or secondary dwellings and do not count as such seasonal shelters must comply with Agency of Natural Resources regulations for primitive camps.

**SECONDARY DWELLING UNIT**– A single dwelling unit within a separate structure or a part of an accessory structure with a footprint no greater than 2,000 square feet and on a lot of 2 acres or more that ~~already~~ has a primary dwelling unit. **The secondary dwelling unit may be existing or constructed before or in conjunction with the primary dwelling unit.**

Secondary dwellings may be sold independently of the primary dwelling only if the lot is subdivided in conformance with this bylaw and the secondary dwelling and the primary dwelling fully comply with all the provisions of this bylaw, including that each new lot must be allotted at least one principal structure or use by the subdivision approval. . Secondary dwelling units are not included in the determination of the number of principal structures or uses and must be sold with the lot and primary structure unless subdivided as detailed above. No primary residence may have more than one secondary dwelling unit associated with it. A dwelling with a footprint exceeding 2000 square feet is considered a primary dwelling unit, and must be subdivided from the original lot and must fully comply with the number of allotted number of principal structures or uses requirements, subdivision and other provisions of this bylaw.

**SETBACK** – The minimal horizontal distance an item, such as a structure, needs to be from a lot line.

**SIDE YARD SETBACK** – The shortest distance between any structure and a side lot line.

**SIGNS** - Any outdoor structure, display, device or representation, freestanding or attached to a structure, which is designed or used to advertise or call attention to any business, activity, place, person or thing. Display does not include the inventory of a business or storage of materials such as lumber, bricks, fencing and similar type materials. Representation shall include color, pictures, shapes and similar things associated with the building or business.



**SIGN, AREA CALCULATION** - The entire area within the extreme limits of writing, representation, emblem or any figure of similar character, together with any frame, panel or other material or color forming a part of the display to differentiate such a sign from the background against which it is placed; excluding the necessary supports or uprights on which a sign is placed. Where a sign does not include a physical frame or panel, an imaginary frame or panel will be used. Where a sign has two or more faces or panels, the area of any one visible faces or panels shall be included in determining the total area of the sign, except on two-sided signs.

**SIGN, TEMPORARY** - A sign, not exceeding six (6) square feet in area, which is being used to advertise any of the following: the sale of property, vacancy, auction, candidate, public or civic event; or activities of a similar nature. Such a sign shall be removed within five (5) days of fulfilling its function.

**SINGLE DWELLING UNIT** - A private residential building or part thereof with living quarters for one household, including provisions and facilities for food preparation, sleeping and sanitation. There shall be no regulatory distinction made between modular, mobile or site built homes.

**STRUCTURE** - An above grade assembly of materials for occupancy or use, including, but not limited to, a building, accessory structure, mobile home or trailer, wall or fence (except a wall or fence on an operating farm, or a fence mutually created or maintained on a lot line).

**TREE** – Any woody plant greater than 2 inches at 5 feet from the ground (dbh).

**UNDEVELOPED LAND** - Lots created by subdivision following the date of adoption without allotted principal structures or uses. Development of such land is restricted to the development existing on the lot at the time the lot was created and accepted agricultural practices and silvicultural practices as defined under title 24 section 4413(d). Except that such lots may be further subdivided in accordance with the regulations.

**UNDUE ADVERSE EFFECT** – A negative effect which is offensive, shocking, out of character, or significantly diminishing to the relevant resource.

**WIRELESS TELECOMMUNICATIONS FACILITY** – A support structure which is primarily for communication or broadcast purposes and which will extend vertically 20 feet or more, in order to transmit or receive communications signals for commercial industrial, municipal, county or state purposes. The construction or improvement of a road, trail, building, or structure incidental to a telecommunications facility. This definition does not include satellite receivers less than 2 feet diameter or amateur ham operator towers or antennae less than 40 feet in height.

**ZONING ADMINISTRATOR** – This term shall also include the Acting Zoning Administrator, when acting in their capacity if such is appointed in accordance with statute.