

**LAND USE AND DEVELOPMENT
REGULATIONS**

for the

Town of Berkshire, Vermont

Approved and Adopted
by the

TOWN OF BERKSHIRE ON

MARCH 6, 2007

*Prepared by
The Berkshire Planning Commission*

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TABLE OF CONTENTS

ARTICLE 1. AUTHORITY AND PURPOSE..... 2
 Section 1.1 AUTHORIZATION, ENACTMENT, AND AMENDMENT 2
 Section 1.2 PURPOSE 2
 Section 1.3 INTERPRETATION AND APPLICABILITY 3
 Section 1.4 AMENDMENT..... 3
 Section 1.5 EFFECTIVE DATE..... 3
 Section 1.6 SEVERABILITY 3
 ARTICLE 2. ADMINISTRATION AND ENFORCEMENT..... 4
 Section 2.1 ZONING ADMINISTRATOR 4
 Section 2.2 PLANNING COMMISSION..... 4
 Section 2.3 DEVELOPMENT REVIEW BOARD (DRB)..... 4
 Section 2.4 PUBLIC NOTICE..... 5
 Section 2.5 MEETING AND HEARING REQUIREMENTS 5
 Section 2.6 DECISIONS 6
 Section 2.7 RECORDING REQUIREMENTS 6
 Section 2.8 COMBINED REVIEW 6
 Section 2.9 APPEALS..... 7
 Section 2.10 CERTIFICATE OF OCCUPANCY 8
 Section 2.11 VIOLATIONS 8
 ARTICLE 3. DEVELOPMENT REVIEW 9
 Section 3.1 ZONING PERMIT 9
 Section 3.2 BOARD APPROVALS (CONDITIONAL USE REVIEW, SITE PLAN APPROVAL, VARIANCES) .. 11
 ARTICLE 4. ZONING DISTRICTS AND STANDARDS 17
 Section 4.1 ESTABLISHMENT AND INTERPRETATION OF ZONING DISTRICTS..... 17
 Section 4.2 DISTRICT PROVISIONS: PERMITTED AND CONDITIONAL USES 17
 Section 4.3 DISTRICT OBJECTIVES, USES AND STANDARDS 19
 ARTICLE 5. GENERAL REQUIREMENTS 21
 Section 5.1 NONCONFORMITIES 21
 Section 5.2 ACCESS REQUIREMENTS..... 22
 Section 5.3 WATER QUALITY PROTECTION 22
 Section 5.4 PARKING AND LOADING REQUIREMENTS 23
 Section 5.5 SIGN REGULATIONS..... 23
 Section 5.6 PERFORMANCE STANDARDS 24
 Section 5.7 ABANDONMENT OF STRUCTURES/USES, DESTROYED STRUCTURES AND DEMOLITION ... 25
 Section 5.8 SCREENING REQUIREMENTS 25
 Section 5.9 HEIGHT 26
 Section 5.10 WASTEWATER SYSTEMS..... 26
 ARTICLE 6. SPECIFIC USE STANDARDS 27
 Section 6.1 APPLICABILITY 27
 Section 6.2 HOME OCCUPATIONS 27
 Section 6.3 RESIDENTIAL CARE AND GROUP HOMES..... 27
 Section 6.4 STATE REGISTERED OR LICENSED CHILD CARE HOME..... 27
 Section 6.5 ACCESSORY DWELLINGS 28
 Section 6.6 EXTRACTION OF SOILS, SAND AND GRAVEL (EXTRACTION AND QUARRYING) 28
 Section 6.7 MIXED USES 29
 Section 6.8 MOBILE, MODULAR, AND PREFABRICATED HOUSING 29
 Section 6.9 MOBILE HOME PARKS 29
 Section 6.10 PUBLIC FACILITY (LIMITATIONS) 30
 ARTICLE 7. SUBDIVISION REVIEW 31
 Section 7.1 APPLICABILITY 32
 Section 7.2 SKETCH PLAN REVIEW (APPLYING TO ALL SUBDIVISIONS) 35
 Section 7.3 PRELIMINARY PLAN APPROVAL (MAJOR SUBDIVISIONS ONLY) 35
 Section 7.4 FINAL PLAN REVIEW (APPLYING TO ALL SUBDIVISIONS) 36
 Section 7.5 PLAT RECORDING REQUIREMENTS..... 37

Section 7.6 REVISIONS TO AN APPROVED PLAT	37
ARTICLE 8. SUBDIVISION PLANNING AND DESIGN STANDARDS	38
Section 8.1 EVALUATION AND APPLICATION STANDARDS	38
Section 8.2 GENERAL STANDARDS	38
Section 8.3 PROTECTION OF NATURAL RESOURCES	39
Section 8.4 STORMWATER MANAGEMENT AND EROSION CONTROL.....	39
Section 8.5 COMMUNITY SERVICES AND FACILITIES.....	40
Section 8.6 ROADS AND PEDESTRIAN ACCESS	40
Section 8.7 WATER SUPPLY AND WASTEWATER DISPOSAL	42
Section 8.8 UTILITIES	42
Section 8.9 LEGAL REQUIREMENTS	43
ARTICLE 9. PLANNED UNIT DEVELOPMENTS	44
Section 9.1 APPLICABILITY	44
Section 9.2 PURPOSE	44
Section 9.3 APPLICATION REQUIREMENTS	44
Section 9.4 GENERAL STANDARDS	45
Section 9.5 OPEN SPACE AND COMMON LAND	45
Section 9.6 APPROVAL REQUIREMENTS.....	46
ARTICLE 10. DEFINITIONS.....	47
Section 10.1 INTERPRETATIONS	47
Section 10.2 DEFINITIONS.....	47

TABLE 1.1 MUNICIPAL PERMITS AND APPROVALS: TOWN OF BERKSHIRE			
Permit/Approval	Required for:	Issued by:	See:
Zoning Permit	All land development as defined in Article 10, including signs, accessory structures, conversions and changes of use, unless specifically exempted from these regulations under Section 3.1.	Zoning Administrator	Section 3.1
Waste Water Permit	On-Site Sewage Disposal Systems.	Agency of Natural Resources	Section 5.10 and 8.7.
Access by Right-of-Way Approval	Development without frontage on a maintained public road or public waters.	DRB	Section 5.2
Site Plan Approval	All development except for one and two family dwellings, forestry and agriculture, unless otherwise specifically exempted.	DRB	Section 3.2 (D)
Conditional Use Approval	All uses classified as conditional uses under each district in Table 4.1.	DRB	Section 3.2 (B)
Variance Approval	Requests for a variance from the provisions of these regulations	DRB	Section 3.2 (E)
Planned Unit Development (PUD) Approval	Subdivision and/or development of land, which incorporates modifications from the provisions of these regulations as specified in Article 9 of these bylaws.	DRB	Article 9
Certificate of Occupancy	Use of a dwelling or structure constructed after the effective date of these regulations for which a zoning permit has been issued.	Zoning Administrator	Section 2.10
Subdivision Approval	All subdivisions of land, as defined in Article 10, including boundary line and lot line adjustments.	DRB	Article 7
Sketch Plan Approval	All applications for subdivision approval	DRB	Section 7.2
Preliminary Plan Approval	All applications for major subdivisions [the creation of 4 or more lots]	DRB	Section 7.3
Final Plan Approval	All applications for subdivision approval	DRB	Section 7.4
Plat Recording	All approved subdivisions of land, including boundary line and lot line adjustments.	DRB	Section 7.5

ARTICLE 1. AUTHORITY AND PURPOSE

Section 1.1 AUTHORIZATION, ENACTMENT, AND AMENDMENT

In accordance with the Vermont Planning and Development Act (24 V.S.A., Chapter 117), referred to in these regulations as “the Act”, the Town of Berkshire zoning regulations as set forth in Articles 1 - 10, the Official Zoning Map, and any other documents incorporated by reference, are established. These Regulations shall be known and cited as the “Berkshire Land Use and Development Regulations”. These Regulations shall take effect, and may be amended, only in accordance with Sections 4441 and 4442 of the Act.

Section 1.2 PURPOSE

The intent of this Regulation is to implement the “Comprehensive Municipal Plan for the Town of Berkshire, Vermont”; to provide for orderly community development; and to promote the health, safety, and general welfare of the residents of the Town. No provision of this Regulation shall have the effect of excluding from the municipality housing to meet the needs of the population as determined by the Act, Section 4382c.

In order to fully implement the goals and policies of the “Comprehensive Municipal Plan”, the following specific purposes are recognized:

- A) To meet the Town’s obligations to the community at large, as identified in the Comprehensive Plan, while at the same time recognizing the rights of individual property owners;
- B) To maintain the rural, agricultural character of the Town, including the historic settlement pattern of small hamlets separated by rural countryside;
- C) To protect important natural resources and agricultural use of land, while at the same time providing sufficient space in appropriate locations for residential, commercial, and industrial development and for community facilities;
- D) To protect natural, cultural, and scenic resources, as identified in the Comprehensive Plan;
- E) To encourage the continuation of agriculture, while at the same time recognizing the need for a diversified and stable economic base;
- F) To provide for and maintain a safe, convenient, and functional transportation network for vehicular, pedestrian, and recreation use within the Town;
- G) To provide safe and affordable housing for all segments of the population;
- H) To ensure that the rate of growth does not exceed the Town’s ability to provide for needed facilities and services, and to ensure the reasonable, functional, and orderly development of all utilities, facilities, and services;
- I) To protect the public and individual landowners against harm or loss from contamination of drinking water, failed septic systems, fire, flood, explosions, excessive noise, air pollution, and other pollutants or dangers.

Section 1.3 INTERPRETATION AND APPLICABILITY

- A) No land development (as defined under Article 10 of this Regulation) shall commence in the Town of Berkshire except in compliance with these Regulations.
- B) This regulation shall not repeal, abrogate, or impair any other applicable land use controls (including statutes, regulations, rules, ordinances, permits, easements, deed restrictions, covenants or other similar devices) previously adopted or issued. The provisions of this Regulation shall be interpreted as minimum requirements, shall take precedence over any less restrictive or concurrent controls, and shall be consistently applied.
- C) Except where specifically defined in Article 10 of this Regulation, all words shall carry their customary meanings. Any interpretations of words or provisions in this Regulation by the Zoning Administrator may be appealed to the Development Review Board (DRB) for a declaratory ruling. The DRB shall publish (and update from time to time) such rulings of interpretation, to ensure consistent and uniform application of these regulations.

Section 1.4 AMENDMENT

- A) These regulations may be amended or repealed in accordance with the regulations and procedures established in the Act (4441 and 4442). An amendment or repeal of these Regulations may be prepared by the Planning Commission or by any other person or body.

Section 1.5 EFFECTIVE DATE

- A) The Regulations shall take effect on the date of their adoption by the Town of Berkshire, in accordance with the Act (4442).
- B) On the date these bylaws become effective, they shall amend in their entirety the flood hazard zoning regulations and zoning regulations for the Town of Berkshire then in effect.

Section 1.6 SEVERABILITY

- A) The provisions of these Regulations are severable. In the event any provision of this Regulation is held unconstitutional or invalid by a proper court, all other unaffected provisions shall remain in force.

ARTICLE 2. ADMINISTRATION AND ENFORCEMENT

Section 2.1 ZONING ADMINISTRATOR

- A) This Regulation shall be administered and enforced by a Zoning Administrator, nominated for a three (3) year term by the Planning Commission and appointed by the Selectboard. The Zoning Administrator may be removed from office for cause by the Selectboard after consultation with the Planning Commission. The Zoning Administrator shall be compensated in an amount established by the Selectboard.
- B) The Zoning Administrator shall administer this Regulation literally, and strictly, according to the plain meaning of its term, and shall have no authority to permit land development that is not in conformance with it. In addition, the Zoning Administrator shall administer this Regulation uniformly. The Zoning Administrator shall make reasonable inspections as s/he deems necessary to determine compliance and shall maintain a full and accurate record, available to the public, of all applications and fees received; permits issued, denied and appealed; inspections made; and reported violations.
- C) In the absence or disability of a Zoning Administrator, or in case of a conflict of interest, an acting Zoning Administrator shall be nominated by the Planning Commission and appointed by the Selectboard. The acting Zoning Administrator is empowered in the same manner as provided in (A) and (B) of this Section.

Section 2.2 PLANNING COMMISSION

- A) The Planning Commission shall consist of not less than five (5) nor more than seven (7) members appointed by the Selectboard in accordance with the Act (Sections 4321-4323). Any member of the Commission may be removed at any time by a unanimous vote of the Selectboard. The Planning Commission shall:
 - 1) Prepare amendments to these Regulations and other regulations as permitted by the Act.
 - 2) Prepare and update the Town Plan every five (5) years and prepare amendments to the Plan as necessary.
 - 3) Have party status to respond to projects under "Act 250" review.

Section 2.3 DEVELOPMENT REVIEW BOARD (DRB)

- A) The DRB shall consist of not less than five (5) nor more than nine (9) members, the numbers and terms of appointment to be determined by the Selectboard. Members of the DRB shall be appointed by the Selectboard. The Board may consist of members of the Planning Commission. Vacancies also shall be filled by appointment of the Selectboard for unexpired terms and upon expiration of terms. Any member of the DRB may be removed for cause by the Selectboard upon notice of written charges and after a public hearing.
- B) The DRB shall have to following duties:
 - 1) To hear and decide upon applications for appeals of decisions by the Zoning Administrator.
 - 2) To hear and decide upon applications for requests for variances.
 - 3) To hear and decide upon applications for conditional use approval.

- 4) To review and decide upon applications for site plan approval.
 - 5) To hear and decide upon applications for planned unit developments.
 - 6) To review and decide upon applications for access by right-of-way for lots without frontage.
 - 7) Any other reviews as required in the Regulations.
- C) The Board shall adopt Rules of Procedure and ethics policies with regard to conflicts of interest to guide its official conduct in accordance with the requirements of the Act (4461) and Vermont's Open Meeting Law (V.S.A. 310-314).

Section 2.4 PUBLIC NOTICE

- A) A warned public hearing shall be required for conditional use review, appeals of decisions of the Zoning Administrator, variances, subdivision review, site plan review, and all other types of development review requiring a hearing. Any public notice for a warned public hearing shall be given not less than fifteen (15) days prior to the date of the public hearing by all of the following:
- 1) Publication of the date, time, place, and purpose of the hearing in a newspaper of general circulation in the municipality;
 - 2) Posting of the same information in three (3) or more public places within the municipality, including the posting of a notice on a form provided by the Town of Berkshire within view from the public right-of-way nearest the property for which 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;
 - 4) For hearings on subdivision plats located within five hundred (500) feet of a municipal boundary, written notification to the clerk of the adjoining municipality.

Section 2.5 MEETING AND HEARING REQUIREMENTS

- A) All meetings and hearings of the Planning Commission and the DRB, except deliberative and executive sessions, shall be open to the public.
- B) For the conduct of a hearing, and the taking of any action, a quorum shall not be less than the majority of members of the Planning Commission and/or DRB. Any action of a Board shall be taken by concurrence of the majority of the members of the Board (vacancies must be counted).
- C) The Planning Commission and DRB shall keep minutes of all its proceedings, showing the outcome of each vote, record of its examination, and other official actions, filed in the Town Clerk's Office as public records.
- D) Public hearings of the Planning Commission and DRB shall be noticed and warned in accordance with Section 2.4 above. In any public hearing of the DRB, there shall be an opportunity for each person wishing to achieve status as an interested person for the purposes of appeal under Section 2.9 to demonstrate that the criteria, as defined in Article 10, are met. The DRB shall keep record of the name, address and participation of each of these persons.
- E) The DRB may:

- 1) examine or cause to be examined, any property, maps, books, or records bearing upon matters concerned in that proceeding;
- 2) require the attendance of any person having knowledge concerning the application;
- 3) require an independent technical review of one or more aspects of an application such as, but not limited to, a traffic study, environmental impact analysis, or fiscal impact analysis, to be paid by the applicant.
- 4) the DRB may recess a hearing on any application or appeal pending submission of additional information, provided that the next public hearing date and place is announced at the hearing.

Section 2.6 DECISIONS

- A) The DRB shall issue a written decision within forty-five (45) days after the adjournment of the hearing. Failure to issue a decision within the forty-five (45) day period shall be deemed approval and shall be effective on the forty-sixth (46th) day. In addition:
 - 1) All decisions shall be issued in writing and shall separately state findings of fact and conclusions of law. Findings of fact shall explicitly and concisely restate the underlying facts that support the decision, based exclusively on recorded evidence. Conclusions of law shall be based on the findings of fact. The decisions shall also include a statement of the time within which appeals (Section 2.9) may be taken.
 - 2) In making a decision in favor of the applicant, the DRB may attach conditions and safeguards as it deems necessary to implement the purposes of the Act, these Regulations, and the municipal plan currently in effect. Conditions of approval may include:
 - a) the submission of a three-year performance bond, escrow account, or other form or surety acceptable to the Berkshire Selectboard as provided in Section 3.2(A)(5); 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.
 - c) a requirement for the phasing of development as necessary to avoid or mitigate any undue adverse impacts to existing or planned community facilities.
 - 3) All decisions shall be sent to the applicant or appellant by certified mail within the forty-five (45) day period. Copies of each decision shall also be mailed to every person or body appearing and having been heard at the hearing and be recorded in the municipal office in accordance with the Act.

Section 2.7 RECORDING REQUIREMENTS

- A) Within thirty (30) days after the issuance of a municipal land use permit or notice of violation, the Zoning Administrator shall deliver either the original, a legible copy, or a notice of permit violation to the Town Clerk for recording in the municipal land or permit records as provided in 24 V.S.A. 1154(a). The applicant may be charged the cost of the recording fees as required by law.

Section 2.8 COMBINED REVIEW

- A) In cases where a development proposal requires more than one Board review or approval, the DRB may warn and hold a joint hearing for the purpose of reviewing and acting on the proposal. In cases where a joint hearing cannot be conducted to address each necessary review, the proceedings for

each review shall occur concurrently or semi-concurrently (initiating one review process while the preceding process is nearing completion).

- B) To the extent feasible, the review process shall be conducted in the following order, as applicable:
- 1) Site Plan; then
 - 2) Access by right-of way; then
 - 3) Requests for Waivers or Variances; then
 - 4) Conditional Use Review; then
 - 5) Subdivision Approval (preliminary and final) and/or PUD approval
- C) All notice requirements and provisions applicable to each purpose of the hearing shall be complied with. Notice for combined review, to the extent feasible, shall be made in the same public notice. In the case of differing notice requirements, the process which provides more notice, by amount of time or by other means, shall apply.
- D) All decision requirements and deadlines applicable to each purpose of the proceedings shall apply. Separate written decisions shall be issued for each review conducted as part of the combined review, but shall be coordinated where possible.

Section 2.9 APPEALS

A) Appeals of decisions of the Zoning Administrator

- 1) Requests for appeals of decision(s) by the Zoning Administrator shall be made by interested persons by filing a written notice of appeal with the DRB within fifteen (15) days of the act or decision at issue. An "interested person" is described in Section 4465 of the Act and in Article 10.
- 2) A notice of appeal filed under this Section shall be in writing and include the following information, in accordance with the Act (Section 4466):
 - a) The name and address of the appellant.
 - b) A brief description of the property with respect to which the appeal is taken.
 - c) A reference to applicable provisions of these regulations.
 - d) The relief requested by the appellant.
 - e) The alleged grounds why such relief is believed proper under the circumstances.

B) Appeals of decisions by the DRB

- 1) In accordance with the Act (Section 4471), an interested person who has participated in a Regulatory proceeding of the DRB may appeal a decision rendered by the DRB within thirty (30) days of such decision, to the Vermont Environmental Court. Additionally, they shall also meet the following requirements:
 - a) Participation in a (DRB) proceeding shall consist of offering, through oral or written testimony, evidence of a statement of concern related to the subject of the proceedings.
 - b) For all proceedings (of the DRB) that are on record, appeals to the Environmental Court shall be taken on the record in accordance with the Rules of Civil Procedure.
 - c) 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 who shall supply a list of interested persons (including the applicant if not the appellant), to the appellants within five (5) working days, Upon receipt of the list of interested persons, the appellant shall, be 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 2.10 CERTIFICATE OF OCCUPANCY

- A) In accordance with the Act [4449(a)(2)], after the effective date of these Regulations, a Certificate of Occupancy issued by the Zoning Administrator 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.
- B) An application for a Certificate of Occupancy shall be provided with the zoning permit issued by the Zoning Administrator. The applicant shall submit the application prior to the use or occupancy of the land or structure.
- C) Within thirty (30) days of receipt of the application for a Certificate of Occupancy, the Zoning Administrator 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. A Certificate of Occupancy may be issued for unfinished residential structures provided that the Zoning Administrator can determine it meets all applicable zoning permit conditions. If the Zoning Administrator fails to either grant or deny the Certificate of Occupancy within thirty (30) days of submission of an application, the certificate will be deemed issued on the thirty-first (31st) day. Regarding the determination that the permitted use or structure meets all setback requirements, the Zoning Administrator may rely on any information contained in the zoning permit application regarding the location of parcel boundaries. In the event that there is a discrepancy between the information provided by the applicant and true facts, the Town does not waive future enforcement authority with the issuance of a Certificate of Occupancy.
- D) If a permit from the Environmental Protection Rules of the State of Vermont is required for the disposal of domestic or other wastes or effluent, a Certificate of Occupancy shall not be issued by the Zoning Administrator until evidence of such approval, has been filed with the Zoning Administrator.

Section 2.11 VIOLATIONS

- A) **Violations.** The commencement or continuation of any land development, subdivision, or use, which is not in conformance with these Regulations, is a violation. Any person, who is found in violation of these Regulations, shall be fined not more than the amount permitted under the Act (Section 4451). Each day that a violation is continued shall be a separate offense. All fines imposed and collected shall be paid to the Town of Berkshire.
- B) **Filing a Complaint.** Whenever a violation of these Regulations occurs, or is alleged to have occurred, any person may file a written complaint with the Zoning Administrator. The complaint shall state fully the causes and basis for the alleged violation. The Zoning Administrator shall properly record such complaint, immediately investigate, and take action as appropriate in accordance with these Regulations.
- C) **Notice of Violation.** No violation may be enforced unless the alleged offender has had at least seven (7) business days notice by certified mail that a violation exists and has failed to satisfactorily respond or correct the violation. The warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven (7) day period, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven (7) day period. Action may be brought without notice and opportunity to cure, if the alleged offender repeats the violation of the Regulation after the seven (7) day notice period and within the next succeeding twelve (12) months.
- D) **Limitation on Enforcement.** The municipality shall observe the fifteen (15) year limitation on enforcement proceedings relating to municipal permits and approvals as set forth in the Act (Section 4454).

ARTICLE 3. DEVELOPMENT REVIEW

Section 3.1 ZONING PERMIT

- A) **Applicability.** No land development or use may commence in the Town of Berkshire without a zoning permit issued by the Zoning Administrator. Above ground swimming pools are exempt from the provisions of these regulations and do not require a zoning permit.
- B) **Application Requirements.** An application and sketch plan, drawn to scale, for a zoning permit shall be submitted to the Zoning Administrator on forms provided by the Town, along with the required application fees. The sketch plan shall show the following information in sufficient detail to determine whether the proposal is in conformance with these Regulations:
- 1) the dimensions of the lot, including property boundaries;
 - 2) location, size, shape, height of existing and proposed buildings and structures;
 - 3) location of existing and proposed easements, rights-of-way, sidewalks, and utilities;
 - 4) location of natural features such as watercourses, wetlands, floodplains, rock outcroppings, and stands of trees;
 - 5) setbacks from property boundaries, right-of-way, surface waters, and wetlands; and
 - 6) any other information that may be needed to determine compliance with these Regulations.
- C) **Issuance of Zoning Permit.** A zoning permit shall be issued by the Zoning Administrator only in accordance with the Act (section 4449) and these Regulations. If, in the opinion of the Zoning Administrator, a proposal for a permitted use as set forth in these Regulations is not in conformance with the provisions of these Regulations, the Zoning Administrator shall deny the zoning permit. The Zoning Administrator must refer all applications requiring Board approval, including conditional use review, site plan review, variance approval, access by right-of-way approval, planned unit developments, and/or subdivision review, to the DRB.
- 1) Within thirty (30) days of receiving a completed permit application, including all materials and fees, the Zoning Administrator shall either issue or deny a permit in writing, or refer the application to the DRB for their review and action. Each permit or denial issued shall include a statement of the time in which appeals may be made under Section 2.9. Failure to act on the permit request within thirty (30) days shall constitute deemed approval of the permit on the thirty-first (31st) day.
 - 2) The applicant must post a permit notice on a form prescribed by the municipality within view from the public right-of-way most nearly adjacent to the subject property for a fifteen (15) day appeal period during which time appeals would be accepted. Applicants are advised that if the posting provision is not satisfied, an interested person could question the validity of the permit. The notice shall contain a statement of the appeal period and information as to where a full description of the project and approval can be found.
 - 3) Within three (3) days of issuing a permit, the Zoning Administrator shall post a copy in the Town Clerk's Office until the expiration of the appeal period.
 - 4) Following the appeal period, a copy of the permit shall be mailed (or otherwise delivered) to the listers and all permits shall be maintained on file in the Town Clerk's office.
 - 5) All permits are issued for a specific site and are not transferable to any alternative site or parcel. All permits shall run with the land and are valid and binding upon any heir, assign or successor who acquires an undivided, whole interest in the property.

- 6) More than one pending application per parcel will not be allowed if the proposed developments are mutually exclusive. Applicants must withdraw any previous applications before submitting a new one if the approval and construction of the pending application would preclude completion of the new application.
- 7) In accordance with Section 4424(D) of the Act, no permit shall be issued by the Zoning Administrator for the development of land within a designated flood hazard area prior to the expiration of thirty (30) days following the submission of a copy of the application by the Zoning Administrator to the department of Environmental Conservation. Such report must describe the proposed use, the location, and an evaluation of the effect of such proposed use on the Town Plan and on the Regional Plan.

D) Effective Dates

- 1) **Zoning Permits.** No zoning permit shall take effect until the time for appeal under Section 2.9 has passed or, in the event that a notice of appeal is properly filed, until final adjudication of the appeal. All development approved under this Regulation shall be completed or established within two (2) years from the date of issuance of the permit, unless the permit specifies otherwise. The Zoning Administrator shall make a determination as to whether the development has been completed or established. Failure to complete or establish the proposed development shall render the applicant in violation of this Regulation. At a minimum, established development must include the complete construction of an access, a foundation, and a water supply and wastewater system.
- 2) **Permit Extensions.** The Zoning Administrator may administratively issue one (1) permit extension of not more than two (2) years from the date of application, if the application for an extension is made in writing prior to permit expiration, and it is determined by the Zoning Administrator that the extension is justified due to delays in the issuance of other necessary permits, project financing, or other unforeseen circumstances.
- 3) **Board Approvals.** Approvals granted by the DRB shall expire upon the expiration of the zoning permit issued subsequent to Board approval. The Board may grant a longer period of time for a zoning permit and associated Board approvals to remain in effect, as specified in the Board's written approval, to accommodate phased development or projects that reasonably may require more than two (2) years to complete.

Section 3.2 BOARD APPROVALS (CONDITIONAL USE REVIEW, SITE PLAN APPROVAL, VARIANCES)

- A) **Application.** Applicants for development requiring site plan, conditional use, or variance approval shall submit all applicable application materials listed Table 3.1 to the Zoning Administrator for consideration by the DRB, including any associated fee and any written request for a waiver of required application materials.
- 1) **Additional application requirements Flood Hazard Overlay District.** Proposals for development within the Flood Hazard Area must include, in addition to the requirements listed above, a property survey, elevation data and an elevation certificate, which includes information on “base flood” and “lowest floor”, including basement, and flood proofing measures, certified by appropriate licensed professional and detailed construction plans, engineering, and material specifications.
 - 2) **Waivers of Application Requirements.** The application shall not be considered complete by the Development of Review Board until all application materials have been submitted. The DRB may waive one or more of the listed items in the event they determine the items to be unnecessary for the comprehensive review of the application. Such waiver shall be issued in writing when the application is accepted and deemed complete by the Board.
 - 3) **Notification and Review Procedure.** Upon receipt of a complete application, the DRB shall schedule a public hearing, warned in accordance with Section 2.4. The DRB may recess the convened hearing to require the submission of additional information from the applicant, or to allow for the submission of information from other interested parties. The DRB shall issue a written decision in accordance with Section 2.6 within forty-five (45) days from the date of the final public hearing.
 - 4) **Bonding.** The DRB may require that the developer tender a performance guarantee in the form of a public improvements bond, escrow account, or other form of surety acceptable to the Berkshire Selectboard in an amount to cover the total cost for completion all landscaping and/or public improvements. Performance guarantees shall be valid and binding for three (3) years. No zoning permit allowing construction of any portion of a proposed development shall be issued by the Zoning Administrator until the applicant has paid the full amount of any required performance guarantee. Any performance guarantee shall not be released by the DRB until the applicant has completed all improvements covered by the guarantee in accordance with the DRB's decision and the improvements have been inspected and found satisfactory by the Zoning Administrator.

TABLE 3.1 APPLICATION REQUIREMENTS: CONDITIONAL USE, SITE PLAN, AND VARIANCE REVIEW

Application Requirements:

Applicable zoning application provided by the Town of Berkshire; one original and one complete copy of a site plan, drawn to scale, with north arrow and date of preparation; and required application fees. If requested by the DRB, site plans shall be prepared by a licensed engineer, surveyor, or architect, the name of which shall be noted on the map.

The site plan shall show the following information in sufficient detail to determine whether the proposal is in conformance with these Regulations:

	Site Plan	Cond. Use	Variance
1) the dimensions of the lot, including property boundaries;	✓	✓	✓
2) location, size, shape, height of existing and proposed buildings and structures;	✓	✓	✓
3) location of existing and proposed easements, rights-of-way, sidewalks, and utilities;	✓	✓	✓
4) location of natural features such as watercourses, wetlands, floodplains, rock outcroppings, and stands of trees;	✓	✓	✓
5) setbacks from property boundaries, right-of-way, surface waters, and wetlands;	✓	✓	✓
6) location and dimension of parking areas, loading and unloading facilities, and points of ingress and egress of vehicles to and from the site to public streets;	✓	✓	
7) location, height, and lumens of outdoor lighting;	✓		
8) topography indicating contours at intervals of not more than two (2) feet;	✓		
9) soils;	✓		
10) landscaping and screening; and	✓		
11) any other information that may be needed to determine compliance with these Regulations.	✓		

In addition, each application shall include:

Construction sequence and time schedule for completion of each phase of development	✓		
Estimated daily and peak traffic generation	✓		
Statement of how the proposed development fits the purposes of the land use district in which it is located		✓	
Expected impact on existing and planned community facilities		✓	
For nonconforming uses or structures, statement of how the proposal meets standards in Section 5.1.	✓	✓	
A statement describing the variance requested from one or more provisions of these Regulations and the alleged grounds why such relief is believed proper under the circumstances based on the five (5) statutory criteria listed in Section 3.2 (E) and Section 4449 of the Act.			✓
Any other information that the DRB requires to ensure that the provisions of these regulations are met.	✓	✓	

B) **Conditional Use Review.** Any use or structure requiring conditional use approval shall not be issued by the Zoning Administrator until the DRB grants such approval.

- 1) The DRB may grant Conditional Use approval for developments conforming with this Regulation and the standards set forth in Section 4414 of the Act, provided the proposed Conditional Use does not result in an undue adverse effect on any of the following:
 - a) The capacity of existing or planned community facilities;
 - b) The character of the area affected;
 - c) Traffic on roads and highways in the vicinity;
 - d) Regulations and Town Plan currently in effect; or
 - e) Utilization of renewable energy sources.
- 2) In granting Conditional Use approval, the DRB may attach additional conditions if deemed necessary to implement the purpose of the Town Plan, this Regulation, and pursuant to Section 4414 of the Act. The DRB may also impose specific conditions to ensure the safety and general welfare of surrounding properties, the neighborhood or area affected by the proposed use, and the community at large. Such conditions may include, but are not limited to:
 - a) Minimum and maximum lot size;
 - b) Distance from adjacent nearby users;
 - c) Performance standards pursuant to Section 4414 of the Act and Section 5.7 of this Regulation;
 - d) Minimum off-street parking and loading facilities pursuant to Section 5.4;
 - e) Landscaping and fencing;
 - f) Design and location of structures and service areas;
 - g) Size, location, and design of signs pursuant to Section 5.5; or
 - h) Any other factors regulated under this Regulation.

C) **Additional conditional use standards for land development located in the Flood Hazard Overlay District.**

- 1) The DRB shall also consider the following for uses located in the Flood Hazard Overlay District:
 - a) The expected heights, duration, rate of rise, velocity, erosion, and debris transport of the flood waters expected at the site;
 - b) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owners;
 - c) The danger to life and property due to increased flood heights or velocities caused by the encroachments;
 - d) The danger that materials may be swept onto other lands downstream to the injury of others;
 - e) The proposed water supply and sanitation system and the ability of these systems to prevent disease, contamination, and unsanitary conditions during flooding;
 - f) The safety of access to the property in times of flood for emergency vehicles;
 - g) The cost of providing governmental and public facilities and services during and after flooding;
 - h) The importance of the services provided by the proposed facility to the community;
 - i) The compatibility of the proposed use with the existing development and that anticipated in the foreseeable future;
 - j) The relationship of the proposed use to the Comprehensive Town Plan;
 - k) The necessity to the facility of waterfront location;
 - l) The availability of alternative locations not subject to flooding for the proposed use;
 - m) Any evaluation or comment by the Vermont Department of Environmental Conservation; and
 - n) Such other factors as may be relevant to the purpose of this Regulation.
- 2) Before granting a conditional use permit for a use in the Flood Hazard Overlay District, the site and structures shall be determined to be reasonably safe from flood damage in accordance with the following criteria:
 - a) General design and construction in accordance with the following:
 - i) All subdivisions and other development proposals shall be designed to minimize flood damage.

- ii) All design and construction shall utilize:
 - ~ Materials and utility equipment which are resistant to flood damage.
 - ~ Methods and practices that minimize flood damage, including anchoring to prevent flotation, collapse and lateral movement, and adequate surface drainage to reduce exposure to flood damage.
- b) Elevation and flood proofing of new construction or substantial improvements in accordance with the following:
 - i) All residential structures shall be elevated such that the lowest floor (including basement) is above the base flood level.
 - ii) All nonresidential structures must either be:
 - ~ Elevated such that the lowest level (including basement) is above the base flood level.
 - ~ Flood proofed to or above the base flood level with certification from a registered professional engineer or architect stating that: "The structure, and attendant utility and sanitary facilities, are designed to be watertight, with wall substantially impermeable to the passage of water, and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy."
- c) Design and location of utilities and sanitary facilities in accordance with the following:
 - i) All utilities and facilities, such as gas and electrical equipment, circuits, and appliances shall be located and constructed to minimize or eliminate flood damage.
 - ii) All new and replacement water supply systems shall be designed so as to minimize infiltration of floodwaters into the system.
 - iii) All new and sanitary sewage systems (including onsite waste disposal systems) shall be located to avoid impairment to them or contamination from them during flooding.
- d) Excavation, fill and floodway encroachment in accordance with the following:
 - i) In the floodway, no encroachment (new construction, substantial improvements or land alterations) shall be permitted that would result in any increase in flood levels during the base flood.
 - ii) The flood carrying capacity within any portion of an altered or relocated watercourse shall be maintained.
 - iii) No excavation, fill or other land alterations which would result in ponding or other flood damage to the detriment of other property owners shall be permitted.
 - iv) Insofar as possible and reasonable, existing shoreline cover (vegetation) shall be retained. Where necessary, excavation, fill and shoreline protection works shall be designed and completed to minimize failure, erosion, and turbidity of adjacent waters.
- 3) Non-conforming structures located in the Flood Hazard Overlay District shall be subject to the provisions of Section 5.1.
 - a) In addition, any substantial improvement to a structure within the Flood Hazard Overlay District, as defined in Article 10, may be granted by the DRB only upon finding that the proposed action:
 - i) Will not cause an increase in flood levels or otherwise threaten the health, safety and welfare of the public or of other property owners: and
 - ii) Is required, in the case of nonresidential enterprise, for its continued economically feasible operation.
 - b) Nothing in this Section shall be deemed to prevent the following:
 - i) Any improvements solely required for the purpose of, and necessary to comply with, any environmental, safety, health, or energy codes, laws or regulations, providing that reasonable efforts are taken to comply with the provisions of this Regulation if physically possible to do so.
 - ii) Any improvements solely required for maintaining the structural integrity and historic significance of a building or place which is listed on the National Register of Historic Places or on the State Inventory of Historic Places.
 - c) Conditional use permits granted under this Section shall state that the nonconforming structure "is located in a regulated flood hazard area, does not conform to the regulations pertaining thereto, may not be eligible for any flood insurance which may pertain to a regulated flood hazard area, and will be maintained at the risk of the "owner". A copy of such

permit shall be affixed to the copy of the deed of the concerned property on file at the Town Clerk's Office.

- D) **Site Plan Review.** The Zoning Administrator shall not issue a zoning permit for any use or structure, except for one or two-family dwellings and agricultural and forestry uses, until the DRB grants Site Plans Approval.
- 1) The DRB shall consider the following objectives in its review of site plan applications:
 - a) Maximum safety of vehicular traffic circulation between the site and the street network;
 - b) Adequacy of circulation, parking and loading facilities with particular attention to safety;
 - c) Adequacy of landscaping and screening with preference towards native species and retention of existing vegetation where possible;
 - d) Protection of utilization of renewable resources;
 - e) Adequacy of pedestrian and cyclist circulation and safety; and
 - f) Proposed roadways shall meet the Selectboard's Road Standards.
- E) **Variance Review.** An applicant may apply for a variance from the provisions of these Regulations from the DRB for any structure. Renewable energy structures are reviewed under separate criteria than general structures.
- 1) **Standards.** The Board may grant a variance, and render a decision in favor of the appellant, only if all the following facts are found, and the findings are specified in its written decision:
 - a) 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 the Regulation in the neighborhood or district in which the property is located.
 - b) Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformance with the provisions of the Regulation, and that authorization of a variance is therefore necessary to enable the reasonable use of the property.
 - c) Unnecessary hardship has not been created by the applicant.
 - d) The variance, if authorized, will not alter the essential character of the neighborhood or district in which 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.
 - e) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the Regulation and from the Town Plan.
 - 2) In making a decision in favor of the applicant for a variance, the DRB may attach conditions that are necessary to implement the Act and/or the Town Plan. In no case shall the Board grant a variance for use that is not permitted or conditionally permitted within the zoning district, or that results in an increase in allowable density.
 - 3) For a variance from the provisions of these Regulations that is requested for a structure that is primarily a renewable energy resource structure, the Board may grant a variance only if it finds that the relief requested meets all requirements listed in the Act (section 4469(b)) and are specified in its decision.

ARTICLE 4. ZONING DISTRICTS AND STANDARDS

Section 4.1 ESTABLISHMENT AND INTERPRETATION OF ZONING DISTRICTS

- A) To implement the provisions of this Regulation, the Town of Berkshire is divided into the following districts:
- (EV) EXTENDED VILLAGE DISTRICT
 - (RL) RURAL LANDS DISTRICT
 - (WHP) WELLHEAD PROTECTION DISTRICT
 - (FHA) FLOOD HAZARD AREA OVERLAY DISTRICT
- B) The Official Zoning Map consists of the Town of Berkshire Zoning Map. The location of the zoning districts are on the Official Zoning Map, which is adopted by reference and declared to be part of this Regulation and may only be amended in accordance with Sections 4441 and 4442 of the Act.
- C) Zoning boundaries shown within the lines of roads, streams or transportation rights-of-way shall be deemed to follow the centerline. The abandonment of roads shall not affect the location of zone boundaries. When the Zoning Administrator cannot determine the location of a zoning district boundary, the DRB shall interpret the district boundary.
- D) Any interpretation of zoning district boundaries by the Zoning Administrator may be appealed to the DRB for a declaratory ruling.
- E) Where a boundary between districts divides a lot, the regulations of the less restrictive district may apply in that section of the more restrictive district that lies within fifty (50) feet of the district boundary.

Section 4.2 DISTRICT PROVISIONS: PERMITTED AND CONDITIONAL USES

- A) All uses and structures must meet the district dimensional requirements and all other applicable provisions of this Regulation except as authorized by a variance or by approval of a planned unit development.
- B) Table 4.1 lists uses and structures for each district, which may be permitted (P), permitted with site plan approval (P/S), conditionally permitted (C), conditionally permitted with site plan approval (C/S), or restricted (R). Procedures for review include the following:
- 1) Permitted uses and structures may be approved by the Zoning Administrator, as provided in Section 3.1. However, permitted uses may also require site plan approval from the DRB prior to issuance of a zoning permit, as provided in Section 3.2.
 - 2) Conditional uses and structures require conditional use approval by the DRB, as provided under Section 3.2. Conditional uses may also require site plan approval from the DRB, as provided in Section 3.2. Conditional use review and site plan review may be completed concurrently, as provided in Section 2.8.

TABLE 4.1: DIMENSIONAL STANDARDS AND USES BY ZONING DISTRICT				
		Extended Village District	Rural Lands District	Wellhead Protection District
Dimensional Standards				
Minimum Lot Size	With East Berkshire Water Coop Service	½ Acre	5 Acres	10 Acres
	Without East Berkshire Water Coop Service	1 Acre		
Min. Frontage		75 ft	200 ft	250 ft
Min Setback/Road (measured from center line of road)		45 ft	75 ft	75 ft
Min. Setback/Yard		15 ft	30 ft	50 ft
Allowed Uses				
“P” – Permitted Use “C” – Conditional Use “S” – Site Plan Review “NA” – Not Allowed				
Residential Uses				
Accessory Structures		P	P	C
Accessory Apartments to Single Family Dwellings		P	P	P
Mobile Home Park		NA	P/S	NA
Multi-family dwelling		C/S	NA	NA
Seasonal Dwelling		P	P	C
Single-family dwelling		P	P	C
Two-family dwelling		P	P	C
Commercial Uses				
Agribusiness		NA	C/S	NA
Campground		NA	C/S	NA
Commercial Indoor Recreation (includes theater, amusement hall, bowling, etc.)		C/S	C/S	NA
Commercial Outdoor Recreation (includes golf, riding stables, skiing, etc.)		NA	C/S	NA
State Registered or Licensed Child Care facility (w/ no more than 6 full time and 4 part time children)		P	P	C
State Registered or Licensed Child Care facility (w/ more than 6 full time and part time children)		C/S	C/S	NA
Gas Stations		C/S	NA	NA
Home Occupation		P	P	C
Junkyards		NA	NA	NA
Light Industry/ Manufacturing		C/S	C/S	NA
Lodging Establishments		C/S	NA	NA
Neighborhood Convenient Store		C/S	C/S	NA
Professional and Business Service		C/S	C/S	NA
Quarrying, major sand and gravel exploration		NA	C/S	NA
Retail sales and repair		C/S	NA	NA
Residential Lodging (Room and Board Houses)		C/S	C/S	NA
Restaurant		C/S	NA	NA
Saw Mills		NA	C/S	NA
Warehousing		NA	C/S	NA
Other Uses				
Non-profit club		C/S	C/S	NA
Outdoor recreation (non commercial)		NA	C	NA
Public facilities and services		C/S	C/S	NA
State Licensed or Registered Residential care facility serving 8 or fewer persons with a handicap or disability		P	P	C
State Licensed or Registered Residential care facility serving over 8 persons		C/S	C/S	NA

Section 4.3 DISTRICT OBJECTIVES

- B) Extended Village District.** The purpose of the Extended Village District is to maintain and support the role of the village as a focus of many social and economic activities in Berkshire and to provide for residential, commercial and other compatible development that serves the need of the community. Such development should maintain the traditional density and overall social and physical character of the village, including their historic and scenic resources, but should not exceed the capability of the lands, waters, services and facilities to accommodate such density.
- C) Rural Lands District.** The purpose of the Rural Lands District is to conserve the integrity and natural qualities of rural open space for the betterment and future use of the community, and to maintain the forest and agricultural character of the Town to provide for a rural residential development and compatible commercial establishments at a density the land can support without central water or sewage disposal.
- D) Wellhead Protection Overlay District.** The purpose of the Wellhead Protection District is to maintain or improve the quality of Berkshire's and Enosburg's water resources, including surface and ground waters, and to ensure that surface water bodies and corridors are protected and well managed.
- E) Flood Hazard Area Overlay District.** The purpose of the Flood Hazard District is to promote public health, safety, and general welfare in the following ways:
- To meet the requirements for community eligibility in the National Flood Insurance Program and to thereby ensure continued availability of flood insurance to property owners.
 - To encourage conservation and open space uses of flood hazard areas ; for example:
 - ~ agricultural uses, such as general farming, pasture, orchards, grazing, outdoor plant nurseries, truck farming, and forestry.
 - ~ recreational uses, such as parks, picnic grounds, golf courses or driving ranges, archery or shooting ranges, trails, hunting and fishing areas, and boat launching sites.
 - ~ residential uses, such as lawns, gardens, parking areas, and play areas.
 - To require (where development is proposed) reasonable measures to promote health and safety and to minimize property damage due to flooding. In the event that the provisions of this Section of the Regulation conflict with other Sections of this Regulation, the more stringent shall apply.
- 1) **Warning and Disclaimer of Liability.** This Section does not imply that land outside the areas of special flood hazard or land uses permitted within such districts will be free from flooding or flood damages. These Regulations shall not create any liability on the part of the municipality, or of any official or employee thereof, for any flood damages that result from reliance on these Regulations or any administrative decision lawfully made under these regulations.
- 2) **Basis for establishing the areas of Special Flood Hazard.** The area of special flood hazard identified by the Federal Insurance Administration in scientific and engineering reports entitled "Flood Insurance Study for the Town of Berkshire, Vermont", with accompanying Flood Insurance Rate Maps (FIRM) and Flood Boundary and Floodway Maps are hereby adopted and declared to be part of this Regulation. The Flood Insurance Study and Maps are on file at the Town Clerk's Office. The "Flood Hazard Area" on the Official Zoning Map is only an estimate. Official Flood Hazard identification can only be determined based on interpretation of the FIRM Maps located at the Town Clerk's Office.
- 3) **Permitted Uses.** There are no permitted uses in the Flood Hazard District.
- 4) **Conditional Uses.** Conditional use approval shall be required for any of the following:
- a) New construction of a structure;
 - b) Substantial improvement to a structure as defined in Article 10;
 - c) Land alterations for any new construction or substantial improvements; and

- d) Relocation or alteration of any watercourse (stream or river).

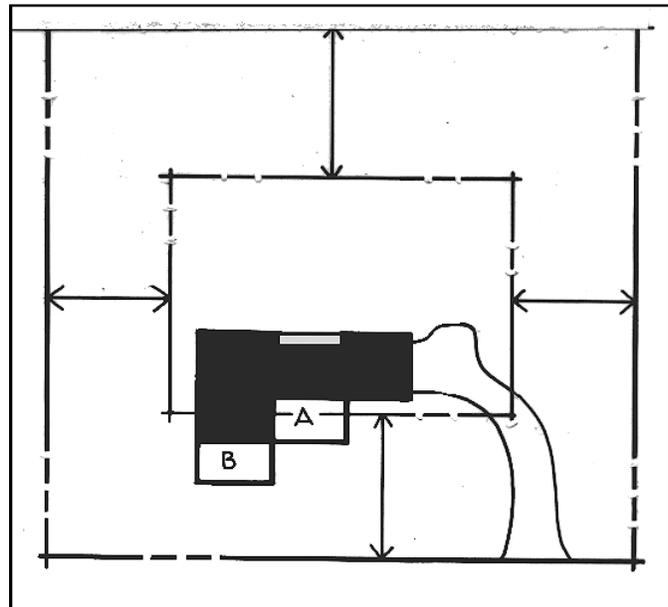
ARTICLE 5. GENERAL REQUIREMENTS

Section 5.1 NONCONFORMITIES

- A) **Applicability.** The following provisions shall apply to all structures, uses, and lots in lawful existence prior to the effective date of these regulations or subsequent amendments, which do not conform to the requirements of these Regulations. In accordance with the Act, this Regulation shall not prevent the normal continuation and maintenance of lots, structures and uses of land that lawfully existed prior to the adoption of this Regulation.
- B) **Nonconforming Uses and Structures.** A preexisting use of land or use of structures that does not conform to the allowable use provisions of the zoning district in which they are located, or this Regulation, shall be deemed a nonconforming use. A pre-existing structure that does not conform to those requirements imposed by these Regulations regarding set backs, height, lot size, or with other dimensional requirements imposed by this Regulation or by State law, or which does not meet the parking area requirements, shall be deemed a nonconforming structure.

1) Any nonconforming use or structure may be continued indefinitely, but shall be subject to the following provisions:

- a) A nonconforming use or structure shall not be re-established after being abandoned or demolished (as defined in Section 10 of these Regulations) for a period of twelve (12) months or after being changed to a conforming use or structure.
- b) The DRB may permit, as a conditional use, the extension, change, relocation, alteration or enlargement of a nonconforming structure providing such action does not increase the degree of nonconformance (see figure 5.1) or for the purpose of compliance with mandated environmental, safety, health, or energy codes.
- c) In the event that a nonconforming structure is destroyed (as defined in Article 10 of these Regulations), a zoning permit is not needed for reconstruction, if reconstructed within one (1) year with the same footprint and number of bedrooms. If a reconstruction does not fit the aforementioned criteria, the DRB may grant a variance from this provision if a hardship would be created by rebuilding in strict conformance with the requirements of this Regulation. (In considering a variance from this position, the DRB shall take into consideration the ability of the applicant to utilize remaining features of the property such as foundation, water supply, sewage disposal, underground utilities, etc.)



In this example of a nonconforming structure, a portion of the building exceeds the front setback for the district in which it is located. Extending the building in a manner that does not encroach further into the setback are, as depicted in the addition labeled "A", would not increase the degree of nonconformance. The extension labeled "B", however, represents a further encroachment into the setback which would increase the degree of nonconformance.

- C) **Pre-existing Small Lots.** Any lot that is legally subdivided, is in individual, separate, and nonaffiliated ownership from surrounding properties, and is in existence on the date of enactment of any Regulation, including an interim Regulation, shall be deemed a preexisting small lot.
- 1) Any preexisting small lot may be developed for the purposes permitted in the district in which it is located, even though the small lot no longer conforms to minimum lot size requirements of the new Regulation or interim Regulation, provided such a lot is not less than one-eighth (1/8) acre in area, or not less than forty (40) feet in width or depth.
 - 2) If a lot not conforming to the minimum lot size requirements in the district in which it is located is or subsequently comes under common ownership with one or more contiguous lots, the nonconforming lot(s) shall not be deemed merged and shall be considered separate lots.

Section 5.2 ACCESS REQUIREMENTS

- A) **Access to Lots without Required Frontage.** Land development may be permitted on lots that do not have frontage either on a public road or public waters only with the approval of the DRB through site plan approval under Section 3.4, or subdivision review under Article 7 where the subdivision of land is proposed. Access to such a lot shall be provided by a permanent easement or right-of-way at least twenty-five (25) feet wide or a Class IV road. In addition to other review criteria, the Board may consider the intended use of the property, safety, traffic, and road and site conditions in granting, conditioning or denying the approval.
- B) **Curb Cuts.** Access onto public highways is subject to the approval of the Berkshire Selectboard and for state highways, the approval of the Vermont Agency of Transportation. As a condition to access approval, compliance with all local ordinances and regulations pertaining to roads and land development is required. Access permits must be obtained prior to the issuance of a zoning permit.
- C) **Driveways.** Driveways (access drives, easements, or roads which serve one (1) or two (2) lots) shall meet the following standards:
- 1) All driveways entering onto public roads must meet the Selectboard's specifications for grade, culverts, and ditching (Vermont Agency of Transportation B-71 Standards for Commercial and Residential Driveways).
 - 2) Driveways shall be accessible by emergency service vehicles, and shall logically relate to topography so as to ensure reasonable grade and safe intersections with public roads.
 - 3) Where a site occupies a corner of two (2) intersecting roads, no driveway entrance or exit shall be within fifty (5) feet of the intersection and roadway access shall be located on the less traveled road.
 - 4) The use of common land or shared driveways is encouraged and may be required in order to minimize the number of access points onto a road.
- D) **Development Roads.** An access driveway serving three (3) or more lots shall be considered a development road for the purpose of these Regulations and shall be designed and maintained in accordance with the Selectboard road policies and provisions of this Regulation.

Section 5.3 WATER QUALITY PROTECTION

- A) In order to protect water quality in the Town of Berkshire, no new structures of any kind shall be built within one hundred (100) feet of any river, wetland (as identified on the National Wetland Inventory Maps and/or through field delineation), stream, lake, or pond.

Section 5.4 PARKING AND LOADING REQUIREMENTS

- A) The following minimum off-street parking requirements shall be provided and maintained in case of new construction, alteration, or change of use:
- 1) Residential Structures - 2 spaces per dwelling (which may include spaces within a garage or carport)
 - 2) Lodging Establishments - 1 space per unit
 - 3) Professional or Business Offices - 1 space per 200 sq. ft. of floor area
 - 4) General Retail - 1 space per 250 sq. ft. of retail floor area
 - 5) Restaurants - 1 space per employee plus 1 space per 4 seats
 - 6) Industrial - space per 500 sq. ft. of floor area
 - 7) For any uses or structures not provided for in these Sections, it shall be the burden of the applicant to demonstrate to the DRB, if approval is required, that s/he can provide adequate parking necessary to eliminate the need for parking on public roads.
- B) No parking lot (defined as an area which provides five (5) or more parking spaces) shall be located in the area between the front lot line and the building wall most parallel to the front lot line. Parking lots shall be appropriately screened to preserve the qualities of the neighborhood where they are located. Appropriate screening should include trees, hedges or other landscaping that will serve to shield vehicular lights from adjoining landowners.
- C) The DRB may require additional parking and loading spaces, if it is found that the above-mentioned standards are not sufficient. The DRB may also grant waivers to the above standards to meet specific demonstrated factors that will limit the need for parking and may impose limits on the number of spaces provided. Shared parking for compatible uses is encouraged.

Section 5.5 SIGN REGULATIONS

- A) A zoning permit shall be required prior to the erection, construction or replacement of any outdoor sign, which must include a detailed drawing or blueprint showing construction details, including all structural and supporting elements; lettering and/or pictorial composition; lighting, including type and positioning; the signs position in relation to adjacent buildings, structures, public and private rights of way; and the signs position in relation to building and structural elements (roof eaves, facades, etc.). The following signs will be exempt from this Regulation:
- 1) Public highway signs
 - 2) Non-advertising signs placed for directional or safety purposes
 - 3) Temporary auction, lawn sale, or real estate signs, not to exceed two (2) in number and not to exceed nine (9) square feet in area. Temporary signs shall be removed when they have fulfilled their function.
 - 4) Signs on motor vehicles except where determined by the DRB to be circumventing the purpose of this Section.
 - 5) In any residential area, a sign not exceeding four (4) square feet in area may be permitted which announces the name, address or professional or home occupation of the occupant of the premises on which the sign is located.
- B) The following signs shall be prohibited in all zoning districts:
- 1) Signs which impair highway safety.

- 2) Roof signs and wall signs which extend above the roof line.
 - 3) Signs which project over public rights-of-way or property lines.
 - 4) Beacons
- C) The following requirements shall apply to all signs:
- 1) No sign may be illuminated by flashing lights of any kind or color, and no sign shall have neon, moving lights, moving parts or fluorescent paint.
 - 2) Roof and wall signs shall not extend above the roofline.
 - 3) No placement of an in-ground sign may be in excess of ten (10) feet in height (measured from the ground level to the top of the sign or support structure, which ever is higher).
 - 4) No more than two (2) business signs may be permitted on any business or industry premises.
 - 5) The display area of each sign shall not exceed twenty (20) square feet, except that a single double-faced sign may be erected with a display not to exceed twenty (20) square feet on each side.
 - 6) Offsite signs shall comply with all State laws.

Section 5.6 PERFORMANCE STANDARDS

- A) The following standard of performance must be met and maintained by all uses in all districts. Agricultural uses are exempt from these provisions in the Rural Lands and the Wellhead Protection Districts. No use of land or structure shall:
- 1) Emit odors, noise, dirt, noxious smoke or gasses or other disturbances that are offensive and uncharacteristic to the surrounding area, or which cause damage to any home, business, vegetation or other property, or which endanger the health, safety or welfare of the neighborhood.
 - 2) Present an unreasonable risk as to fire, explosion, or hazard to any adjacent property or to vehicular traffic.
 - 3) Cause sewage or other harmful waste to be discharged into any watercourse or into any disposal facility beyond its proper capacity. All local, state, and federal health standards shall be complied with.
 - 4) No building shall be erected or occupied without permanent foundations and permanent siding. Pole-barn construction shall be regarded as having permanent foundations.
 - 5) Having lighting, signs, or surfaces which create glare and which could impair the vision of a driver of any motor vehicle.
- B) No flammable or explosive liquids, solids, or gasses shall be stored in bulk (more than five hundred (500) gallons) above ground unless they are located at least fifty (50) feet from any lot line, or five (5) feet for underground storage. All materials shall be stored in a manner and location that is in compliance with applicable federal, state, and local rules and regulations.

Section 5.7 ABANDONMENT OF STRUCTURES/USES, DESTROYED STRUCTURES AND DEMOLITION

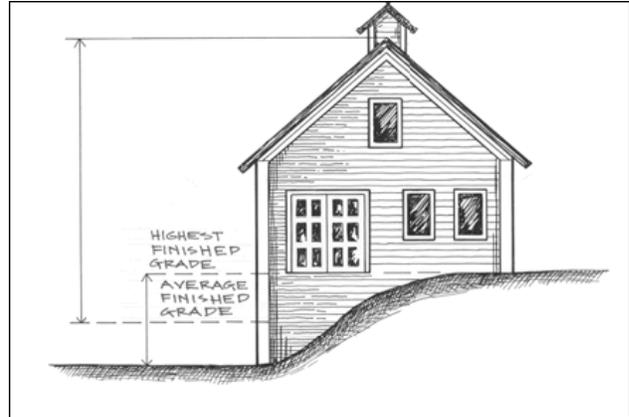
- A) **Abandonment of Uses.** Any use regulated under these Regulations shall be deemed abandoned and not reestablished if the use has been discontinued for at least one (1) year. Once the use of a property has been deemed abandoned, a zoning permit must be acquired to resume the original use.
- B) **Abandonment of Structures.** Any structure shall be deemed abandoned when it has not been used for at least one (1) year. Abandoned structures must be either maintained or demolished. There is no time limit on how long a structure may remain abandoned provided it is maintained.
- C) **Demolition of Structures.** Demolition of structures is the intentional removal or dismantling of a structure either for the purpose of replacement or returning to grade. Prior to any demolition, a zoning permit must be obtained from the Zoning Administrator.
 - 1) Within one (1) year after any structure has been demolished, all structural materials and debris shall be removed from the site, and any remaining excavation shall be covered over or filled to the natural grade and seeded by the owner to prevent erosion.
 - 2) All applicable local permits and approvals must be obtained before any reconstruction following demolition.
- D) **Destroyed Structures.** Destroyed structures are those that have been lost through accident or act of nature (fire, floods, etc.) and are treated differently than structures which have been demolished or abandoned (intentional losses of structure).
 - 1) A zoning permit is not needed for the reconstruction of a destroyed structure, if reconstructed within one (1) year with the same footprint and number of bedrooms. If a reconstruction does not fit the aforementioned criteria, all applicable local permits and approvals apply.
 - 2) Within one (1) year after the abandonment of any destroyed structure, or if active work on an uncompleted construction project on a destroyed structure has not occurred in such period, the owner shall either:
 - a) remove all debris and structural materials and restore the site to a smooth grade, or
 - b) resume construction of the structure.

Section 5.8 SCREENING REQUIREMENTS

- A) The following shall be screened with a wall, stockade fence or evergreen (or combination of the two) to a height of at least six (6) feet above grade level, on all sides where the adjacent land is a residential use:
 - 1) Public utility substation;
 - 2) Highway and fire stations and similar public garages;
 - 3) Service and parking areas for any use except operating farms and single and two-family dwellings;
 - 4) Solid Waste Disposal Facilities.
- B) The DRB may require additional landscaping and screening for any use except agricultural uses and single and two-family dwellings if they determine that the above minimum requirements are not sufficient.

Section 5.9 HEIGHT

- A) Building height is measured vertically from the highest point on top of the structure, to the average (of the highest and lowest) finished grade at the foundation or base.
- B) No structure (agriculture structures are exempt) shall exceed thirty-five (35) feet in height above ground level unless approved by the DRB under site plan review. The Board may permit structures in excess of thirty-five (35) feet provided the structure does not constitute a hazard and provided that the portion above thirty-five (35) feet shall remain unoccupied except for normal maintenance.



Section 5.10 WASTEWATER SYSTEMS

- A) **Purpose.** The purpose of this Section is to preserve the public health, prevent pollution, and secure the sanitary protection of waters. This Section is intended to ensure that wastewater is discharged into an approved wastewater system and to prevent the creation of health hazards that include, but are not limited to, surfacing wastewater, contaminated drinking water, groundwater and surface water; ensure adequate drainage related to the proper function of wastewater disposal; and ensure that facilities are designed, constructed, operated and maintained in a manner which will promote sanitary and healthful conditions.
- B) **Applicability and Standards.** All wastewater must be discharged into a properly designed and constructed disposal system or properly constructed alternative facility. This includes, but is not limited to, wastewater disposal systems for seasonal dwellings, single and multiple family homes, and commercial and industrial properties in accordance with the Wastewater System and Potable Water Supply Rules, dated August 16, 2002 or as revised from time to time, by the Vermont Department of Environmental Conservation.
- C) **Disposal System Construction Permit.** All structures, the reasonable use of which generates wastewater, must have disposal systems and must receive a Wastewater System and Potable Water Supply permit from the Agency of Natural Resources and a copy of the design plans with the engineer's signature and stamp and submit a copy to the town for records, before commencement of construction on the property. If, according to the Agency of Natural Resources, a Wastewater System and Potable Water Supply permit is not required, written proof of such shall be provided to the Zoning Administrator by the property owner/applicant. Before issuance of a Certificate of Occupancy, the applicant must submit a letter from the engineer qualifying that the septic system is built according to the state permit standards.
- The Zoning Administrator may conduct a review of state Wastewater System and Potable Water Supply permits, and may carry out onsite inspections.
- D) **Other Applicable Regulations.** In the case that any other applicable regulation, bylaw, article or statute differs from this Section, the stricter shall apply.

Building height is measured vertically from the highest point on top of the structure, to the average (of the highest and lowest) finished grade at the foundation or base.

ARTICLE 6. SPECIFIC USE STANDARDS

Section 6.1 APPLICABILITY

- A) The following standards shall apply to the specified uses in all zoning districts where such uses are allowed. Specified uses may be subject to site plan review or conditional use review. If there is a conflict between a standard in this Section and a standard in another part of these Regulations, the more restrictive shall apply.

Section 6.2 HOME OCCUPATIONS

- A) No Section of this Regulation should be interpreted so as to infringe upon the right of any resident to use a minor portion of a dwelling for an occupation which is customary in residential areas and that does not change its character.
- B) Home occupations shall be carried out without altering the residential character of the structure or neighborhood or changing the character of the lot from its principal use as a residence.
- C) Home occupations are permitted as an accessory use in all districts where residential uses are permitted subject to the following provisions:
- 1) Not over twenty-five percent (25%) of the total usable floor area in a dwelling is to be used for the home occupation. The home occupation must be clearly incidental and secondary to the residential use of the property.
 - 2) A home occupation shall be carried on by permanent residents of the dwelling unit, with not more than two (2) employees who are not residents of the dwelling unit.
 - 3) Home occupations shall be carried on wholly within the principal or accessory structures. There shall be no outside storage or display of materials or products, equipment, or vehicles.
 - 4) No traffic shall be generated that would be uncharacteristic of the neighborhood. Parking shall be provided off street and shall not be located in front yard setback areas.

Section 6.3 RESIDENTIAL CARE AND GROUP HOMES

- A) Residential care homes and group homes must be treated as single-family dwellings under these Regulations, provided that the home is operated under state licensing or registration and serves not more than eight (8) persons who have statutorily defined handicaps or disabilities as defined in 9 V.S.A. Section 4501. However, residential care and group homes shall not be permitted within one thousand (1000) feet of another existing or permitted residential care or group home.
- B) A residential care home that does not meet the above criteria may be permitted as required in Article 4 and is subject to site plan approval.

Section 6.4 STATE REGISTERED OR LICENSED CHILD CARE HOME

- A) A state registered or licensed child care home serving no more than six (6) full-time children and four (4) part-time children (as defined below) shall be considered to constitute a permitted use of property.
- 1) For purposes of this Regulation, care of a child on a part-time basis shall mean care of a school age child for not more than four (4) hours a day. These limits shall not include children who reside in the residence of the caregiver; except:

- a) These part-time school age children may be cared for on a full time basis during school closing days, snow days and vacation days which occur during the school year; and
 - b) During summer vacation, up to twelve (12) children may be cared for provided at least six (6) of these children are school aged and a second staff member is present and on duty when the number of children in attendance exceeds six (6).
- B) A state registered or licensed facility family care home serving more than six (6) full-time and four (4) part-time children may be permitted as required in Article 4 and is subject to site plan approval.

Section 6.5 ACCESSORY DWELLINGS

- A) One accessory dwelling to a single family dwelling, which meets the requirements below, may be allowed as a permitted use of property.
- 1) Floor space shall not exceed thirty percent (30%) of the floor space of the existing living area of the single-family residence or four hundred (400) square feet, whichever is greater and shall clearly be subordinate to the primary single family dwelling; and
 - 2) Shall be an efficiency or one (1) bedroom; and
 - 3) Shall have facilities, and provisions for independent living, including sleeping, food preparation, and sanitation; and
 - 4) One of the residences is occupied by the owner; and
 - 5) The property has sufficient wastewater capacity; and
 - 6) All applicable setback, coverage, and parking requirements specified in these Regulations are met.

Section 6.6 EXTRACTION OF SOILS, SAND AND GRAVEL (EXTRACTION AND QUARRYING)

- A) All new earth resource extraction or processing operations, land alterations, land filling, or excavation that would cause a substantial change in the rate or direction of drainage shall be subject to conditional use review (Section 3.3) and site plan approval for the rehabilitation of the site (Section 3.4).
- B) In obtaining a conditional use permit for a use described above, an applicant shall provide the following information in addition to the application materials required for conditional use review under Section 3.2.
- 1) A fencing and screening plan;
 - 2) An erosion and sedimentation control plan describing methods of control measures during and after construction of proposed development; and
 - 3) A description of the proposed methods of operation including types and quantity of equipment and trucks, location and method of waste disposal and a transportation plan addressing both on and off-site trucking activities.
- C) Uses regulated under this Section are also subject to the following provisions:
- 1) Operation of equipment and extraction of materials from the site shall be permitted only Monday through Saturday between the hours of 7:00 A.M. and 5:30 P.M.
 - 2) Onsite storage of more than five (5) gallons of hazardous materials from the site is prohibited.

- 3) A buffer strip of not less than one hundred (100) feet shall be maintained between the location of any extraction of materials and all property lines, and all bodies of water.
- 4) A fence shall enclose all areas of standing water, exceeding two (2) feet in depth, and areas with slopes in excess of thirty percent (30%).
- 5) Upon cessation of extraction of materials or upon the expiration of DRB approval, the site shall be rehabilitated in accordance with a plan approved and endorsed by the Natural Resource Conservation Service (NRCS) and approved by the DRB.
- 6) The DRB may require a performance bond guarantee sufficient to cover the cost of rehabilitation of the site at the conclusion of operations.

Section 6.7 MIXED USES

- A) In designated districts, more than one use may be permitted within a single building or on a single lot subject to conditional use review in accordance with Section 3.3 and the following provisions:
 - 1) Each of the proposed uses is otherwise allowed as permitted or conditional use in the district in which mixed use is proposed.
 - 2) The combined uses meet all applicable standards for the district in which the mixed use is proposed, including minimum setbacks and frontage, and minimum lot size (unless such standards are modified as part of a planned unit development).
 - 3) The mixed use meets all applicable general regulations and use provisions contained in Articles 5 and 6.

Section 6.8 MOBILE, MODULAR, AND PREFABRICATED HOUSING

- A) Mobile homes, modular homes and other prefabricated housing shall be permitted in any district on the same terms and conditions as conventional housing, provided that they are anchored to a pad or permanent foundation and a durable skirt is installed around the base, consistent with the appearance of a home.

Section 6.9 MOBILE HOME PARKS

- A) No person shall construct, expand, or alter a mobile home park without site plan approval according to Section 3.4 and conditional use approval according to Section 3.3 of these Regulations. Pursuant to state law, a mobile home park shall be defined as a parcel of land, under single ownership or control, which is used (or is to be used) to accommodate three (3) or more homes. Mobile Home Parks are subject to the following provisions:
 - 1) A mobile home park shall have a contiguous use area of not less than five (5) acres nor more than thirty (30) acres.
 - 2) A strip of land at least one hundred (100) feet wide shall be maintained as a landscaped area abutting all mobile home park boundaries. No mobile home unit or office, utility or service building may be placed in this buffer area. However, the Board may reduce or eliminate this landscaped area requirement if such modification or waiver will make it possible to preserve a scenic view from the park, provided that privacy for adjacent property owners can be maintained.
 - 3) The minimum mobile home lot size shall be one acre unless all lots are served by offsite sewage disposal, in which case the minimum lot size shall be fifteen thousand (15,000) square feet. If

both water supply and sewage disposal are offsite, the minimum lot size shall be five thousand (5,000) square feet.

- 4) Each mobile home lot shall have at least fifty (50) feet of frontage on a mobile home park road. Mobile home park roads shall have a minimum right-of-way width of twenty-five (25) feet and a compacted gravel surface at least eighteen (18) feet wide and twelve (12) inches deep. All mobile home park roads shall be private roads unless constructed to Town standards and accepted by the Selectboard for becoming public roads.
 - 5) A suitable nonporous pad of at least four (4) inches thick shall be provided for each mobile home lot. A minimum yard of five (5) feet and a minimum setback from access roads of twenty (20) feet are required for each mobile home lot.
 - 6) Sewage disposal, water supply and garbage facilities shall comply with State and local regulations. All electric, telephone and other utility lines shall be underground, unless the applicant can demonstrate that due to utility company standards or pricing procedures, an inequitable financing hardship will be created.
- B) In accordance with the requirements of the Act (Section 4412(7)(B)), if a mobile home park is a nonconformity under these Regulations, the entire mobile home park is treated as a nonconformity for purposes of discontinuance or abandonment.

Section 6.10 PUBLIC FACILITIES (LIMITATIONS)

- A) The following uses may be regulated through site plan approval and/or conditional use review, only with respect to location, height, size, 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:
- 1) State or community owned and operated institutions and facilities.
 - 2) Public and private schools and other educational institutions certified by the State Department of Education.
 - 3) Churches and other places of worship, convents, and parish homes.
 - 4) Public and private hospitals.
 - 5) Regional solid waste management facilities certified under 10 V.S.A. Chapter 159.
 - 6) Hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. Section 6606a.

ARTICLE 7. SUBDIVISION REVIEW

TABLE 7.1 SUBDIVISION REVIEW AT A GLANCE	
Sketch Plan (all subdivisions)	
1) Submission of sketch plan	Applicant; at least 16 days prior to a regularly scheduled DRB meeting
2) DRB meeting	Applicant attendance required
3) Classification of subdivision as minor or major; action on request for waivers (if any); written recommendations for changes.	DRB; within 60 days of determining that the sketch plan is complete
Minor Subdivision (3 or fewer lots)	
1) Submission of final subdivision plan, proposed plat and supporting documentation	Applicant; within 6 months of the date of sketch plan approval
2) DRB public hearing	DRB; warned hearing in accordance with Section 2.4.
3) Subdivision/plat approval	DRB; within 45 days of the hearing adjournment date
4) Final plat recording in the town records	Applicant; within 180 days of the date of subdivision approval
5) Certificate of Compliance	Applicant and Zoning Administrator; if required, after all improvements are completed
Major Subdivision (4 or more lots)	
1) Submission or preliminary subdivision plan, supporting documentation	Applicant; within 1 year of the date of sketch plan approval
2) DRB public hearing	DRB; warned hearing in accordance with Section 2.4
3) Preliminary subdivision/plat approval	DRB; within 45 days of the hearing adjournment date
4) Submission of final subdivision plan and plat. Including supporting documentation	Applicant; within 1 year of the date of preliminary plan approval
5) Final DRB public hearing	DRB; earliest available regular or special meeting
6) Final subdivision/plat approval	DRB; within 45 days of the hearing adjournment date
7) Final plat recording	Applicant; within 180 of the date of subdivision approval

Section 7.1 APPLICABILITY

- A) Whenever any subdivision of land is proposed that is not specifically exempted from these provisions in B below, subdivision approval by the DRB is required prior to undertaking:
- 1) any sale, conveyance, or lease of any subdivided portion of a property; or
 - 2) any construction, building development, grading, or land clearing (excluding forestry, or agricultural or surveying activities) associated with the subdivision of land; or
 - 3) the issuance of any permit for any land development involving land to be subdivided; or
 - 4) the filing of a subdivision plat with the Town Clerk.
- B) **Exemptions.** Parcels leased solely for agricultural or forestry purposes, where no new roads are created, are exempted from the requirements of subdivision regulations.
- C) **Minor and Major Subdivisions.** For the purpose of these Regulations, subdivisions shall be classified as minor subdivisions or major subdivisions in accordance with the following:
- 1) Minor Subdivisions shall include any subdivision of a parcel into three (3) or fewer lots, boundary line adjustments and amendments to an approved minor subdivision plan.
 - 2) Major subdivisions shall include any subdivision of a parcel of land into four (4) or more lots, Planned Unit Developments (PUD) that meet the definition of a subdivision, and amendments to an approved major subdivision.
- D) **Coordination with Planned Unit Development Review.** Subdivision applications for Planned Unit Developments that meet the definition of a subdivision under Article 10 shall be reviewed as major subdivisions under this Article. Conditional Use Review under Article 3 may occur concurrently with final subdivision review if all application and procedural requirements pertaining to each respective review process are met.
- E) **Waivers.** The DRB may waive or vary one or more application requirements and/or subdivision standards under Article 8 if the Board determines that the requirement or standard:
- 1) is not necessary in the interest of the public health, safety and general welfare; and
 - 2) will not have the effect of nullifying the intent and purpose of applicable provisions of these Regulations, the Berkshire Town Plan and/or other municipal regulations and ordinances in effect. The request for a waiver shall be submitted in writing by the subdivider with the sketch plan. It shall be the responsibility of the subdivider to provide sufficient information to allow the DRB to justify the waiver.
- F) **Boundary Adjustments.** Applications for boundary adjustments, which are determined by the Zoning Administrator to not create any additional lots, make conforming lots nonconforming, or increase the nonconformance of any existing lot or use, may be exempted from sketch plan review and proceed immediately from application to final plan approval.

TABLE 7.2 SUBDIVISION APPLICATION REQUIREMENTS			
Application Information	Sketch	Draft Plat	Final Plat
1) Application form [number of copies]	1 original & 3 copies	1 original & 3 copies	1 original & 3 copies
2) Application fee [to be set by Selectboard]	✓	✓	✓
3) Name of project, if any	✓	✓	✓
4) Name, address of applicant [landowner and/or subdivider]	✓	✓	✓
5) Written description of proposed development plans, including number and size of lots; general timing of development	✓	✓	✓
6) Waiver request, in writing [optional]	✓	✓	
7) Names, addresses of all adjoining property owners*	✓		
8) Evidence of written notification to adjoining owners of intent to subdivide; to include copies of any waiver request*	✓		
Plan/Plat Mapping Requirements	Sketch	Draft Plat	Final Plat
1) Materials	Paper	Paper	Mylar
2) Preparer information, certifications	✓	✓	✓
3) Scale (minimum 1 inch = 200')	✓	✓	✓
4) Date, north arrow, legend	✓	✓	✓
5) Project boundaries and property lines	Drawn	Drawn	Surveyed
6) Existing and proposed lot lines, dimensions	Drawn	Drawn	Surveyed
7) Adjoining land uses, roads, and drainage	✓	✓	✓
8) Zoning district designations and boundaries	✓	✓	✓
9) The location of natural and physical features located on the site, including buildings; roads, driveways, and parking areas; fences and walls; watercourses; wetlands; areas of slope in excess of 20%; historic or archeological resources	✓	✓	✓
10) A general indication of land cover, including forested areas and forest type, land in current or recent (prior to 3 years) agricultural production	✓	✓	✓
11) Existing and proposed elevations, contour lines*		5' interval	5' interval
12) Existing and proposed roads, paths, parking areas, associated rights-of-way or easements	Drawn	Surveyed	Surveyed
13) Proposed building envelopes	✓	✓	✓

Plan/Plat Mapping Requirements (Continued)	Sketch	Draft Plat	Final Plat
14) Proposed utilities, water and wastewater systems and associated rights-of-way or easements	✓	✓	✓
15) Road profiles; road, intersection, and parking area geometry and construction schematics		✓	✓
16) Proposed landscaping and screening		✓	✓
17) Proposed conservation buffer and/or open space easement areas*		✓	✓
Supporting Information and Documentation	Sketch	Draft Plat	Final Plat
1) Site location map showing proposed subdivision in relation to major roads, drainage ways, and adjoining properties	✓	✓	✓
2) Statement of compliance with municipal plan and applicable local regulations	✓	✓	✓
3) Engineering reports (water and wastewater systems)		✓	✓
4) Existing and proposed traffic generation rates, volumes*		Estimated	Documented
5) Off-site easements (e.g. for water, wastewater, access)	Description	Draft	Final
6) Proposed phasing schedule*	Description	Draft	Final
7) Proposed covenants and/or deed restrictions	Description	Draft	Final
8) Proposed homeowner or tenant association or agreements	Description	Draft	Final
9) Proposed performance bond or surety*		Description	Final
As may be Required by the DRB	Sketch	Draft Plat	Final Plat
1) Stormwater and erosion control plan		As required under sketch plan approval	As required under sketch plan approval
2) Grading plan (showing proposed areas of cut and fill)			
3) Shoreland or open space management plan			
4) Site reclamation plan (for subdivisions involving extraction)			
5) Traffic impact analysis (current and proposed traffic volumes, capacities, levels of service, proposed improvements)			
6) Fiscal impact analysis (analysis of fiscal costs and benefits to the town)			
7) Historic and archeological assessment			

As may be Required by the DRB (Continued)	Sketch	Draft Plat	Final Plat
8) Environmental impact analysis (analysis of potential environmental impacts, proposed mitigation measures)		As required under sketch plan approval	As required under sketch plan approval
9) Other		As required under sketch plan approval	
* Upon written request may be waived by the DRB			

Section 7.2 SKETCH PLAN REVIEW (APPLYING TO ALL SUBDIVISIONS)

- A) **Application Requirements.** At least sixteen (16) days prior to a regularly scheduled DRB meeting, the applicant shall submit to the Zoning Administrator one (1) original and three (3) copies of a subdivision application and proposed sketch plan as specified in Table 7.2 and the associated fee.
- B) **Sketch Plan Review Meeting.** The applicant and/or an authorized representative shall attend a regularly scheduled DRB meeting for the purpose of discussing the subdivision application and the proposed sketch plan. Requirements of these Regulations related to road improvements, drainage, sewerage, water supply, fire protection, availability of services and other related aspects will be reviewed. The Board may request additional information needed to act on the sketch plan or may request that certain changes be made to subsequent submissions of the proposed plan.
- C) **Action on Sketch Plan.** Within thirty (30) days of finding that a sketch plan application is complete, the DRB, based on information provided, shall issue in writing;
 - 1) A determination on whether the subdivision is a minor subdivision to be reviewed under Section 7.4 or a major subdivision to be reviewed under Sections 7.3 and 7.4.
 - 2) The granting or denial of any requests to waive any provisions of the subdivision regulations.
 - 3) A preliminary determination of whether or not the proposed subdivision plan conforms to applicable subdivision standards under Article 8, or would be in conflict with the Berkshire Town Plan and other municipal regulations currently in effect.
 - 4) Recommendations for changes in subsequent submissions, and/or requests for additional studies or supporting documentation.
- D) **Effect of Sketch Plan Determinations.** DRB determinations and associated recommendations shall remain in effect for six (6) months from the date of issuance, unless otherwise approved or extended in the written determinations issued by the Board. Within six (6) months of the determination by the Board, the applicant may apply to the Board for preliminary plan review for a major subdivision under Section 7.3 or final and plat approval for a minor subdivision under Section 7.4.

Section 7.3 PRELIMINARY PLAN APPROVAL (MAJOR SUBDIVISIONS ONLY)

- A) **Application Requirements.** Within six (6) months of the date of action on a sketch plan by the DRB, the applicant shall submit an application and associated fees for preliminary plan and plat approval that includes, unless otherwise specified or waived by the Board under Section 7.2(C), an original and three (3) copies of the information required for preliminary plan review as specified in Table 7.2.
- B) **Public Notice.** Within thirty (30) days of receipt of a complete preliminary plan application, the Board shall hold a public hearing on the preliminary plan, warned in accordance with Section 2.4.

- C) **Preliminary Plan Approval.** Within forty-five (45) days of the date of adjournment of the public hearing, the DRB shall approve, approve with modifications, or disapprove the preliminary plan and associated plat based on a determination of whether or not the preliminary plan conforms to applicable subdivision review standards under Article 8, or would be in conflict with the Berkshire Town Plan and other municipal regulations in effect. The Board may also require conditions of approval with respect to requiring changes or modifications to the preliminary plat or the amount of improvement or amount of all bonds required as a prerequisite to the approval of the subdivision plat.
- D) **Phasing.** At the time the DRB grants preliminary plan approval it may require the plat to be divided into two (2) or more phases to ensure project conformity with the Berkshire Town Plan currently in effect. Conditions may be imposed upon the filing of application for final plat approval for each phase as the Board deems necessary to ensure the orderly development of the plat and to avoid overburdening of town facilities and services.
- E) **Effect of Preliminary Plan Approval.** Approval of the preliminary plan shall not constitute approval of the final subdivision plan and plat. Following approval of the preliminary plan, the DRB may require the submission of a list of all applicable approvals being sought from municipal officials and/or agencies having jurisdiction over the project (e.g., Selectboard, Health Officer), and such state and federal agencies as may be required by law. Upon the expiration of all relevant appeal periods, the applicant may apply to the Board for final plan approval under Section 7.4.

Section 7.4 FINAL PLAN REVIEW (APPLYING TO ALL SUBDIVISIONS)

- A) **Application Requirements.** Within six (6) months of the date of sketch plan approval for minor subdivisions, or preliminary plan approval for major subdivisions, the subdivider shall submit an application for final subdivision plan approval, including plat approval. If the subdivider fails to do so, s/he will be required to resubmit for minor subdivisions a new sketch plan, or for major subdivisions a new preliminary plan, for approval subject to any new zoning and subdivision regulations. The application for final subdivision plan and plat approval shall include associated fees and, unless otherwise specified or waived by the DRB under Section 7.2(C), an original and three (3) copies of the information for final plan and plat review as specified in Table 7.2
- B) **Public Hearing.** Within thirty (30) days of the date the DRB deems that a final plan application is complete, the Board shall hold a public hearing on the final plan and associated plat, warned and held in accordance with Section 2.4. Copies of the hearing notice shall be sent, at least fifteen (15) days prior to the hearing date, to the clerk of an adjacent municipality in the case of a plat located within five hundred (500) feet of a municipal boundary.
- C) **Final Plan Approval.** Within forty-five (45) days of the date of adjournment of the public hearing, the DRB shall issue a written decision in accordance with Section 2.6 that will either approve, approve with conditions, or disapprove the final subdivision plan, based on a determination of whether or not the plan and associated plat conform to subdivision review standards under Article 8, or would be in conflict with the Berkshire Town Plan and other municipal regulations in effect.
- D) **Effect of Final Plan Approval.** The approval of the DRB of a final subdivision plan and associated plat shall not be construed to constitute acceptance of any legal interest by the Town of any road, easement, utility, park, recreation areas, or other open space shown on the final plat. Such acceptance may be accomplished only by a formal resolution of the Selectboard, in accordance with state statute. Each approval for a final plan may contain a time limit within which all improvements necessary for the subsequent development of the subdivided lots (e.g., roads, utilities) shall be completed, not to exceed three (3) years unless otherwise required or extended by the DRB.

Section 7.5 PLAT RECORDING REQUIREMENTS

- A) Within one hundred eighty (180) days of the date of receipt of final plan approval under Section 7.4(C), the applicant shall file three (3) copies of the final subdivision plat, including one (1) mylar copy and two (2) paper copies, for recording with the Town in conformance with the requirements of 27 V.S.A Chapter 17. Approval of subdivision plats not filed and recorded in this one hundred eighty (180) day period shall expire. The Zoning Administrator may; however, grant an extension for plat filing in the event the applicant documents that other required local and/or state permits are still pending.
- B) Prior to plat recording:
 - 1) The plat must be signed by the Chair of the DRB.
 - 2) When required as a condition of approval, the subdivider must file any performance bond or comparable surety with the Selectboard to ensure completion of any improvements in accordance with approved specifications.

Section 7.6 REVISIONS TO AN APPROVED PLAT

- A) No changes, modifications, or other revisions that alter the plat or conditions attached to an approved subdivision plan shall be made unless the proposed revisions are first submitted to the DRB as a minor or major subdivision, which ever applies, and the Board approves such revisions after a public hearing. In the event that such subdivision plan revisions are recorded without complying with this requirement, the revisions shall be considered null and void.

ARTICLE 8. SUBDIVISION PLANNING AND DESIGN STANDARDS

Section 8.1 EVALUATION AND APPLICATION STANDARDS

- A) The DRB shall evaluate any minor or major subdivision in accordance with the procedures described in Article 7 and the standards set forth below. The Board may, as a result of findings made concerning the proposed subdivision's conformance with these standards, require modification of subdivision design, phasing of the proposed subdivision, and/or additional measures to avoid or mitigate any adverse impacts likely to result from the proposed subdivision.

Section 8.2 GENERAL STANDARDS

- A) **Character of the Land.** All land to be subdivided shall be, in the judgment of the DRB, of such a character that it can be used for the intended purpose(s), as stated in the application, without danger to public health or safety, the environment, neighboring properties, or the character of the area or district in which it is located.
- B) **Conformance with the Berkshire Town Plan and Other Regulations.** Subdivisions of land shall be in conformance with all applicable requirements of these Regulations, the Berkshire Town Plan currently in effect, and all other municipal bylaws, regulations and ordinances currently in effect.
- C) **Compatibility with Existing Settlement Patterns.** Subdivisions shall be designed and laid out to achieve the purpose and desired settlement pattern of the district in which they are located. To the extent feasible, new subdivisions shall:
- 1) maintain and extend desired settlement patterns, including lot area and configuration, road layout, and building locations, for the neighborhood or district in which they are located;
 - 2) maintain contiguous tracts of open land; and
 - 3) connect to, and extend where appropriate, existing road, path, utility and open space corridors.
- D) **Density and Lot Layout.** Density, lot size, and layout shall conform to zoning district standards pertaining to frontage, lot and yard requirements (Article 3), unless modified or waived by the DRB under planned unit development provisions, in accordance with Article 9. In addition:
- 1) Lower densities of development may be required by the Board based on site limitations.
 - 2) Lot layout shall be appropriate for the intended use, and reflect the purpose of the district in which lots are created.
 - 3) Corner lots shall have sufficient width to permit a front yard setback from each road.
 - 4) Side lot lines shall generally be at right angles to straight roads, or radial to curved roads.
 - 5) Lots with irregular shapes (curves, jogs, dog-legs, etc.) shall not be created unless warranted by conditions of topography, the location of natural features, or existing roads.
- E) **Establishment of Building Envelopes.** All lots shall have a designated building envelope. Such building envelope shall be designed to identify and limit the location of principal and accessory structures, parking areas, and associated site development (excluding road and utility rights-of-way or easements) on one or more portions of a lot. The size and shape of the building envelope shall be at a minimum determined by district setback requirements, unless otherwise specified in these Regulations. The Board may require the identification of specific building footprints, if, in their judgment, such information as required to meet the standards set forth in these Regulations.

- F) **Landscaping and Screening.** The preservation, planting and/or maintenance of trees, hedges, ground cover and other vegetation in one or more areas of land to be subdivided, may be required by the DRB in the following instances:
- 1) to provide an undisturbed, vegetated buffer between developed and undeveloped portions of a subdivision to protect water quality and/or other natural features in accordance with Sections 8.3;
 - 2) to provide for stormwater infiltration and management;
 - 3) to provide screening of development to increase privacy, reduce noise and glare, or to otherwise soften and/or lessen its visual impact;
 - 4) to establish and maintain street trees along public or private roads to create a canopy effect and/or maintain a pedestrian scale where the Board deems appropriate;
 - 5) to preserve existing specimen trees, tree lines, hedgerows, and wooded area of particular natural or aesthetic value to the site, or critical wildlife habitat; and/or
 - 6) to establish buffers or barriers between incompatible land uses.
- G) **Energy Conservation.** To conserve energy, all subdivisions shall use the least amount of area for roadways and the least length of sewer, water and utility lines within environmentally and economically sound limits. Clustered development (i.e. Planned Unit Developments) shall be considered wherever feasible, desirable, and allowed. The siting of buildings should maximize solar access where feasible, and landscaping should effectively be used to provide wind barriers and reduce heat loss or gain,

Section 8.3 PROTECTION OF NATURAL RESOURCES

- A) **Significant Natural Features.** Subdivision boundaries, lot layouts, and building envelopes shall be located and configured to avoid any adverse impact critical areas as identified in the Berkshire Town Plan. Methods for avoiding such adverse impacts include, but may not be limited to, locating and sizing building envelopes to exclude these features, designating undisturbed buffer area to protect the identified feature(s), and designing roads, driveways, and utilities to avoid and/or prevent the fragmentation of identified features and minimize adverse visual impacts to the extent feasible.
- B) **Farm Land.** Within the Rural Lands District, subdivision boundaries, lot layout, and building envelopes, to the extent feasible, shall be located and configured to avoid adverse impacts to prime and statewide agricultural soils and other productive farmland. Methods for avoiding such adverse impacts include, but may not be limited to, locating building envelopes at field and orchard edges and/or on the least fertile soils, designating vegetated buffer areas between agricultural and other proposed uses to minimize land use conflicts, designing access roads, driveways, and utility corridors to follow existing linear features, and sharing access to the extent feasible.

Section 8.4 STORMWATER MANAGEMENT AND EROSION CONTROL

- A) **Stormwater Management.** Stormwater drainage, infiltration, retention and treatment facilities, including culverts and ditches, shall be designed to accommodate potential stormwater runoff from the entire upstream drainage areas, based on conditions of total potential development. The DRB may require the subdivider to maintain post-development peak storm flows at predevelopment levels. All stormwater management facilities shall be designed in accordance with the best management practices (BMPs) for stormwater management as most recently defined by the Vermont Agency of Natural Resources. The preparation and implementation of a stormwater management plan, prepared by a professional engineer licensed by the state, may be required by the DRB. Off-site easements and/or management facilities may also be required by the Board as needed to

accommodate stormwater runoff on adjoining properties or downstream from the proposed development.

- B) **Erosion Control.** Land shall be subdivided and improved so as to retain, insofar as possible, the natural contours and to conserve the natural cover and soil. All areas exposed during construction shall be protected in accordance with standards of the Vermont Agency of Natural Resources, or other appropriate regulatory body. Permanent vegetation and structures shall be established according to a schedule as required by the Board. The Board may require the preparation and implementation of a sedimentation and erosion control plan to ensure site improvements, including excavation, road and driveway construction, and site clearing and grading shall not unduly impact neighboring properties or surface waters. Such a plan, if required, shall be prepared by a licensed engineer.

Section 8.5 COMMUNITY SERVICES AND FACILITIES

- A) **Municipal Facilities and Services.** The proposed subdivision shall not create an undue burden on municipal facilities or create an unreasonable demand for public services (for example, shall not result in an increase in student enrollment in excess of existing or planned school capacity) in accordance with the Town Plan.
- B) **Fire Protection Facilities.** Adequate water storage or distribution facilities for fire protection within the subdivision shall be provided to the satisfaction of the DRB. Where practicable, or where required by the Board, fire hydrants, dry hydrants, or ponds shall be installed by the subdivider. The applicant shall submit documentation from the Berkshire Fire Department as to the adequacy of emergency access and fire protection facilities.
- C) **Park Lands and School Sites.** The DRB may require as a condition to subdivision approval, the dedication of land or payment of a fee in lieu of land for public recreation and school purposes. The DRB shall develop uniform criteria for determining when to require land dedication or a fee alternative, the amount of land or fee to be exacted, the uses to which the land or fee are to be put, and the manner in which the land is to be put and the manner in which dedication or payment is to be made. In developing uniform criteria, the DRB shall consider the following factors:
- 1) Acreage size of proposed subdivision.
 - 2) Physical suitability of the applicant's land for use as a park or school site.
 - 3) The minimum area required for practical use for such purposes.
 - 4) Whether use of the applicant's for such purposes would conform to the Town's recreation plans and the school district's facility plans.
 - 5) The potential need for school sites or park land that the proposed subdivision may generate.

Section 8.6 ROADS AND PEDESTRIAN ACCESS

- A) **Applicability of Road Standards.** The following standards shall apply to all proposed public roads and to private roads serving four (4) or more lots. In addition, these standards may be applied to private roads serving three (3) or fewer lots when the DRB determines such standards are necessary to provide suitable access to, or accommodate anticipated future subdivision. Acceptance of private roads by the Town is subject to the approval of the Berkshire Selectboard. Construction of these roads to these standards in no way ensures such acceptance.
- B) **Road Design.** All roads serving a proposed subdivision shall be designed in accordance with Town standards currently in effect and shall generally conform to the dimensional and geometric design

standards for local roads and streets contained within the Vermont State Standards for the Design of Transportation Construction, Reconstruction and Rehabilitation on Freeways, Roads and Streets, dated October, 1977, or as recently amended. Minimum design standards include the following:

- 1) Rights-of-way for all roads shall be a minimum of fifty (50) feet in width.
 - 2) Dead end roads and cul-de-sacs are specifically discouraged. No dead end road shall be permitted without a suitable turn around at its terminus. This must consist of a cul-de-sac with a radius of thirty (30) feet, or a "T" or "Y" configuration suitable to topography.
 - 3) Roads shall logically relate to topography to minimize site disturbance, including the amount of cut and fill required, and to produce usable lots, reasonable grades and safe intersections in relation to the proposed use of land to be served by such roads. Road grades should be consistent with local terrain.
 - 4) Roads shall, to the extent feasible, be designed and laid out to:
 - a) to avoid adverse impacts to natural, historic, cultural and scenic resources;
 - b) to be consistent with existing road patterns in village and other settlement areas;
 - c) to maximize connectivity within the subdivision and to adjoining parcels and road networks;
 - d) to follow existing linear feature, such as utility corridors, tree lines, hedgerows and fence lines.
- C) **Road Construction Standards.** Road construction, including specifications relating to crown, grade, sub-base and surfacing, shall conform to the Vermont Agency of Transportation's Standard A-76, as most recently amended.
- D) **Drainage and Stormwater.** A stormwater drainage system shall be provided which is designed to control and accommodate stormwater collected on all proposed roads and/or parking areas in accordance with Section 8.4 of these Regulations. Generally, roadbeds, shoulders, ditches and culverts shall be designed and maintained in conformance with the Vermont Better Backroads Manual, as most recently amended.
- E) **Coordination with Adjoining Properties.** The arrangement of roads in all subdivisions shall provide for continuation of roads from existing adjoining subdivisions and for proper projection of roads through adjoining properties which are not yet subdivided, in order to facilitate necessary fire protection, movement of traffic, and construction or extension of needed utilities and public services, needed presently or when later required. Where, in the opinion of the DRB, topographical or other conditions make such continuance undesirable or impracticable, the above conditions may be modified.
- F) **Access Permits.** In accordance with statute and Section 5.2, all road access shall be subject to the approval of the Vermont Agency of Transportation in the case of state highways and the Berkshire Selectboard in case of Town roads.
- G) **Access Management.** In addition to access requirements under Section 5.2, to better manage traffic flow and safety, avoid congestion and frequent turning movements, preserve the carrying capacity of important travel corridors, and to avoid strip development, the following access management standards shall apply to all subdivisions:
- 1) Shared driveways and/or internal development roads providing access to multiple lots are encouraged and may be required to limit the number of access points onto public highways in accordance with Section 5.2.
 - 2) If a subdivision has frontage on primary and secondary roads, access shall be from the one with the least amount of traffic unless the Board determines that topographical or traffic safety conditions make such an access impracticable.
 - 3) Where extensions of new roads could provide future access to adjoining parcels, a right-of-way shall be provided.

- 4) The creation of reserved strips shall not be permitted adjacent to a proposed road in such a manner as to deny access from adjacent property to such road.
- H) **Traffic.** Traffic to be generated by the proposed subdivision shall not create unreasonable traffic congestion or cause unsafe conditions on public roads in the vicinity of the subdivision. The DRB may request the preparation of a traffic impact study to identify impacts and mitigation measures necessary to ensure road safety and efficiency, the cost of which to be borne by the applicant. The implementation, including road improvements, necessitated by the subdivision shall be the responsibility of the applicant.
- I) **Upgrades to Existing Roads.** Where an existing access road is inadequate or unsafe, the DRB, in consultation with the Selectboard, may require the subdivider to upgrade the access road to the extent necessary to serve additional traffic resulting from the subdivision and to conform to these standards. Where a subdivision requires expenditures by the Town to improve existing road(s) to conform to these standards, the DRB may disapprove such subdivision until the Selectboard certifies that funds for the improvements have been ensured. The subdivider may be required to contribute to any or all of the expenses involved with road improvements necessitated by the project.
- J) **Driveways.** Driveways shall generally comply with the Vermont Agency of Transportation's Standard B-71 for residential and commercial driveways, as most recently amended and the requirements of Section 5.2.
- K) **Modification of Road Standards.** In the case of unusual topographical conditions or other circumstances which would make the strict adherence to these standards a substantial hardship, the Board may modify the strict application of one or more of these standards providing the applicant can demonstrate that the proposed road is accessible by emergency response vehicles, does not pose any threat to the safety of motorists or pedestrians, will not result in unreasonable maintenance requirements for landowners, and is designed in a manner that is consistent with other applicable standards or these Regulations.
- L) **Pedestrian and Bicycle Access.** The DRB may require pedestrian rights-of-way to facilitate pedestrian and bicycle circulation within the subdivision and to ensure access to adjoining properties, uses, or public facilities.
- 1) In order to facilitate pedestrian and bicycle access from a subdivision to schools, parks, playgrounds, or other nearby roads, the Board may require perpetual unobstructed easements at least twenty (20) feet in width. Easements shall be indicated on the plat.
 - 2) Unless specifically waived by the Board, sidewalks shall be required along internal streets of major subdivisions and may be required along major arteries within or bordering the subdivision, and to connect to existing sidewalks on adjoining properties.

Section 8.7 WATER SUPPLY AND WASTEWATER DISPOSAL

- A) **Individual Systems.** Individual water and wastewater systems shall meet all local and state regulations, including design, installation and maintenance, in accordance with Section 5.10.
- B) **Community (Shared) Systems.** Proposed development may be serviced by private, community water and/or wastewater systems which shall be designed and installed in accordance with all applicable local and state regulations and standards.

Section 8.8 UTILITIES

- A) **Location.** All utility systems, existing and proposed, throughout the subdivision shall be shown on the final plat, and be located as follows:

- 1) All utility systems, which may include but not be limited to, electric, gas, telephone, fiber optics, and television cable, shall be located underground throughout the subdivision, unless deemed unreasonable and prohibitively expensive by the DRB (for example, burial would require extensive blasting and ledge removal for most of the length of the utility extension).
 - 2) The subdivider shall coordinate subdivision design with utility companies to insure adequate and suitable areas for under or above ground installation, both for the proposed subdivision, and areas adjacent to the subdivision.
 - 3) Utility corridors shall be shared with other utility and/or transportation corridors where feasible, and be located to minimize site disturbance, the fragmentation of agricultural land and open space, any adverse impacts to natural, cultural or scenic resources, and to public health.
- B) **Utility Easements.** Utility easements of sufficient width shall be provided so as to serve both the proposed subdivision and existing and anticipated development outside the subdivision. Such easements shall be shown on the final plat.

Section 8.9 LEGAL REQUIREMENTS

- A) Every subdivision plat shall show all proposed road and pedestrian rights-of-way, as required under these Regulations, regardless of whether a proposed right-of-way is intended to be accepted by the Town. In the event that the right-of-way is not intended for acceptance by the Town, the mechanism by which the right-of-way is to be maintained, owned and/or conveyed shall clearly be documented.
- B) Documentation and assurance shall be provided that all required improvements, associated rights-of-way and easements, and proposed roads and rights-of-way will be adequately maintained either by the applicant, a homeowners' association, or through other legal mechanisms. Such documentation shall be in a form approved by the Board and filed in the Berkshire Land Records.
- C) All required improvements shall be constructed to approved specifications in accordance with a construction schedule approved by the DRB. A performance bond or comparable surety may be required to ensure that all improvements are complete to specification. Such bond shall be posted in accordance with Section 3.2 (5) of these Regulations.

ARTICLE 9. PLANNED UNIT DEVELOPMENTS

Section 9.1 APPLICABILITY

- A) In accordance with Section 4417 of the Act and the provisions below, the DRB is permitted to modify this Regulation for a planned unit development (PUD). To qualify, a PUD project shall contain at least five (5) contiguous acres and conform to the definitions of this Regulation and to the requirements of the Act.

Section 9.2 PURPOSE

- A) The purpose of this provision is:
- 1) To encourage compact, pedestrian-oriented development, and to promote mixed residential uses or nonresidential uses, or both;
 - 2) To implement the policies of the Berkshire Town Plan;
 - 3) To encourage any development in the countryside to be compatible with the use and character of surrounding rural lands;
 - 4) To provide 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 of the area as articulated in the municipal plan and regulations within the particular character of the site and its surroundings;
 - 5) To provide for conservation of open space features recognized as worthy of conservation in the municipal plan and regulations, such as the preservation of agricultural land, forest land, trails, and other recreational resources, critical and sensitive natural area, scenic resources, and protection from natural hazards;
 - 6) To provide for efficient use of public facilities and infrastructure; and
 - 7) To encourage and preserve opportunities for energy efficient development.

Section 9.3 APPLICATION REQUIREMENTS

- A) An application for PUD approval shall be reviewed simultaneously with an application for a major subdivision and/or site plan review, as applicable. Approval for a PUD that involves the development of one (1) or more conditional uses shall not exempt the proposed development from conditional use review in accordance with Article 3. In addition to the information required for subdivision review described in Table 7.2, applications for PUDs must include the following:
- 1) a statement setting forth the nature of all proposed modifications or changes to this Regulation and the standards and criteria which the applicant proposes for the development, including standards for the design, bulk and spacing of buildings and sizes of lots and open spaces;
 - 2) a brief summary of the project and how it meets the standards in this section; and
 - 3) additional information required by the DRB to determine whether the proposed mix of uses, density and scale and intensity of uses will meet the standards set forth in these Regulations.

Section 9.4 GENERAL STANDARDS

A) PUDs are subject to the following provisions:

- 1) The project shall be consistent with the Town Plan, and the predominant uses of the site shall not differ substantially from the uses allowed in the district in which the project is located.
- 2) Density may vary within any PUD; however, the number of dwelling units shall not exceed the number permitted, in the DRB's judgment, if the land were subdivided in conformance with the applicable district requirements of this Regulation.
- 3) In any PUD, the DRB may grant a density bonus not to exceed twenty percent (20%) more than could be permitted, in the DRB's judgment, if the land were subdivided in conformance with the applicable district requirements of this Regulation.
- 4) In the case of affordable housing developments, a density bonus of twenty percent (20%) beyond the number which could be permitted in the judgment of the DRB, if the land were subdivided in conformance with the applicable district requirements of this Regulation.
- 5) Except in the Expanded Village district, lot sizes may not be less than one-half (1/2) acre.

Section 9.5 OPEN SPACE AND COMMON LAND

A) **Intent.** Planned Unit Developments shall be designed to preserve open space and/or common land for parks, recreation, critical areas as identified in the Berkshire Comprehensive Town Plan, agricultural land, scenic views, and/or historic site protection.

B) **Preservation of Open Space/Common Land.** The location, size and shape of lands set aside to be preserved for open space and/or common land shall be approved by the DRB, in accordance with the following:

- 1) The location shape, size and character of the open space/common land shall be suitable for its context and intended use.
- 2) Open space/common land shall be configured to be contiguous with existing and/or potential open space or common land and conform with and extend existing areas sharing similar characteristics or natural features and resources on adjacent parcels.
- 3) Areas preserved for agricultural and forestry use should be of a size that retains their eligibility for available tax abatement programs.
- 4) Sewage disposal areas and utility and road rights-of-way or easements, access and parking areas shall not be counted as open space or common land areas, except where the applicant can prove, to the satisfaction of the DRB that they will in no way disrupt or detract from the values for which the open space is to be protected.

C) **Legal Requirements.** The open space shall be restricted from future subdivision through a conservation easement or deed restriction, or other similar tool legally enforceable by the Town. The applicant shall establish the person or entity responsible for maintenance and long term stewardship. All costs associated with administering and maintaining open space and/or common land shall be the responsibility of the applicant and subsequent land owners. Open space and common land shall be indicated with appropriate notation on the final plat.

Section 9.6 APPROVAL REQUIREMENTS

- A) Upon approval of the PUD by the DRB, the necessary modifications of these Regulations shall be noted in a written report and, together with the approved proposal, be submitted to the Zoning Administrator. All other provisions of these Regulations not specifically modified shall remain in force and be applicable to the project.

- B) As provided by the Act (Section 4417) the DRB may prescribe from time to time, supplementary rules and regulations for any planned unit development. The DRB shall hold a public hearing prior to the establishment of any such rules and regulations.

ARTICLE 10. DEFINITIONS

Section 10.1 INTERPRETATIONS

- A) Except where specifically defined, all words in this Regulation shall carry their customary meanings. Words used in the present tense include the future, and the singular include the plural: the word “shall” is mandatory; “occupied” or “used” shall be considered as though followed by “or intended, arranged or designed to be used or occupied”.

Section 10.2 DEFINITIONS

Adjoiner: The owner of a property that shares a property boundary with a tract of land where a proposed or actual development or subdivision is located; or is adjacent to the tract of land where a proposed or actual development or subdivision is located and the two properties are separated only by a river, stream, or public highway.

Accessory Use or Structure: A use or structure that is customarily both incidental and subordinate to the principal use or structure on the same lot only. The term “incidental” in reference to the principal use or structure shall mean both (a) subordinate and minor in significance to the principal use of the structure, and (b) attendant to the principal structure.

Accessory Dwellings: Apartment units within, attached or separate to single family residences where the accessory apartment is subordinate and minor in significance to the principal structure. (See Section 6.5 for details.)

Act: The Vermont Municipal and Regional Planning and Development Act (24 V.S.A. Chapter 17), as amended from time to time.

Affordable Housing: Housing that is owned or rented by its inhabitants, whose gross annual household income does not exceed eighty percent (80%) of the county median income, as defined by the United States Department of Housing and Urban Development, and the total cost of the housing, including principal, interest, taxes and insurance, or rent, utilities and condominium association fees, is not more than thirty percent (30%) of the household's gross annual income. (24 V.S.A. Section 4303 (1) (A).)

Agribusiness: Any individual, partnership, corporation, or organization primarily supplying services or goods (such as feeds, livestock, supplies, or the sale of major farm equipment such as tractors, spreaders, bulk tanks, etc.) to producers of marketable agricultural products, including greenhouses, nurseries, farm cooperatives, feed equipment and farm supply stores, commercial feedlots, veterinary clinics, and dog kennels.. Agribusiness does not include the slaughter of animals for commercial purposes.

Agriculture: Includes, but is not limited to, the growing, raising, and production of horticultural and silvicultural crops, grapes, berries, trees, fruits, poultry, livestock, grain, hay, and dairy products.

Alterations: Structural change, change of location, or addition to a building or structure, excluding normal maintenance and repair. Alterations shall include any construction that changes the number of dwelling units, or increases the size of a building or structure in terms of height, length, width, footprint, or gross floor area. (Also see Improvement, Substantial Improvement.)

Appeal: A procedure conducted in accordance with Sections 4465, 4464, 4468, 4470, and 4471 of the Act.

Area: Area shall be calculated from the dimensions taken on a horizontal plane at the average grade.

Area of Special Flood Hazard: The areas within a community that are inundated by the base flood, including all Zone A designations (e.g., "A", "A0", "A1", "A2", "A6", etc.) on the FIRM.

Base Flood: The flood having a one percent (1%) chance of being equaled or exceeded in any given year (otherwise known as the 100-year flood). The elevations and extent of the base flood shown in the Flood Insurance Study Profiles, FIRM and Flood Boundary and Flood Maps shall be the standard for location and elevation of structures and improvements under this Regulation, and shall be supplemented as follows:

- 1) In Zone "A" (unnumbered) on the FIRM, the DRB shall obtain, review, and reasonably utilize any base flood elevation data from a federal, state, or other competent source.
- 2) Major developments, involving more than five (5) acres or more than fifty (50) lots shall be required to provide base flood elevation data.
- 3) In Zone "A0" on the FIRM, the base flood level shall be level of the crown of the nearest road or street or the depth number specified in the FIRM.

Building: Any structure, either temporary or permanent, having a roof, and used or built for shelter or enclosure of persons, animals, chattels or property of any kind. This shall include tents, awnings or vehicles situated on private property used for purposes of a building.

Building Height: The vertical distance measured from the established grade to the highest point of the roof surface for flat roofs, to the deck line of mansard roofs and to the average height between eaves and ridges for gable, hip and gambrel roofs.

Clubs and Social Services: includes veterans' halls, clubs and facilities of other nonprofit organizations, and social service uses such as those of the Counseling Services and similar health or social agencies.

Conditional Use: A use which shall be permitted only upon approval of the DRB after due notice, a public hearing, and finding that it meets the general and specific standards set forth in this Regulation.

Construction: Commencement, installation, assembly, placement or affixing of any structure or part thereof on its permanent site, including related land alterations, sanitary facilities and other utilities for new structures.

Deliberative Session: a private session of the board to weigh, examine, and discuss the reasons for and against an act or decision, from which the public is excluded. There shall be no taking of evidence or submission of testimony, nor need a deliberative session be publicly noticed. By motion and majority vote, the board may enter deliberative session during a hearing to consider a matter before it.

Dwelling: Any building designed for or used as the living quarters for one family.

Dwelling Unit: A dwelling occupied by a single family as a single household unit (e.g., detached home, mobile home, condominium or townhouse unit, apartment unit).

Executive Session: a session of a public body from which the public is excluded, pursuant to 1 V.S.A. § 313. Such private session may only be held for one of the reasons permitted by the statute, and no binding action may be taken in executive session.

FIA: Federal Insurance Administration

FIRM: The Flood Insurance Rate Maps

Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing flood levels more than one (1) foot.

Front Lot Line: Any lot separating a lot from an existing or proposed public road or highway. This line coincides with the road property line or right-of-way.

Frontage: The dimension between the two (2) sidelines of any lot, measured along the property line that borders upon whatever way serves as legal access to the lot.

Home Occupation: An occupation carried on in a dwelling unit which is customarily incidental and secondary to the use of that building for dwelling purposes, and which does not substantially alter the character thereof.

Hazardous Material: Any gaseous, liquid or solid materials, either in pure form or incorporated into other materials, designated as hazardous by the Vermont Department of Environmental Conservation.

Improvement: Any physical addition to real property, or any part of such addition, including but not limited to any building, structure, parking facility, wall, fencing, or landscaping. (Also see Substantial Improvement.)

Interested Person: A party as described in Section 4465, generally including any of the following:

- 1) A person owning title to property, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by a bylaw, who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.
- 2) The municipality that has a plan or a bylaw at issue in an appeal brought under Chapter 117 of the Vermont Municipal and Regional Planning and Development Act or any municipality that adjoins that municipality.
- 3) A person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under Chapter 117 of the Vermont Municipal and Regional Planning and Development Act, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of the municipality.
- 4) Any ten (10) persons who may be any combination of voters or real property owners within a municipality who, by signed petition to the appropriate municipal panel of a municipality, the plan or a bylaw of which is at issue in any appeal brought under this title, allege that any relief requested by a person under this title, if granted, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality. This petition to the appropriate municipal panel must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal.
- 5) Any department and administrative subdivision of this state owning property or any interest in property within a municipality listed in item two above, and the Agency of Commerce and Community Development of this state.

Kenel: An establishment for the breeding and boarding of six (6) or more dogs.

Land Development: The construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or any mining, excavation or landfill, or any changes in the use of any building or other structure or land or extension of use of land. (See also Subdivision.)

Light Industry/Manufacturing: Includes those uses which are generally not objectionable because of noise, heavy truck traffic or fumes. Light industry uses are those which consist of the production, processing, cleaning, testing, or distribution of materials or goods. Light industry does not involve the use

of water in the manufacturing process, or in the production of wastes other than from employees' toilets. Light industrial uses do not involve the outdoor storage of materials.

Lot: An area of land in one ownership, or one leasehold, with ascertainable boundaries established by deed or instrument of record, or a segment of land ownership defined by lot boundary lines on a land subdivision plan duly approved by the DRB and recorded in the Town land records.

Lowest Floor: The lowest floor of a structure; the ground floor, or basement, if any.

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 utilities. It does not include recreational vehicles or travel trailers (see also definition in 10 V.S.A. 6201).

Mobile Home Park: A parcel of land, under single or common ownership or control, which is used (or is to be used) to accommodate two (2) or more mobile homes.

Nonconforming Structure: A structure or part of a structure that does not conform to the present Regulations but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present regulations, including a structure improperly authorized by the administrative officer. (24 V.S.A. section 4304(14)).

Nonconforming Use: Use of land that does not conform to the present regulations but did conform to all applicable laws, ordinances, and regulations prior to the enactment of the present regulations, including a use improperly authorized as a result of error by the administrative officer. (24 V.S.A. section 303(15)).

Nonprofit Clubs: Any use operated for social, recreational, or educational purposes, but open only to members and not to the general public.

Parking Space: A defined space at least twenty (20) feet long, and nine (9) feet wide, accessible to the road with not more than one backing/turning movement, and without requiring other cars to be moved. Parking spaces shall have sufficient gravel or pavement surface to permit year round use.

Part-time Child Care: Care of a school age child for not more than four (4) hours a day.

Permitted Use: Uses which are listed as permitted uses in the various districts set forth in this Regulation. The term shall not include prohibited uses.

Place(s) of Worship: A building wherein persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship, together with all accessory buildings and uses customarily associated with such primary purpose. Includes synagogue, temple, mosque, or other such places of worship and religious activities.

Planning Commission: The Planning Commission of the Town of Berkshire

Plat: A site development plan map including all of the information required and prepared for filing, under the proper procedural steps, with the Town Clerk.

Pre-existing Small Lots: Lots or parcels that do not conform to the present regulations covering dimensional requirements but were in conformance with all applicable laws, ordinances, and regulations prior to the enactment of these present regulations., including a lot or parcel improperly authorized as a result of error by the administrative officer. (24 V.S.A. section 4304(13)).

Public Facilities and Services: A use operated directly by the state or by a municipality as defined in 1 V.S.A. Section 126. A community owned and/or operated facility is a public facility or service. Public facility or services shall include an agency of the Federal Government.

Recreation (Commercial Indoor): Includes indoor bowling alleys, theatres, pool halls, skating rinks, gymnasiums, swimming pools, hobby workshops, and similar places of indoor commercial recreation.

Recreation (Commercial Outdoor): Includes golf courses, golf driving, trap, skeet, or archery ranges, swimming pool, skating rinks, tennis court, riding stable, park beach, recreation stadium, skiing, campgrounds, and similar places of outdoor commercial recreation.

Seasonal Dwelling: Any building occupied three (3) months or less over a twelve (12) month period of time, including weekends.

Sign: Any display or representation used or placed as an announcement, direction or advertisement. The word "placed" for the purpose of this definition shall include erected, constructed, or otherwise fastened, affixed or made visible in any manner whatever.

Structure: Anything constructed, erected or placed and which requires a fixed location on the ground in order to be used, Included, in addition to buildings, are signs, garages, carports, porches, patios, swimming pools, and any other outbuildings and building features. Not included are sidewalks, driveways, fences and temporary docks, or floats.

Setback (front): The nearest distance between the center line of a public or private road right-of-way and a structure (including all features of the structure).

Setback (yard): The nearest distance between a side or rear property line and a structure (including all features of the structure).

Subdivision: The division of any parcel of land into two (2) or more parcels for the purposes of sale, conveyance, lease, or development. The term "subdivision" includes the adjustment of boundaries between two or more existing parcels.

Substantial Improvement: Any structural enlargement, reconstruction or replacement which meets either of the following criteria:

- 1) the cost of which equals or exceeds fifty percent (50%) of the market value of the structure as it exists or existed upon the effective date of this Regulation; or
- 2) the size of which equals or exceeds by twenty-five percent (25%) of the size of the structure as it exists upon the effective date of this Regulation.

Town: The Town of Berkshire, Vermont

Use: The specified purpose for which the land or a building is arranged, designed, or intended, or for which either land or a building is or is intended to be occupied.