

# **BROOKFIELD DEVELOPMENT BYLAW**

As Amended Effective April 12, 2010

Prepared by the Brookfield Planning Commission with  
Assistance from the Two Rivers-Ottauquechee Regional Commission

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# ARTICLE 1: GENERAL PROVISIONS

## 1.1 ENACTMENT

Whereas the Town of Brookfield, Vermont has created a Planning Commission and has in effect a plan adopted by the Town and approved by the Two Rivers-Ottawaquechee Regional Commission, under the Vermont Municipal and Regional Planning and Development Act, 24 V.S.A., Chapter 117, herein referred to as the Act, there is hereby established a Development Bylaw for the Town of Brookfield dated March, 1990 and amended in March, 1999, March 2003 and November 2005.

## 1.2 TITLE

This Bylaw shall be known and cited as the Brookfield Development Bylaw.

## 1.3 PURPOSE

It is the purpose of this Bylaw to implement the Brookfield Town Plan by providing for the appropriate use of all lands in the Town of Brookfield in a manner which will promote and protect the public health, safety, prosperity, comfort, convenience, efficiency, and general welfare; to protect high elevations, steep slopes, soils, forests, shorelands, wetlands and other natural resources; to encourage the density and distribution of settlement to be in character with the rural residential environment of the town; and to further the purposes set forth in Section 4302 of the Act.

## 1.4 EFFECTIVE DATE

This Bylaw initially became effective in March 1990, with later amendments through 2003 becoming effective after their adoption by vote of the Town at regular or special meeting. In accordance with 24 V.S.A. § 4442(c), any amendments subsequent to July 1, 2004 shall be effective 21 days after their adoption by the majority of the Board of Selectmen, unless that Board or the voters of the town at a duly warned regular or special meeting elect to require that bylaw amendments or repeals be adopted by vote of the town by Australian ballot at a duly warned regular or special meeting.

## 1.5 INTERPRETATION

In their interpretation and application, the provisions in these regulations shall be regarded as minimum requirements, except that other bylaws (e.g. flood hazard or shorelands zoning and subdivision regulation) having been duly adopted, the more restrictive regulations shall apply. Whenever a development is located on an area that is in more than one district, as designated in this Bylaw, the development must comply with the criteria of all districts or the most restrictive criteria, if there is a conflict.

Section 4413 of the Act defines the limitations on these regulations in respect to state or community owned and operated institutions, all schools certified by the Vermont Department of Education, churches, convents, parish houses, hospitals, regional solid waste management facilities certified under 10 V.S.A. Chapter 159 and hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. § 6606a. In considering applications for such uses, review by the Board of Adjustment or Planning Commission shall be

limited to the use's location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping and screening.

Section 4413 of the Act also defines the exemption from regulation under this bylaw of agricultural and silvicultural practices and electric generation and transmission facilities subject to regulation under 30 V.S.A. § 248.

Nothing in this Bylaw shall require the removal of, or change in, construction of any building existing or under construction on the original effective date of these regulations, provided that the original use remains the same; nor shall anything in this Bylaw require the removal of, or change in, construction of any building existing or under construction at the time of any amendment to this Bylaw, provided that the use and structure were in compliance with this Bylaw at that time.

After the effective date, any change in the use of the land or structure, any change in access, parking area or setbacks will require a permit. When property is transferred, a permit will be required if there is any change in use of land or structure or any change in access, parking area or setbacks.

## 1.6 AMENDMENTS

This Bylaw may be amended in accordance with the procedures and requirements set forth in Sections 4441, 4442 and 4444 of the Act.

## 1.7 SEPARABILITY

The invalidity of any provision of this Bylaw shall not invalidate any other part.

## **ARTICLE 2: DEVELOPMENT DISTRICTS**

### **2.1 A. VILLAGE DISTRICTS**

The purpose of the village districts is to provide for a higher density of activity, both residential and business, serving the immediate community within these centers as a focal point for the social and economic life of surrounding rural areas and to preserve the historic significance of existing landmarks

#### **1. Existing Pond Village District**

The district is the area enclosed by a line described as follows: Starting at the east end of the Floating Bridge, going north along the east shore of Sunset Pond to the east bank of the inlet brook from the north; thence north along the east bank of the brook to the point where the brook passes through a culvert under the Stone Road; thence due east to Ralph Road; thence generally east, perpendicular to Ralph Road, a distance of 300 feet to a point; thence generally south, at a distance of 300 feet from Ralph Road to the point where the line is 300 feet north of Vermont Route 65; thence easterly at a distance of 300 feet from Route 65, to the point where the line is due north of the intersection between Route 65 and Ridge Road; thence due south 300 feet to Route 65 and 500 feet farther in the same line to a point; thence due west to the east shore of Sunset Pond; thence along the east shore of Sunset Pond to the point of beginning.

#### **2. Extended Pond Village District**

The district comprises an area 600 feet wide, extending 300 feet on both sides of the Stone Road, except that the district does not include any portion of Interstate Highway 89 or the right of way therefore. The district extends northerly from the north boundary of the Existing Pond Village District, to the intersection with the Stone Road of the bypass road under Interstate 89 to Route 65.

#### **3. East Brookfield District**

The district comprises an area 1,000 feet wide, extending 500 feet on both sides of Vermont Route 14, except for the Flood Hazard Areas and the Conservation District Areas included therein. The district starts at the bridge on Route 14 over Sunset Brook and extends southerly a distance of seven tenths of a mile, including the cemetery.

#### **4. Permitted Uses**

The following uses may be permitted following the issuance of a Development Permit by the Administrative Officer:

- a. One and two family dwelling
- b. Accessory building or use
- c. A single accessory dwelling unit
- d. Day Care
- e. Bed and Breakfast
- f. Cemetery

- g. Agricultural building or use
- h. Land subdivision

## **5. Conditional Uses**

The following uses may be permitted upon granting Conditional Use approval by the Board of Adjustment, as provided for in Section 3.8 of these regulations.

- a. Multiple family dwelling
- b. Guest House/Inn
- c. Restaurant
- d. Home occupation
- e. General Store
- f. Professional office
- g. Public utility
- h. Repair or service shop
- i. Museum
- j. Dormitory
- k. Public building
- l. School
- m. Antique/gift shop
- n. Greenhouse, landscape nursery
- o. Nursing home
- p. Other business uses except junk yards, upon determination of a majority joint vote of the Board of Adjustment and the Planning Commission that such uses are of the same general character as those listed above, are consistent with the purpose of the District and are not detrimental to other uses within the District as well as adjoining land uses.

## **6. Area, Land and Structural Requirements**

### **For Existing Pond Village:**

- a. Lot area minimum: one half acre for one and two family dwellings; one half acre for each additional dwelling unit; one half acre for each principal use.
- b. Lot frontage minimum: 75 feet on a public highway.
- c. Front yard minimum: 40 feet from center line of public highway.
- d. Side yard minimum: 20 feet.
- e. Rear yard minimum: 20 feet.

**For Extended Pond Village:**

- a. Lot area minimum: one acre for one and two family dwellings; one acre for each additional dwelling unit; one acre for each principal use.
- b. Lot frontage minimum: 100 feet on a public highway.
- c. Front yard minimum: 40 feet from center line of public highway.
- d. Side yard minimum: 25 feet.
- e. Rear yard minimum: 25 feet.

**For East Brookfield:**

- a. Lot area minimum: three acres for one and two family dwellings; three acres for each additional dwelling unit; three acres for each principal use.
- b. Lot frontage minimum: 200 feet on a public highway.
- c. Front yard minimum: 40 feet from center line of public highway.
- d. Side yard minimum: 25 feet.
- e. Rear yard minimum: 25 feet.

**Determination of Acreage in Village Districts; Waiver**

Acreage in a village district shall be determined exclusive of areas with a slope of 25 percent or more or that are Class 1 or 2 wetlands under the Vermont Wetland Rules. However, prior to issuance of a development permit, the Board of Adjustment may waive the requirement that acreage in a village district must be determined exclusive of areas with a slope of 25 percent or more upon finding that a proposed use will encourage clustering of development in the district and will not result in unreasonable soil erosion or undue water pollution through stormwater runoff or other means. The provisions of Sections 3.3 through 3.5 of this bylaw shall apply to a request for such a waiver.

**2.1 B. CONSERVATION DISTRICT**

The purpose of the District is to protect natural resources in lands which are essentially undeveloped or lack direct access to public highways, or are important for wildlife and wildlife habitat, or have a physical characteristic such as slopes of 25 per cent or greater or wetlands.

**1. The Conservation District includes the following:**

- a. Steep Slope Conservation Areas. The areas are defined as the areas in town with a slope of 25% or greater. The areas are depicted on the Official Development Map and have been derived from USGS Digital Elevation Model data that computed the slope for 30 meter by 30 meter square areas centered on each DEM point.
- b. Wetlands Areas. These areas are defined as all wetlands identified on the National Wetlands Inventory Map and, if they are not so identified, all wetlands classified as either Class 1 or Class 2 wetlands by the State of Vermont and shall include the area within 75 feet of their boundary. The areas are depicted on the Official Development Map.

**2. Permitted Uses**

Hiking, hunting, skiing, other outdoor recreational activities, maple sugaring and forestry with a plan approved by the Town Forester or the County Forester and in conformance with the State's accepted management practices for logging. Permitted uses in this district shall also include a single accessory dwelling unit within or appurtenant to an existing owner-occupied one family dwelling for which approval was previously obtained under these bylaws, except as detailed in Section 2.1.B.3.e. below.

### **3. Conditional Uses**

- a. Development of access roads
- b. One family dwelling (Only in Steep Slope Conservation Areas)
- c. Camp (Only in Steep Slope Conservation Areas)
- d. Accessory buildings and uses
- e. The following components involved in the creation of an accessory dwelling unit: a new accessory structure, an increase in the height or floor area of the existing dwelling to which the unit is accessory, and an increase in the dimensions of the parking areas.

### **4. Land Area, Setbacks and Other Requirements**

- a. Lot area minimum requirements:

One family dwelling	25 acres
Camp	25 acres
- b. Front yard minimum setback 65 feet
- c. Side and rear yard minimum setback 50 feet
- d. In permitting the construction of a dwelling or camp in a Steep Slope Conservation Area, the Board of Adjustment must find, in addition to the findings required in Section 3.8, that there is access to the site of construction equivalent to that required by Section 4.2 B.1., that the site of construction is an area of at least 10,000 square feet with a slope of no greater than 10%, that the site can be accessed by a road that meets the A.O.T. A76 fire code and that the construction and road development will not cause undue erosion.

## **2.1 C. SCENIC PROTECTION DISTRICT**

The purpose of the District is to protect the scenic beauty and unique undeveloped character of the areas designated.

### **1. The Scenic Protection District consists of all of the following area**

- a. The Brookfield Gulf Area. The area is defined as the area 600 feet wide, extending 300 feet on both sides of Route 12, starting at a point approximately four tenths of a mile north of the intersection of Route 12 and Town Highway #4 and extending northward to a point approximately six tenths of a mile south of the junction of Route 12 and Vermont Route 65.
- b. The Williamstown Gulf Area. The area is defined as the area 600 feet wide, extending 300 feet on both sides of Route 14, starting at the highway turnout area on the west side of Route 14, located approximately seven tenths of a mile south of the Brookfield/Williamstown town line and approximately three tenths of a mile south of the

culvert where the Second Branch of the White River passes under Route 14, and extending northward to the town line.

- c. Other areas that may in the future be designated by amendment to this Bylaw.

## 2. Permitted Uses

Hiking, hunting, skiing, other outdoor recreational activities, maple sugaring and forestry with a plan approved by the Town Forester or the County Forester and in conformance with the State's accepted management practices for logging. Permitted uses in this district shall also include a single accessory dwelling unit within or appurtenant to an existing owner-occupied one family dwelling for which approval was previously obtained under these bylaws , except as detailed in Section 2.1.C.3.e. below.

## 3. Conditional Uses

- a. Develop access roads
- b. One family dwelling
- c. Camp
- d. Accessory buildings and uses
- e. The following components involved in the creation of an accessory dwelling unit: a new accessory structure, an increase in the height or floor area of the existing dwelling to which the unit is accessory, and an increase in the dimensions of the parking areas.

## 4. Land Area, Setbacks and Other Requirements

- a. Lot area minimum requirements:

One family dwelling	25 acres
Camp	25 acres
- b. Front yard minimum setback 200 feet
- c. Side and rear yard minimum setback 50 feet
- d. In permitting the construction of a dwelling or camp in the Scenic Protection District, the Board of Adjustment must find, in addition to the findings required in Section 3.8, that the structure will not be visible from either Route 12 or Route 14 and that the access road and construction process will result in the least disturbance to the existing landscape reasonably achievable.
- e. Any utility lines within the district shall not be visible from Route 12 or route 14.

### 2.1 D. PUBLIC LANDS DISTRICT

The purpose of this district is to permit appropriate public uses on the large tracts of publicly owned land in Brookfield.

This district consists of Ainsworth State Park, Allis State Park, any state owned forest land and the Town Forest.

## **1. Permitted Uses**

Camping, picnicking, hiking, hunting, skiing, other outdoor recreational activities, maple sugaring and forestry with a plan approved by the Town Forester or the County Forester and in conformance with the State's accepted management practices for logging.

## **2. Conditional Uses**

Structures for public recreational use consistent with the objectives of the Brookfield Town Plan.

### **2.1 E. AGRICULTURAL/RESIDENTIAL DISTRICT**

The purpose of the agricultural/residential district is to promote, encourage, and protect farming of all kinds as an important part of the Town's economic base and social character; to maintain and conserve agricultural lands and lands with potential for agricultural use; to provide areas for residence at a density consistent with the capacity of the soil and topography to furnish potable water supply and accommodate a private waste disposal system for such residences.

The district consists of all the area of the town that is not included in any one of the previously listed districts (Village Districts, Conservation District, Scenic Protection District or Public lands District)

## **1. Permitted Uses**

The following uses may be permitted following issuance of a development permit by the Administrative Officer:

- a. One or two family dwelling
- b. Accessory dwelling unit.
- c. Farm homestead
- d. Affiliated farm homestead - for use in the farm operation
- e. Accessory buildings and uses
- f. Guest house
- g. Camp
- h. Land subdivision

## **2. Conditional Uses**

The following uses may be permitted following the issuance of a conditional use permit by the Board of Adjustment as provided for in Section 3.8 of these regulations:

- a. Home occupation
- b. Extraction of gravel, soils, sand, and minerals
- c. Outdoor recreational facilities
- d. Commercial uses such as day care, farm equipment and repair shops, seed store and the conditional uses in paragraph 2.1.A.5, provided such uses have frontage on roads with capacity to carry service traffic.
- e. Access roads for timber operations

- f. Affordable housing, per 2.6
- g. Light industry - see definition in Article 5

### 3. Purpose

It is the purpose of this regulation to encourage planned residential development to preserve prime lands. A proposal for such development would be necessary for tracts of more than ten acres and would require a detailed Site Plan to be reviewed and approved by the Planning Commission. The overall density would be one unit to five acres, but with provision for open space on the tract and clustering of buildings. The Planning Commission may reduce lot size and set back requirements. No density credit will be given for wetlands, steep slopes and other areas not suitable for development.

- a. The protected land may either remain in the ownership of a farmer or forest manager, or owned by a community association incorporated in the State of Vermont. It may also be owned by a private individual who subscribes to the conservation rules and covenants placed on it in the deed.
- b. The minimum activity required under the conservation rules on protected land include the following:
  - Fields shall be tilled or mowed at least once every two years.
  - The woodlands shall be managed following a management plan developed by a forester which is consistent with the goals of the owner of the land.
  - While the aforementioned meet the minimum, the owner is encouraged to develop a plan which provides for maximum agricultural or forestry return from the land.

### 4. Land Area Setbacks and Structural Requirements

- a. Lot area minimum requirements (exclusive of areas with a slope of 25% or more or which are Class 1 or 2 wetlands under the Vermont Wetland Rules):
 

Farm homestead	5 acres
Affiliated farm homestead	1/2 acre
One and two family dwellings	5 acres
Camp	5 acres
- b. Lot frontage minimum requirement                      300 feet
- c. Front yard minimum setback                                65 feet
- d. Side and rear yard minimum                                50 feet
- e. Natural pond setback                                         50 feet
- f. Permanent fencing     25 feet from center of traveled way
- g. Temporary fencing     at the edge of the traveled way only from  
1 May to 1 November

## 2.2 DEVELOPMENT MAP

The areas and boundaries of the Development Districts established above are depicted on a map designated as the Town of Brookfield Development Map. Said map is made a part of this Bylaw, together with all future amendments or attachments. A copy of the official Development

Map, with attachments, shall be used and interpreted by the Town of Brookfield in the administration and enforcement of this Bylaw and shall be on file with the administrative Officer and Town Clerk.

### 2.3 INTERPRETATION OF DEVELOPMENT DISTRICTS AND BOUNDARIES

- A. It is recognized that uncertainties will exist about the boundaries of districts as shown on the official Development Map, therefore, the following rules shall apply:
  - 1. Boundaries indicated or described as approximately following roads, streams, transportation, and utility rights of way, shall be construed to follow the center lines.
  - 2. Boundaries indicated as approximately following lot lines shall be construed to follow such lot lines.
  - 3. Boundaries indicated as approximately following shorelines shall be construed as the normal mean water level.
  - 4. Boundaries indicated as being parallel to or extensions of features in 1 through 3 above, shall be so construed.
  - 5. Where circumstances are not covered by 1 through 4 above, the Board of Adjustment shall interpret the district boundaries in consultation with the Planning Commission following an on-site inspection.
- B. Hereafter, division of a parcel into two or more parcels, construction, reconstruction, conversion, or relocation of a building or structure; relocation or enlargement of any mining excavation or landfill; or any change in the use of any building or other structure, or land or extension of use of land shall commence only in compliance with all regulations in this Bylaw for the district in which such building, structure, activity or land is located.
- C. Any new use not listed as permitted or conditional by this Bylaw shall be reviewed by the Board of Adjustment.

### 2.4 APPLICATION OF REGULATIONS

Except for the maintenance, repair or replacement of existing uses of land, buildings or structures which are permitted and conform to these Regulations, buildings or structures shall be erected, moved, altered, or extended; and used or substantially changed in use only in conformity with these Regulations.

### 2.5 CONSTRUCTION COMMENCED PRIOR TO ADOPTION OR CONSTRUCTION APPROVED PRIOR TO AMENDMENT OF REGULATIONS

If a Development Permit was issued, or if no Development Permit was required for a building or change of use prior to any amendment to this Bylaw; then no Development Permit shall be required for any building upon which construction had begun or use which has been established prior to the amendment to this Bylaw, provided such construction is completed within one (1) year from the date of such adoption or amendment or longer by agreement with the Board of Adjustment.

## 2.6 AFFORDABLE HOUSING

Nothing in this Bylaw is intended to deny residents of the town affordable housing provided the density, lot size, frontage on highways, or public water and setbacks for the particular district are met.

The provisions applicable to Village Districts most easily provide for moderate or low cost housing because of lot size and density.

Existing small lots (as of the effective date of this Bylaw) may provide for affordable housing.

In the Agricultural/Residential District, planned residential development (cluster housing) approved by the Planning Commission and/or Board of Adjustment and including the protection of space useful to the purpose of the district may provide for moderate or low cost housing. It is the intent of this Bylaw to encourage potential developers to submit proposals of this sort. For developments of eight units or more it is required to submit such a proposal.

## **ARTICLE 3: ADMINISTRATION, ENFORCEMENT, APPEALS**

### **3.1 ADMINISTRATIVE OFFICER -- GENERAL DUTIES**

The Administrative Officer is hereby appointed to administer the Development Regulations, as provided for in Section 4448 of the Act. The Administrative Officer shall enforce the provisions of this Bylaw and in so doing shall receive applications, inspect premises, maintain records, issue permits and perform other tasks to carry out the provisions of this Bylaw.

### **3.2 DEVELOPMENT PERMIT -- GENERAL REQUIREMENTS**

- A. No land development shall commence without a permit issued by the Administrative Officer pursuant to this bylaw. Where an application for a development permit requires subdivision approval by the Planning Commission, or conditional use approval, site plan approval, or planned residential development approval, or a variance, such approvals shall be obtained prior to issuance of a development permit.
- B. Major subdivisions and resubdivision are regulated by the Subdivision Regulations and all other subdivisions require a permit pursuant to this Bylaw.
- C. No construction or conversion from one use to another of any building or structure shall commence until a development permit has been issued by the Administrative Officer. Prior to issuance of a development permit, a state wastewater and potable water supply permit must be provided to the Administrative Officer, if such a permit is required under state law.
- D. Prior to commencement of construction, any person proposing to enlarge a building or structure shall provide notice of the enlargement to the administrative officer on a form to be prescribed by that officer. Provided setback requirements are met, no permit is required for the reconstruction or enlargement of a building or structure, except for an accessory dwelling unit or the enlargement of a building or structure by more than 120 square feet of floor space cumulatively within a period of five years (exclusive of decks and porches).
- E. Provided setback requirements are met, no permit is required for auxiliary buildings (storage sheds, kennels, etc.) that are not dwelling units and are no more than 10 X 12 feet and 12 feet high.
- F. Prior to commencement of construction, any person proposing to build a farm structure, as that term is defined under chapter 117 of Title 24 V.S.A., shall provide written notice to the administrative officer on a form to be prescribed by that officer.
- G. No Development Permits issued by the Administrative Officer shall take effect until time for appeal has passed, or, in the event a notice of appeal is properly filed, such permit shall not take effect until final adjudication of said appeal, including appeals to Board of Adjustment or appeals to the Environmental Court from the Board of Adjustment or Planning Commission. Applicants are required to notify contiguous property owners by registered mail.

- H. Each Development Permit issued under this Bylaw shall contain a statement of the period of time within which an appeal may be taken. Immediately upon issuance, the applicant must also post a permit notice, in a form prescribed by the Town of Brookfield, within view of the public right-of-way most nearly adjacent to the subject property until the time for appeals has passed. Within three days following the issuance of a Development Permit, the Administrative Officer shall deliver a copy of the permit to the Town Listers and post a copy in the Town Offices for a period of at least fifteen days from the date of issuance.
- I. In the event that the Administrative Officer fails to act with regard to an application for a Development Permit within thirty days, whether by issuing a decision (including a decision that more information is needed) or by making a referral to the appropriate Panel, a permit shall be deemed issued on the 31st day.
- J. Within 30 days of the issuance of a permit or approval or notice of violation, the Administrative Officer shall deliver the original or a legible copy of the permit, approval or violation, or notice thereof in as provided in 24 V.S.A. § 1154(c), to the town clerk for recording in the land records of the municipality as provided in 24 V.S.A. §1154(a), and file a copy in the town office in a location where all municipal land use permits shall be kept, as required under the Act. The applicant may be charged for the cost of the recording fees.
- K. All land development as authorized by a Development Permit shall be commenced within a period of one year and completed within two years of the effective date of issuance or longer by agreement with the Board of Adjustment.
- L. A fee for a Development Permit may be required. The Board of Selectmen, in consultation with the Planning Commission, may adopt a fee schedule for Development Permits.

### 3.3 GENERAL PROVISIONS APPLICABLE TO PANELS

- A. Each Panel acting under this bylaw shall elect its own officers and adopt rules of procedure subject to the provisions of this Development Bylaw and the Act, and shall adopt rules of ethics with respect to conflicts of interest. The officers of the Panel may administer oaths and compel the attendance of witnesses and the production of material pertinent to any issue under review.
- B. Meetings of the Panel shall be held at the call of the Chairperson and at such times as the Panel may determine. All such meetings, except for deliberative and executive sessions, shall be open to the public.
- C. Each Panel shall keep minutes of its proceedings, showing the vote of each member upon each question and indicating each member who is absent or fails to vote, and shall keep records of its examinations and other official actions, all of which shall be filed with the town clerk as a public record.
- D. For the conduct of any hearing and the taking of any action, a quorum shall be not less than the majority of the members of a Panel, and any action of a Panel shall be taken by the concurrence of the majority of the Panel.

- E. In connection with a proceeding under this bylaw, the Panel having jurisdiction may examine or cause to be examined any property, maps, books, or records bearing on the matters concerned in the proceeding, may require the attendance of any person having knowledge in the premises, may take testimony and require proof material for its information, and may administer oaths or take acknowledgment with respect to these matters. Any of the powers granted to a Panel under this subsection may be delegated by the Panel to a specifically authorized agent or representative.
- F. In any hearing before a Panel under this bylaw, there shall be an opportunity for each person seeking status as an Interested Person to demonstrate that the criteria for achieving such status are met, and the Panel having jurisdiction shall keep a written record of the name, address, and participation of each of these persons.
- G. A Panel may recess the proceedings on any application before it pending submission of additional information, provided that the next hearing date and place is announced at the hearing. The Panel should close the evidence promptly after all parties have submitted the requested information.
- H. If approval for a project is required by more than one Panel under this bylaw, the reviews necessary for such approval shall be conducted concurrently, to the extent feasible.
  - 1. The applicant for such a project shall apply for all the necessary approvals at the same time and provide with the application all information required for each of the approvals under this bylaw. The Administrative Officer shall refer such application to both Panels. The Chairpersons of each Panel shall then confer and set a date for joint hearing by the Panels. To the extent the notice requirements for the applicable approvals differ, the more stringent notice requirements shall apply. Upon convening of a joint hearing, when one of the Panels finds it necessary to recess for submission of additional information and continue the hearing on another date, the joint hearing for both Panels shall be continued to a date mutually acceptable to the Panels, unless a Panel elects to adjourn the hearing with respect to its review or determines that a continued joint hearing is not feasible and sets a separate date to which it will continue its hearing.
  - 2. During a joint hearing under this section, the Chairperson or other designated member of each Panel shall describe the nature and criteria applicable to the approval(s) sought from the Panel. To the extent information relates to the approvals sought from each Panel, that information may be presented concurrently; otherwise, it shall be presented separately during segments of the hearing devoted to each approval.
  - 3. Each Panel may hold separate deliberative sessions with respect to an application being heard jointly.
  - 4. Upon referral by the Administrative Officer, a Panel may determine that combined review with the other Panel is not feasible, in which case the application for approval from the Panel will be heard separately.
  - 5. An applicant may request that a Panel defer its review until the issuance of a decision by the other Panel. The granting of such a request shall be discretionary and any

such grant shall suspend the running of any periods pertaining to the review and issuance of a decision by the granting Panel.

6. When an application is heard jointly, each Panel shall issue a separate decision within 45 days after adjournment of the joint hearing. However, if under Section 3.3.H.1. above, a Panel elects to adjourn the hearing with respect to its review or determines that a continued joint hearing is not feasible and sets a separate date to which it will continue its hearing, the Panel shall issue a decision within 45 days of the date it adjourns the hearing pertaining to its review.
- H. Within 30 days following the date of decision rendered by a Panel, notice of the appeal shall be filed by certified mail with fees to the environmental court and mailing a copy to the administrative officer, who shall supply a list of interested persons to the appellant within five working days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person and, 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.

### 3.4 NOTICE PROCEDURES

- A. A warned public hearing shall be required for conditional use review, appeals of decisions of the administrative officer and variances. Any public notice for a warned public hearing shall be given not less than 15 days prior to the date of the public hearing by all of the following:
1. publication of the date, place and purpose of the hearing in a newspaper of general circulation in the municipality;
  2. posting of the same information in three (3) or more public places within the municipality (one of which shall be the town clerk's office), including the posting of a notice within view from the public right-of-way nearest to the property for which the application is being made; and
  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.
- B. Public notice of all other types of hearings under this bylaw, including site plan review, shall be given not less than seven (7) days prior to the date of the public hearing, and shall at minimum include the following:
1. posting of the date, place and purpose of the hearing in three (3) or more public places within the municipality (one of which shall be the town clerk's office); and
  2. written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way, which includes a description of the proposed project, information that clearly informs the

recipient where additional information may be obtained, and that participation in the local proceeding, is a prerequisite to the right to take any subsequent appeal.

- C. The applicant shall be required to bear the cost of public warning and the cost and responsibility of notifying adjoining landowners as required above, as determined from the current municipal grand list. The applicant shall be required to bear the cost and responsibility of posting a notice within view from the public right-of-way nearest to the property for which the application is being made, in the form prescribed by the Town of Brookfield. The applicant shall demonstrate, to the Panel having jurisdiction, proof of delivery to adjoining landowners either by certified mail, return receipt requested, or by written notice hand delivered or mailed to the last known address supported by a sworn certificate of service.
- D. No defect in the form or substance of any required public notice under this section shall invalidate the action of the Panel having jurisdiction where reasonable efforts have been made to provide adequate posting and notice. However, the action shall be invalid when the defective posting or notice was materially misleading in content. If an action is ruled to be invalid by the Panel having jurisdiction or the Environmental Court, the action shall be remanded to the appropriate Panel to provide new posting and notice, hold a new hearing, and take a new action.

### 3.5 ISSUANCE OF DECISIONS

In accordance with the Act, a Panel shall issue a decision within 45 days after the adjournment of the hearing. Failure to issue a decision within the 45-day period shall be deemed approval and shall be effective the 46th day. In addition:

- A. All decisions shall be issued in writing and shall separately state findings of fact and conclusions of law. Findings of fact shall explicitly and concisely restate the underlying facts that support the decision, based exclusively on evidence of the record. Conclusions shall be based on the findings of fact. The decision shall also include a statement of the time within which appeals may be taken. The minutes of a meeting may suffice, provided that the factual basis and conclusions relating to the review standards are provided in accordance with these requirements.
- B. In rendering a decision in favor of the applicant, a Panel may attach additional reasonable conditions and safeguards as it deems necessary to implement the purposes of the Act, these regulations, and the municipal plan currently in effect. These conditions of approval may include, but are not limited to:
  - 1. the submission of an up to three-year performance bond, escrow account, or other form of surety acceptable to the Board of Selectmen, which may be extended by the Panel for an additional period up to three years with the consent of the owner, to assure the completion of a project, adequate stabilization, or protection of public facilities that may be affected by a project; and/or
  - 2. a requirement that no zoning permit be issued for an approved development until required street and other public infrastructure improvements have been satisfactorily installed in accordance with the conditions of approval.

- C. All decisions of a Panel shall be sent by certified mail, within the required 45-day period, to the applicant or the appellant on matters of appeal. Copies of the decision also shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Administrative Officer and town clerk as part of the public record of Brookfield.

### 3.6 DEVELOPMENT BOARD OF ADJUSTMENT -- CREATION

A Development Board of Adjustment is hereby established. Except as specifically provided herein and in accordance with the provision of 24 V.S.A., Chapter 117, the Development Board of Adjustment shall not amend, alter, invalidate or affect any bylaw of the Town of Brookfield or the implementation or enforcement thereof; nor shall it allow any use or structure not permitted by the Development Bylaw.

The Board shall adopt, from time to time, such rules and regulations as it determines are necessary to carry out the provisions of this Bylaw in accordance with Sections 4461 of the Act.

### 3.7 DEVELOPMENT BOARD OF ADJUSTMENT -- GENERAL DUTIES

The Board shall be charged with the proper interpretation of the Development Bylaw, The Shoreland Zoning Bylaw and The Flood Hazard Area Zoning Bylaw and their consequent application within the municipality, and with the administration of the procedures allocated to it by this Development Bylaw including the following:

- A. To hear and rule on appeals concerning any order, requirement, decision, or determination made by the Administrative Officer in the administration and enforcement of this Development Bylaw in accordance with Section 3.9.
- B. To hear and grant or deny a request for a variance in accordance with Section 3.10.
- C. To hear and grant or deny a request for a Conditional Use in accordance with Section 3.8.
- D. To hear and grant or deny a request for waiver under Section 2.1.A.6.

### 3.8 DEVELOPMENT BOARD OF ADJUSTMENT -- CONDITIONAL USES

- A. No Development Permit shall be authorized or issued by the Administrative Officer for any use listed as conditionally permitted within the various development districts, unless the Development Board of Adjustment has granted Conditional Use Approval. The Development Board of Adjustment, upon receipt of a complete application shall conduct a legally noticed public hearing, and based upon the testimony presented at the hearing, and the Board's considered opinion render a written decision approving or denying the request. In granting approval, the Board shall find that the proposed use meets with the general and specific standards prescribed for such uses in this Bylaw. In its approval the Board shall find that the use will not have an undue adverse effect on:

1. The capacity of existing or planned community facilities;
2. The character of the area affected, as defined by the purpose or purposes of the district in which the project is located, and specifically stated policies and standards of the town plan;
3. Traffic on roads and highways in the vicinity;

4. Such environmental factors as air, soil and water quality, and noise levels; and
  5. The utilization of renewable energy resources.
- B. The Board of Adjustment shall find that an adverse effect is undue if: (a) the adverse effect will contravene the fundamental purposes of the town plan for the area in which the use will be located; (b) the adverse effect will exceed an accepted standard (e.g., sight distance for turning vehicle, air emissions) applicable to one or more of the factors listed Section 3.8.A.1 through 5, above; or (c) the applicant has failed to take reasonable measures to mitigate the adverse effect.
- C. In granting such conditional use, the Board may attach such additional reasonable conditions and safeguards as it may deem necessary to implement the purposes of the Development Bylaw.

### 3.9 DEVELOPMENT BOARD OF ADJUSTMENT -- APPEALS

Any Interested Person may appeal any decision or act taken by the Administrative Officer by filing a notice of appeal with the secretary of the Board of Adjustment or with the Clerk of the Municipality, if no such secretary has been elected. If the appeal is made with respect to any decision or act of the Administrative Officer, such notice of appeal must be filed within fifteen (15) days of the date of such decisions or act, and a copy of the notice of appeal shall be filed with such officer.

Any notice of appeal shall be in writing and shall include the name and address of the appellant, a brief description of the property with respect to which the appeal is taken, a reference to the regulatory provisions applicable to that appeal, the relief requested by the appellant and the alleged grounds why such requested relief is believed appropriate under the circumstances.

The Board of Adjustment shall set a date and place for a public hearing of an appeal under these Regulations, which shall be within sixty (60) days of the filing of the notice of such appeal.

Any Interested Person who wishes to take an appeal with respect to that property at issue may appear and be heard in person or be represented by an agent or attorney at such a hearing.

Any hearing held under this Section may be adjourned by the Board from time to time, provided however, that the date and place of the reconvened hearing shall be announced at the hearing. All hearings held under this Section shall be open to the public, except that the Board may deliberate in closed session. The rules of evidence applicable at these hearings shall be the same as the rules of evidence applicable in contested cases in hearings before state agencies as set forth in 3 V.S.A. § 810.

Notwithstanding any other provision of these bylaws, the Board may reject an appeal or request for reconsideration without hearing, and render a decision which shall include findings of fact within 10 days of the filing of a notice of appeal or request for reconsideration, if the Board determines that the issues raised by the appellant have been decided in an earlier appeal or are based on substantially or materially the same facts by or on behalf of the appellant.

### 3.10 DEVELOPMENT BOARD OF ADJUSTMENT -- VARIANCES

- A. On an appeal, wherein a variance from the provisions of the Development Bylaw constitutes the relief requested by the appellant, the Board may grant such variances, and render a decision in favor of the appellant, if all the following facts are found by the Board and are specified in its decision:
1. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the Development Bylaw in the neighborhood or district in which the property is located;
  2. That as a result of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the Development Bylaw and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
  3. That such unnecessary hardship has not been created by the appellant;
  4. That the variance, if authorized, will not alter the essential character of the district in which the property is located, nor substantially or permanently impair the appropriate use or development of an adjacent property nor be detrimental to the public welfare; and
  5. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible from the Development Bylaw and from the Plan.
- B. Notwithstanding Section 3.10.A, above, if on appeal before the Board a variance is requested for a structure that is primarily a renewable energy resource structure, the Board may grant that variance and render a decision in favor of the appellant if all the following facts are found by the Board and are specified in its decision:
1. That it is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with these regulations;
  2. That the hardship was not created by the appellant;
  3. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and
  4. That the variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.

- C. On rendering a decision in favor of an appellant under this Section, the Board may attach such conditions to a variance as it may consider necessary and appropriate under the circumstances to implement the purposes of this Bylaw and the Town Plan.
- D. The issuance of a variance shall not relieve the appellant of the obligation to obtain a Development Permit under Section 3.2, and such permit shall only be issued if the proposed land development complies with all other applicable provisions, except as varied by the Board of Adjustment. Any land development, as approved by the Board in such variance proceeding, shall not be commenced until such development permit is obtained.

### 3.11 PLANNING COMMISSION -- SITE PLAN APPROVAL

No Development Permit shall be authorized or issued by the Administrative Officer for any use or structure, except for one family or two family dwellings and accessory uses or structures thereto, and an accessory dwelling unit to a one-family dwelling where such unit is a permitted use, until the Planning Commission has granted Site Plan Approval following a public hearing and a written decision consisting of findings and conclusions. In reviewing the site plan, the Planning Commission shall consider the following factors: adequacy of traffic access; circulation for pedestrians and vehicles; parking; landscaping; screening; exterior lighting; size, location and design of signs; fire protection; and to protecting the utilization of renewable energy resources. The Planning Commission may, as part of its approval, impose conditions with respect to those factors.

### 3.12 PLANNED COMMERCIAL DEVELOPMENT

It is the intent of the Town Plan and this Bylaw to foster the economic welfare of Brookfield residents as well as their health and safety. Planned Commercial development could include a grocery or general store, an automobile service station, a professional office, a hairdresser/barber shop, a craft shop, or a restaurant. The concept would be reviewed and approved or disapproved by both the Board of Adjustment and the Planning Commission. The final permit would be for a conditional use.

The criteria for approval would include the following:

- A. Location adjacent to or reached by service road from a public highway which can support the traffic generated both by needed trucking and by users.
- B. Location on soils which have capacity for wastewater disposal and water supply.
- C. Safe access: sight distance, no hill or curve to obstruct view of traffic from either direction.
- D. A site plan: parking space off the public highway, landscaping or screening by trees, shrubs, etc., lighting and signs which do not interfere with visibility on the highway.
- E. No storage of supplies outside of buildings. Containers (dumpsters) for waste shall be behind buildings and screened from adjacent properties.
- F. No apartments or other residential units; the architecture, external appearance of the complete plan appropriate for the setting in Brookfield, e.g. shingle or clapboard siding,

no visible cement block or poured concrete exterior walls more than two feet above grade.

- G. The Planning Commission and the Board of Adjustment jointly may set other conditions such as maximum size (sq. ft.) of buildings, numbers of parking spaces, size and location of signs, style of lighting, number of curb cuts, type of paving surface for parking space.

### 3.13 PLANNED RESIDENTIAL DEVELOPMENT APPROVAL STANDARDS AND CONDITIONS

In its review and approval of a proposed Planned Residential Development, the Planning Commission shall find in its written decision that the PRD meets all of the following criteria and/or standards:

- A. The application submitted satisfies all the requirements for submission of a PRD application as set forth in Section 3.15;
- B. The PRD involves only those permitted or conditional uses as provided for in the districts in which the project is proposed;
- C. The area of the proposed PRD meets the minimum area requirements for a PRD according to the District in which the proposal is located. The minimum area requirements for PRD is as follows:

Pond Village	2 acres
East Brookfield	3 acres
Agricultural/Residential	10 acres

- D. The setback requirements, as determined for the project in its entirety, and not for any and all buildings, structures, or lot lines within the project, comply with all applicable setback requirements for the district or districts within which the project is located;
- E. The total number of dwelling units and other uses not exceed the number or densities which would be permitted in the Planning Commission's judgment if the involved land were subdivided into lots in conformance with all applicable regulations for the district or districts on which project is located; or

However, in order to encourage better use of the land, the Commission may allow a density increase of up to 25% of the dwelling units and other uses normally allowable. In granting any such requested density increase, the Commission shall find that:

1. The character, architectural and siting variations incorporated in the project consist of factors which make a substantial contribution to the general intent and purposes of the PRD provision;
2. Such variations are appropriate based upon, but not limited to the following project amenities: (a) siting, visual focal points, use of existing physical features such as topography, building orientation, variation in building groups such as clusters; (b) design features, architectural styles, harmonious use of building materials, landscaping, and pedestrian ways; and (c) extent of open space reservation relative to

total project area, proposed plans for the use and management of such areas, and the degree of preservation of natural features for any unimproved areas;

- F. Off street parking areas are adequate for the proposal and comply with minimum off street parking requirements as set forth in Section 4.7 of these Regulations;
- G. The design and layout of the project preserves, to the greatest extent feasible, any recognized historic sites or structures and any natural features or resources of the site;
- H. Adequate conditions and technical plans exist to ensure the safe treatment of sewage and the provisions of a safe supply of drinking water for the project;
- I. The project has been designed so as to reduce or eliminate negative impacts on surrounding properties whether presently developed or not;
- J. The project is in conformance with a duly adopted Capital Budget Plan or Program of the Town of Brookfield;
- K. A Property Owners' Association, organization or other legal entity will be established to own and maintain any common elements including open spaces, utilities, and roads, and the power and authority of such organization be insured and protected by covenants running with the land;
- L. If the proposal involves a greater concentration of density or intensity of land uses within some section(s) of the development than upon others, such greater concentration shall be offset by a lesser concentration in other section(s) or by an appropriate reservation of common open spaces on the remaining lands by a grant of easement or covenant to the Town of Brookfield, private non profit charitable conservation trust, or property owners' association or other legal entity;
- M. That the design of structures and common areas for the project are arranged in such a way as to best service the needs of the occupants and other uses of the PRD;
- N. The project will not result in higher public costs or earlier incursion of public costs for the extension, enlargement, or improvements to existing public facilities or services; or the applicant has made or proposes to offer provisions acceptable to the Planning Commission for off setting any added net public costs or early commitments of public funds necessitated by the proposed PRD.
- O. Planned residential development (cluster housing) approved by the Planning Commission and/or Board of Adjustment and including the protection of space useful to the purpose of the district may provide for moderate or low cost housing. It is the intent of this Bylaw to encourage potential developers to submit proposals of this sort. For developments of eight units or more, it is required to submit such a proposal.

### 3.14 PLANNED RESIDENTIAL DEVELOPMENT -- GENERAL PROCEDURES

- A. Upon receipt of an application for Planned Residential Development approval, the Administrative Officer, in consultation with the Planning Commission, shall have fourteen (14) working days to ascertain if the application is complete or if any items require correction or completion, as described in Section 3.15.

- B. A request for Planned Residential Development approval shall be scheduled for at least one public hearing on the proposed Planned Residential Development within a reasonable time from the date of acceptance of the completed application.
- C. The Planning Commission may attach such reasonable conditions to its approval of a Planned Residential Development as it finds necessary to protect the public health, safety, and general welfare and to further the purposes of this Bylaw and 24 V.S.A., Chapter 117.
- D. The Planning Commission may require a performance bond be furnished and filed with the Town of Brookfield or other forms of surety be provided to guarantee that the various stages and elements of the total development will be constructed as planned and approved. Where public and/or private roadways or other common amenities are to be constructed or acquired following erection of buildings or other structures, such financial guarantees shall be of sufficient amount to cover in full the estimated construction costs and engineering of such amenities.
- E. If the Planned Residential Development application results in land available for park, recreation, open space or other municipal purposes, the Planning Commission, as a condition to its approval, may establish such conditions on the ownership, uses, and maintenance of such lands as it deems necessary to assure the preservation of such lands for their intended purposes.
- F. The Planning Commission, in its approval of a Planned Residential Development, shall limit the period of approval for a specific time period within which substantial construction shall commence, such period not to be in excess of four (4) years.
- G. No land development for which Planned Residential Development approval has been granted shall commence unless the Administrative Officer has issued a development permit for such land development.
- H. The Administrative Officer shall issue a development permit following the submission of a complete application upon finding that the application is in compliance with the Planned Residential Development as applied for and approved by the Planning Commission. The Administrative Officer may, after consultation with the Planning Commission, act to deny or approve an application for a development permit for land development in an approved PRD that involves minor modifications to the approvals granted for the PRD. Minor modifications to the approved plans shall not have the effect of changing the overall character or size of the development, increasing the overall coverage, intensity of use, or density, or reduce available parking, open space, or otherwise substantially modify the project as approved by the Planning Commission. Minor modifications shall have the effect of amending PRD approval.
- I. No material change to the project approved by the Planning Commission shall be permitted unless the Planning Commission grants, following public hearing, an amendment to the original approval and/or any preceding amendments thereto, whether or not such amendments are proposed by the original applicant or any successor(s) in interest to the original approval.

- J. No amendments to the original Planned Residential Development approval shall have the effect of extending the time period within which substantial construction must commence as set forth in Section 3.14 (G) above.
- K. In the event that substantial construction has not been undertaken during the time period specified pursuant to Section 3.14 (G) above, Planned Residential Development approval shall have no effect and no development permits or amendments to the PRD approval shall be permitted.

### 3.15 APPLICATION SUBMISSION STANDARDS:

#### CONDITIONAL USE APPROVAL

#### SITE PLAN APPROVAL

#### PLANNED RESIDENTIAL DEVELOPMENT APPROVAL

An Application for Conditional Use Approval, Site Plan Approval, or PRD Approval shall include submission of the following plans and supporting documents to the Development Board of Adjustment or Planning Commission, as appropriate.

- A. A map showing the general location of the property within the Town and its relationship to existing public roads and highways;
- B. A statement including the uses and the names and current addresses of all owners of land immediately adjacent to and directly across the public highways from the property at issue;
- C. A statement and/or map sufficient to demonstrate the relationship of the proposed development to adjacent land uses, both existing and proposed;
- D. A proposed site plan, drawn to an appropriate scale showing the location, height, spacing, uses, and architectural relationships of all buildings, open spaces, landscaping, utility lines, streets, driveways, off street parking facilities, unique or manmade features and the physical condition of the site;
- E. In the event land development is proposed involving the condominium form of ownership, proposed deeds and articles of the condominium;
- F. Quantitative data indicating the number of types of dwelling units and/or other uses, parcel size, proposed coverage of buildings, structures, roads, driveways, and parking areas; area of proposed open space not to include roads, utilities, rights of way, parking and loading areas of small inter structural yards;
- G. A development schedule indicating the approximate dates when construction of the project or stages of the project expected to begin and be completed;
- H. Existing and proposed ownership of the property involved; and
- I. Notwithstanding the above, any additional documents and supporting information upon finding by the appropriate Panel that such information may materially assist the Panel in its review and evaluation of the proposal.

### 3.16 NONCONFORMITIES

A nonconformity may be continued, subject to the following:

- A. A nonconforming lot that is undeveloped may be developed in accordance with Article 4.1 of these bylaws.
- B. A nonconforming use may be changed to another nonconforming use upon approval of the Board of Adjustment, but only if the Board finds that the degree of non conformity of the new use is not greater than that of the original non conforming use.
- C. A nonconforming use or structure may be extended within the boundary lines of a parcel or lot existing on the effective date of this Bylaw, or any applicable amendment thereto, upon issuance of a development permit by the Administrative Officer, provided that the extension shall not cause the use or structure to become in violation of any parking, unloading, required setback, lot area coverage, access road, or other requirements of this Bylaw applicable to such parcel or lot, and provided further that such extension shall not cause an increase in an existing violation of any such requirement. Where a building has less than the required front setback, additions that are lateral to the existing structure will be permitted so long as they become no closer to the road than the original structure, and provided that side setback requirements are maintained.
- D. When a nonconforming use has been discontinued for a period of one (1) year, it shall not thereafter be re established.
- E. A non conforming structure which has been damaged or destroyed by any cause may be reconstructed either to its prior condition or to a smaller structure as long as any non-conformities are not increased, but only if such reconstruction is commenced within one (1) year and completed within two (2) years of such damage or destruction. If the nature of the damage or destruction is such that reconstruction within the foregoing time period would work a hardship, then the Board may permit such reconstruction within a time period and on such terms as are equitable.

### 3.17 CERTIFICATION OF USE

In order that there be a determination that all buildings hereafter altered, enlarged, moved or constructed and all uses of land and structures are in accordance with the provisions of the development permit authorizing such activity, a certification of use may be required by the Administrative Officer or the Board of Adjustment prior to the use or occupation of any land or building or part thereof. The decision as to whether a certification of use is required may be made on a permit by permit basis.

If required, or if requested by the applicant, a certification of use shall be issued by the Administrative Officer upon determination that the building or use authorized by the development permit is in substantial compliance with the standards and conditions of said permit. The certification of use compliance shall be noted on the copy of record on file with the Town Clerk.

Application for a certification of use shall be made concurrent with the application for a development permit and shall be acted upon by the Administrative Officer within ten (10) days

after the erection or structural alteration of such a building or part thereof has been completed or, in the case of change in use of a building or land, not until such use has been established.

In order to provide for expedition in processing an application for a certification of use, and to establish the time period for action referenced above, any applicant requesting or required to have such a certification shall notify, in writing, the Administrative Officer immediately upon completion of the work authorized by the development permit requesting that the certification be granted.

A certification of use shall remain in effect as long as such building or use is in compliance with the standards and conditions authorized by the development permit.

### 3.18 INSPECTIONS

The Administrative Officer, being duly authorized to enforce this Bylaw, is empowered to enter upon land or any building for the purpose of assuring that any land development, as defined or approved, is in compliance with the requirements of this Bylaw and any development permit or certification of use as may have been granted.

Prior to entry on private property, the Administrative Officer shall give reasonable notice to the owner of record and any other involved party of interest and shall conduct such inspections only during reasonable hours.

## ARTICLE 4. GENERAL REGULATIONS

### 4.1 EXISTING SMALL LOTS AND OTHER NONCONFORMING LOTS

Any lot in individual and separate and non-affiliated ownership from surrounding properties in existence on the effective date of any zoning regulation, including an interim zoning regulation, may be developed for the purposes permitted in the district in which it is located, even though not conforming to minimum lot area or frontage requirements, if such lot is not less than one-eighth acre in area with a minimum width or depth dimension of forty feet. Nothing in this section shall be construed so as to prevent the sale or transfer of such a lot.

- A. If such lot subsequently comes under common ownership with one or more contiguous lots, the lot shall be deemed merged with the contiguous lot for purposes of this chapter. However, such lot shall not be deemed merged and may be separately conveyed, if:
  - 1. the lots are conveyed in their preexisting, nonconforming configuration; and
  - 2. on the effective date of any zoning regulations, each lot had been developed with a water supply and wastewater disposal system; and
  - 3. at the time of transfer, each water supply and wastewater system is functioning in an acceptable manner; and
  - 4. the deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems, potable water systems, or both, in case there is a "failed system" or "failed supply" as defined in 10 V.S.A. § 1972.
- B. If, subsequent to separate conveyance, as authorized under subsection A. above, a wastewater system fails, the owner shall be required to obtain from the secretary of natural resources a wastewater permit as required under the subdivision regulations or a certification that the wastewater system has been modified or replaced, with the result that it no longer constitutes a failed system.

### 4.2 REQUIRED FRONTAGE ON OR ACCESS TO PUBLIC ROADS

- A. No land development may be permitted on lots which do not have frontage on a public road, or, with the approval of the Planning Commission, access to such a road by permanent easement or right of way in accord with A.O.T. A76 fire code, at least 20 feet in width.
- B. In the event that a lot does not have frontage on a public road, the owner of said lot or his agent shall submit to the Planning Commission the following information prior to action by the Commission.
  - 1. A proposed easement acceptable to the affected parties which establishes a permanent right of way in accord with A.O.T. A76 fire code, of at least 20 feet in width, the benefit and burden of which shall run permanently with the lot;
  - 2. A site plan and narrative description of the land characteristics including such factors as topography and slope gradients within the proposed right of way. Based upon the above submission and any other relevant evidence and testimony offered, the

Planning Commission shall conclude whether or not said lot has permanent access to a public road.

#### 4.3 PROTECTION OF HOME OCCUPATIONS

These Regulations provide the right for any resident to use a minor portion of the dwelling or accessory building for an occupation which is customary in a residential area, does not have an undue adverse effect on the character thereof, and meets the following standards:

- A. The conduct of a home occupation shall be clearly secondary to the principal or residential use of the premises. As such, the Board of Adjustment in its review and approval may limit the size, placement, type, and scale of the use by appropriate conditions. Should the character of the occupation change to exceed the limitations imposed by such conditions a new permit shall be obtained from the Board of Adjustment for the new scale of activity.
- B. The home occupation shall be conducted by not more than four (4) people other than the full time residents of the house.
- C. The home occupation shall be operated entirely within the residence or accessory building and shall not exceed fifty per cent (50%) of the total floor area of the residence. If the use is to be conducted in an accessory building, it shall be constructed or renovated to be architecturally compatible with the principal buildings on the lot.
- D. No automobile traffic shall be generated in a volume substantially greater than would be normally anticipated in the neighborhood.
- E. No outdoor displays shall be permitted except for those items displayed during the normal business hours and placed indoors overnight, and are the actual products constructed or produced on the premises.
- F. Storage of goods, parts, supplies, and machinery used in the home occupation shall be inside a building or screened from public view and the adjoining property.
- G. Obnoxious or excessive noise, smoke, dust, odors, or other forms of interference not characteristic of residential uses and detectable at the property lines of a home occupation shall not be permitted. Examples of home occupations customary and secondary to a residence include professional offices, photographic and artist studios, craft and antique shops, and woodworking and blacksmith shops. Examples of uses not to be considered home occupations include retail sales (except sales of agricultural or handcrafted products assembled or produced on the premises), auto and heavy equipment service and repair, and restaurants.

#### 4.4 EXTRACTION OF GRAVEL, SAND, SOIL, AND MINERALS

The extraction of gravel, sand, soil, and minerals or the extension of such activities from existing operations shall require conditional use approval from the Board of Adjustment. The Board, in its review of projects, shall give due consideration to the following standards:

- A. Plans for the restoration of the disturbed portions of the site during and following the operation shall be adequate to ensure that a safe, attractive, and useful condition results.

- B. Plans for the operation of the facility shall be sufficient to ensure that the operation will not adversely affect water quality, drainage patterns, or create excessive dust, traffic, vibration, and noise at the site or areas in close proximity to the site.
- C. The operation shall be managed to prevent the creation of excessively steep slopes, overhangs, exposed boulders, uprooted stumps, and other debris.
- D. The scale of intensity of the operation shall not place uneconomic demands on bridges, culverts, and roadways leading to and from the project site.
- E. If power activated crushing or sorting operations are to be allowed on the site, such activity shall not unduly affect the character of the immediate neighborhood area. To ensure that the rehabilitation of the site is properly managed, the Board may, as a condition to its approval, require that a performance bond be posted to cover the costs of restoration or no more than a predetermined area of the site be exposed at any one time.

#### 4.5 ROAD ACCESS LIMITATIONS

Road access limitation will be determined by the Selectmen and the Board of Adjustment.

#### 4.6 SETBACK FROM WETLANDS, RIVERS, STREAMS AND PONDS

- A. Setbacks from 6 Ponds and Sunset Lake are determined by the Brookfield Shorelands Zoning Bylaw.
- B. No building or structure shall be erected within 75 feet of rivers, streams, ponds or Class 1 and 2 wetlands under the Vermont Wetland Rules except for setbacks governed by the Brookfield Shorelands Zoning Bylaw.

#### 4.7 OFF STREET PARKING AND LOADING REQUIREMENTS

No land, building or structure shall be used or substantially changed in use unless there is provided off street parking meeting the applicable minimum requirement as set forth below.

- A. Residential Uses: Two parking spaces for each dwelling unit.
- B. Places of Public Assembly and Restaurants: One parking space for every three seats, or where there are no seats provided, one parking space for every 200 square feet of floor area in addition to one space for each business and employee vehicle.
- C. Commercial or Light Industrial Uses: One parking space for every business and employee vehicle plus one parking space for every 200 square feet of floor area.
- D. Home Occupation: One parking space for each regular employee in addition to the requirement of A. (above) and not less than one space for customers.
- E. Business, Medical and Professional Offices: One parking space for every 200 square feet of office floor area.

F. Hotels, Bed & Breakfast, or Guest Homes: One parking space for each room available for lodging in addition to one parking space for each family dwelling unit, where applicable.

G. Special Requirements:

1. The requirements set forth above are minimum parking requirements and the provision of additional parking may be required by the Planning Commission and/or Board of Adjustment upon finding that such additional parking is necessary and appropriate for the proposed use.
2. Parking spaces for any number of separate uses may be combined in one parking area, but the spaces required of one use may not be assigned to another use, except upon approval of the Board of Adjustment and the Planning Commission.
3. Where any non residential use abuts a residential use, the parking area shall not be closer than fifteen (15) feet from the property line of the residential use and shall be adequately planted and screened from view. The use of artificial plants for this purpose shall be prohibited.
4. Parking area minimum requirements shall not be satisfied by the use of lands lying within a public right of way.
5. Wherein all or part of the above off street parking requirements are found not applicable to a specific proposed principal or accessory use, the Development Board of Adjustment and the Planning Commission, as part of their respective approvals shall find that an adequate number of off street parking spaces are designated and available for the specific use and/or structures.

H. Village Parking Requirements

For every building hereinafter erected, altered, extended or changed in use for the purpose of business or trade, there shall be provided adequate off street space for the loading or unloading of vehicles. The Planning Commission or Board of Adjustment shall give consideration to the size of the facility, type of use and frequency of arrivals and departure of shipments in reviewing this provision.

#### 4.8 OUTDOOR STORAGE

Junk yards are prohibited. With respect to any use other than a junk yard, the open storage of discarded materials for more than 30 days, inoperable or retired vehicles, dismantled equipment and other similar items shall be more than 75 feet from any river, stream, pond or significant wetland under the Vermont Wetland Rules and shall be screened from view from a public highway so that the stored items are not visible from the highway during any season. Fences, walls, evergreen trees, shrubs, buildings, and land contours are acceptable means of screening outdoor storage. Maintenance of screening for the above purposes shall be a responsibility of the owner of the premises.

#### 4.9 TRAFFIC MANAGEMENT

If a proposed land development presents the potential for significant or adverse impacts on highway access or maintenance, traffic flow or safety, a traffic impact study may be required by the Board of Adjustment or Planning Commission with the cooperation of the Selectmen. The purpose of the study shall be to identify existing traffic characteristics, the impact of the proposed land development on the system, and any necessary and appropriate mitigating measures to maintain or improve the level of service of the affected roadway and intersections.

The Board of Adjustment or Planning Commission may require that the applicant or other participating parties incur the costs of the study. The study shall be prepared by a qualified traffic consultant approved by the Board of Adjustment or Planning Commission. The scope or components of the study shall be determined by the Board of Adjustment or Planning Commission in consultation with the applicant.

#### 4.10 DIVISION OF LOTS

- A. No building lot shall hereafter be subdivided into two or more lots unless all the building lots resulting from such division conform with all the applicable regulations of the development district in which the property is located except as provided below.
- B. Notwithstanding the above, single purpose lots not meeting with all the applicable provisions of the development district may be created provided that such lots are proposed to be exclusively and permanently dedicated for conservation purposes. If a subdivision is for the purpose of adding to an adjoining property and is not to be used as a building lot, but to enhance the two properties only or to improve a boundary, those changes may be made so long as the lot created thereby is merged into the adjoining property and so long as the subdivided property remains in conformity with this Bylaw. No single purpose lots shall be created unless the Planning Commission, upon receipt of such a request from the owner, finds that uses of such lots are consistent with this provision and the purposes of the Town Plan.

#### 4.11 MORE THAN ONE PRINCIPAL BUILDING PER LOT

With the exception of Planned Residential Developments, no more than one principal building may be placed on a lot unless the lot on which such buildings and any building accessory to such principal buildings is able to be subdivided into two separate and individual lots, both lots and their respective uses conforming to all applicable provisions of these regulations.

This provision does not require that a subdivision of the lot be effected nor does such provision establish at any subsequent time the right to subdivide the lot in accordance with the proposed plan of division as required and approved by this Bylaw. This provision also does not prohibit the placement of an accessory dwelling unit on a lot containing a one-family dwelling, provided that the requirements of these bylaws otherwise pertaining to such unit and dwelling are met.

#### 4.12 LOTS IN TWO DEVELOPMENT DISTRICTS

Where a district boundary divides a lot of record held in single or joint ownership on the effective date of these regulations, such lot may be developed according to the following:

- A. For the purposes of calculating the permissible density or intensity of uses permitted on that lot, the area of the entire lot may be used.
- B. Notwithstanding the density provisions set forth in (A) above, all structures and/or uses, and any uses or structures accessory to those uses or structures shall comply with the provisions of the district within which such structure or uses are to be located.
- C. All development of such a divided lot shall further comply with any other applicable provisions set forth in these regulations.
- D. Where all or a portion of the area of a lot is used for purposes of calculating the permitted intensity or density of uses or structures on the entire lot, but where such portion of the lot is not otherwise developed, the undeveloped portion shall be deemed to be reserved for purposes of compliance with the density requirements of the developed portion of the lot.

#### 4.13 CAMPING TRAILERS, UNLICENSED MOTOR VEHICLES

It shall be unlawful for any purpose to park a camping trailer, travel trailer, pick up coach, motor home on any public or private property, except in accordance with these regulations:

- A. In an approved trailer camp,
- B. In an approved camping trailer sales lot,
- C. The owner of a trailer may park it on his own property, provided that the trailer is parked no closer than six feet from any lot lines. A trailer so parked shall not be used as living quarters and shall not be hooked up to any utilities, except as temporary residence while the owner's principal residence is being constructed on the same lot, with approval of the Planning Commission, for a period not to exceed one year, or to accommodate visiting friends or relatives for only one period of not more than sixty days per year.
- D. If used no more than 100 days per year, a trailer may be parked and connected to utilities to serve as a camp on a lot without a residential structure in the Agricultural/Residential District upon the issuance of a permit therefore.
- E. There shall be no more than four exposed unlicensed motor vehicles stored on one parcel in any district, excepting unlicensed operating agricultural vehicles.

#### 4.14 PARKS FOR MOBILE HOMES, TRAILERS, OR TENTS

All mobile home parks are subject to the State statutes and rules for mobile home parks (see 10 V.S.A., Chapter 153). An application to the municipality for a mobile home park shall be made under the planned residential development procedures set forth in these regulations and is subject to the density requirements of the district in which it is located.

- A. No person shall construct or operate a trailer camp without first obtaining site plan approval and a permit from the Administrative Officer.

- B. Application for conceptual approval may be made to the Planning Commission, accompanied by a sketch plan and description of the proposal, and is encouraged.
- C. Application for final tent and trailer camp site plan approval shall be made to the Planning Commission. The application shall be accompanied with a site plan and drawings prepared by a professional engineer, showing the property lines and area of the park, contour map, a layout of the roads, walkways, trailer lots, tent sites, parking areas, garbage collection stations, electrical distribution, water lines, sanitary sewer facilities, and storm sewer drainage facilities.

#### 4.15 SIGNS

Signs shall be of a design consistent with the rural and residential character of Brookfield; shall not interfere with sightlines of moving traffic or neighboring residences and shall be constructed of natural materials, e.g., wood or metal. Illumination shall be limited to direct shielded lighting which does not shine on roadway or neighboring properties. Size shall be limited to 16 square feet overall area.

- A. Permitted types of permanent signs:
  - 1. Wall - attached directly to building.
  - 2. Projecting 90 degrees from structure.
  - 3. Free standing anchored directly in ground and set back ten feet minimum from roadway.
- B. Not permitted types of signs:
  - 1. Billboards, streamers, pennants, spinners or similar devices.
  - 2. Flashing signs, roof signs, reflective or internally illuminated signs, or strings of bulbs except as part of holiday celebrations.

#### 4.16 TELECOMMUNICATIONS FACILITIES

##### A. Purpose

The purpose of this section is to protect the scenic qualities of Brookfield's natural environment and to guide development that may have adverse health, safety or visual impacts.

##### B. Applicability

Telecommunications facilities are conditional uses and shall be reviewed pursuant to the provisions of Section 3.8 of this Bylaw. In addition, telecommunications facilities shall meet the requirements of this section.

##### C. Exemption

An expansion of an existing telecommunications facility that does not increase the profile of the tower in any direction by more than five feet from the original permitted structure and appurtenances or does not increase the height of the tower shall not require conditional use or site plan approval, but shall only require a development permit.

#### D. Additional Required Submittals

In addition to the information required to be submitted pursuant to Section 3.15 of this Bylaw, an applicant for a telecommunications facility shall also submit the following:

1. The location of the proposed structure on a USGS topographical map with a minimum of ten foot contours.
2. Names and addresses of the owners and proposed lessees of the facility and whether the facility will be exclusive or will allow co-location by other service providers.
3. A map or maps delineating the service or coverage area for the proposed height and at heights 50, 100, 150 and 200 feet lower than the proposed height.
4. Feasible alternative locations and heights of the facility. If none, a clear explanation as to why the proposed site and/or height is the only location and/or height that is feasible and why other areas are not.
5. Other Federal and/or state conditions placed on the facility, such as lights.
6. A complete description of the facility including, but not limited to, height, base dimensions, other dimensions, construction materials, color and sheen of construction materials, gauge of supporting guy wires or other support structures, illumination and a description of antennas or other equipment to be mounted on the facility.
7. Description and location of utilities and other accessory structures.
8. Any proposed or existing landscaping, screening, fencing and access roads.
9. If the telecommunications facility is located on a parcel that is forested, the approximate average height and type of existing vegetation within 50 feet of the facility.
10. Information sufficient to determine whether the proposed facility is exempt under Subsection C. above.
11. Any other information determined to be necessary by the Board of Adjustment.

#### E. GENERAL STANDARDS

In addition to the general requirements of this Bylaw, the following requirements shall also apply to telecommunications facilities:

1. To the extent practical with respect to height, color and size, the facility shall be compatible with the existing natural and man-made characteristics of the site.
2. Existing on-site vegetation shall be preserved to the extent possible or improved, and disturbance of the existing topography outside the physical facility shall be minimized, unless the disturbance would result in a lesser visual impact to the facility on the surrounding area.
3. The physical facility shall be enclosed by a chain link or similar fence and the entire fence shall be located behind the required landscape screen and the required setback.

4. No lighting shall be allowed on a tower except as required by FAA regulations. Lighting on the tower, if required, shall be shielded so as not to be visible by a person on ground level anywhere within a 300 foot radius of the tower. Lighting on other equipment and buildings shall comply with the lighting requirements in this Bylaw.
5. Materials utilized for the exterior of any structures shall be of a kind and positioned on structures so as to minimize glare if necessary to avoid undue adverse visual impact.
6. The facility shall not be within 500 feet of any residential dwelling unit.
7. The height of the facility shall not exceed ten feet above the average height of the tree line on land immediately adjoining the proposed site. Notwithstanding the above, where the girth of the tower, antennae or related fixture does not exceed sixteen inches at any point ten feet above the tree line, additional height may be permitted subject to the approval of the Board of Adjustment and conformity with other criteria in this subsection.

F. ADDITIONAL CRITERIA FOR CONDITIONAL USE APPROVAL

In granting a conditional use approval for the construction of a new telecommunications facility or the expansion of an existing facility that is not exempt pursuant to subsection C. above, the Board of Adjustment must make an affirmative finding for each of the following criteria, in addition to other applicable criteria set forth in this section and elsewhere. It shall be the responsibility of the applicant to present evidence with respect to the criteria.

1. There are no existing sites or telecommunications facilities that are suitable to the applicant's needs despite a duly diligent search, and that, if such facilities do exist, they are either technically inadequate or the owner, after a process of good faith negotiation, will not allow co-location. It shall be the burden of the applicant to perform a minimal analysis of technical feasibility.
2. The applicant shall allow other wireless service providers to co-locate on the approved facility if it is technically feasible on reasonable terms and conditions; provided, however, that there shall be no affirmative obligation on the applicant to increase the height or width of the tower in order to accommodate the equipment of another user, nor shall the applicant be required to engineer the tower to accommodate another user.
3. All aspects of the proposed project, including access roads and utility lines, are located and designed to mitigate undue adverse visual impact on the aesthetic quality of the area or on the character of the area or natural resources.
4. No dangers to the public health and safety can reasonably be expected to result from the operation of the facility.

## G. ABANDONED, UNUSED, DAMAGED OR DANGEROUS TOWERS

Abandoned or unused towers or portions of towers shall be removed as follows:

1. The owner of an approved telecommunications tower shall annually, on January 15, file a declaration with the Administrative Officer certifying continuing safe operation of the tower subject to this Bylaw. Failure to file a declaration shall mean that the tower is no longer in use and considered abandoned.
2. Abandoned or unused towers and associated facilities shall be removed within 180 days of cessation of operations at the site unless a time extension is approved by the Board of Adjustment. In the event that the tower is not removed within 180 days of the cessation of operations at a site, the town shall notify the owner and may remove the tower and associated facilities. Costs of removal shall be assessed against the property or tower owner.
3. Unused portions of towers shall be removed within 180 days of the time that such portion is no longer used for antennas.

An owner who has failed to file an annual declaration with the Administrative officer by January 15 may, by February 15, file a declaration of use or intended use and may request the ability to continue to use the tower.

### 4.17 ENFORCEMENT

When advised by the Administrative Officer that a violation has occurred, the Board of Selectmen shall apply the penalties provided in 24 V.S.A. § 4451. When a violation occurs or is to occur, the administrative officer shall take appropriate action as provided under 24 V.S.A. § 4452.

### 4.18 COSTS OF TECHNICAL REVIEW

The Board of Adjustment or Planning Commission may require an applicant to pay for reasonable costs of an independent technical review of an application and, if so, shall require the applicant to pay the costs of such a review before issuing a decision. Failure to pay the costs of such a review shall constitute grounds for denial of an application. Prior to authorizing an independent technical review, the Board of Adjustment or Planning Commission shall notify the applicant of its intent to do so, and shall provide the applicant with an estimate of the projected costs and require the applicant to: (a) respond by a particular date concerning the reasonableness of that estimate, (b) pay the estimate prior to further consideration of the application, or (c) both. The provision of such an estimate shall not constitute a limit on the applicant's obligation to pay costs under this section. In the event that the Board of Adjustment or Planning Commission requires advance payment of an estimate under this section, any unused balance shall be refunded to the applicant.

## **ARTICLE 5. DEFINITIONS**

For the purposes of this Bylaw, meanings of the following words and terms shall be interpreted as defined below and all other words shall be presumed to have their normal meaning, unless such meaning runs counter to the purposes and objectives of these regulations or the Town Plan. The definition of terms defined in Section 4303 of the Act, and not otherwise defined herein is hereby incorporated and made part hereof.

**ACCESSORY BUILDING OR ACCESSORY USE** - A building or use, other than an accessory dwelling unit, customarily incidental and subordinate to the principal building or use located on the same lot.

**ACCESSORY DWELLING UNIT** - A single efficiency or one-bedroom apartment that is appurtenant and clearly subordinate to an owner-occupied one family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, and (i) for which the property has sufficient wastewater capacity, (ii) the size of which does not exceed 30 percent of the total habitable floor area of the one family dwelling, and (iii) which, together with the appurtenant one family dwelling, complies with all applicable setback, lot area coverage, and parking requirements. An accessory dwelling unit will be considered appurtenant if it is structurally attached to or within 20 feet of the one family dwelling to which it is subordinate. However, an accessory dwelling unit need not be appurtenant if it otherwise meets this definition and is constructed within a barn, shed, detached garage or other outbuilding that existed before September 1, 2005 as demonstrated to the satisfaction of the Administrative Officer and is on the same lot as the one family dwelling to which it is subordinate.

**AFFILIATED FARM HOMESTEAD** - A one family dwelling on a lot used as living quarters for a family directly related by marriage or blood to the owners and occupants of a farm homestead or for someone actively employed in the operation of the farm.

**AGRICULTURE** - Land containing at least five acres which is used for raising livestock, or agricultural or forest products, including farm structures and the storage of agricultural equipment; riding and boarding stables; and as an accessory use, the sale of agricultural products raised on the property.

**ALTERATION** - Structural change, rearrangement, change of location or addition to a building, other than repairs and modification within the building.

**BED & BREAKFAST** - A dwelling unit occupied by the owner or tenant thereof, which contains no more bedrooms for transient lodging than permitted by State law. This use does not include the commercial catering of on premise functions, private parties, receptions and banquets for groups or individuals not otherwise affiliated with the operator of the tourist home.

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

**CAMP** - Cabin, shelter or other accommodation that is permanently affixed to the site, but without running water, that is suitable for and used no more than 100 days in any one year

for seasonal or temporary living purposes; or a trailer that meets the requirements of Sections 4.13C or 4.13D.

**COMMENCEMENT OF CONSTRUCTION** - Construction of the first improvement to land or to a building or structure including work preparatory to construction, such as clearing or roadway improvements, the act of which is incidental to a plan or intention to erect or alter a building or structure, or divide land for sale or other means.

**COMMERCIAL** - Use of a building or land or portions thereof for the purchase, sale, or exchange of goods and commodities, services and amenities.

**DISTRICT** - A part of the territory of the Town of Brookfield within which certain uniform regulations and requirements or various combinations thereof apply under the provisions of these regulations.

**DWELLING, MULTIPLE FAMILY** - A dwelling or group of dwellings on a lot containing separate dwelling units or three or more families, having separate or joint entrances, services, or facilities.

**DWELLING, ONE FAMILY** - A detached building designated for or occupied solely as a dwelling by one family including a mobile home. As required by 24 V.S.A. § 4412, the phrase "one family dwelling" also is deemed to mean:

- a) A residential care home or group home to be operated under state licensing or registration, serving not more than eight persons who have a handicap or disability as defined in 9 V.S.A. § 4501, provided that such home is 1,000 feet or more from the nearest existing or permitted such home.
- b) A home where the owner or operator is licensed or registered by the state for child care, serving six or fewer children.
- c) A home where the owner or operator is licensed or registered by the state for child care, serving no more than six full-time children and four part-time children as defined in 33 V.S.A. § 4902(3)(A); provided, however, that site plan approval shall be required for such facility under Section 3.11 of these bylaws.

**DWELLING, TWO FAMILY** - A detached building designated for or occupied by two families living independently of each other.

**DWELLING UNIT** - A unit housing to be occupied solely by one family containing separate kitchen facilities, not to include motels, hotels, tourist homes, clubs, schools, hospitals, or similar uses.

**FARM HOMESTEAD** - A one or two family dwelling on a lot used as living quarters for a family whose principal occupation is in agriculture.

**FILLING STATION** - A retail establishment at which motor vehicles are serviced especially with gasoline, diesel oil, air and water. Also called gas station, service station.

**GUEST HOUSE** - A building with a central entrance used as a dwelling unit by the owner or tenant thereof containing four to ten rooms for public lodging; providing rooms and/or meals for lodging guests only and which does not materially change the character of the immediate

area. The use does not include the commercial catering of on premise functions, private parties, receptions, and/or banquets for groups or individuals not otherwise affiliated with the operator of the guest house.

**HOME OCCUPATION** - Any occupation customarily carried on by a resident at his or her residence, involving not more than four people other than the full time residents of the house, provided that the use occupies a minor portion of the residence and/or accessory structures have an undue adverse effect on the character of the area and is clearly secondary to principal use as a residence. Examples of home occupation include dressmaking, secretarial services, art studio, beauty parlor, and craft shops.

**HOTEL/INN** - A building designed or used for public lodging, meeting room, meals, and service of legal beverages, but excluding motels, guest houses, dormitories and tourist homes.

**INDUSTRY, LIGHT** - Any industrial use, including manufacturing, compounding, processing, packing, treatment or warehousing which can be carried on in such a manner than neither obnoxious, or excessive noise or smoke, vibration, dust, glare, odors, electrical interference or heat is detectable at the boundaries of the property on which the principal building is located provided that a majority joint vote of the Board of Adjustment and the Planning Commission determines that such use is compatible with the environment and neighborhood in the area.

**INTERESTED PERSON** - As defined under § 4465(b) of the Act:

- a) 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 this 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;
- b) the Town of Brookfield or any adjoining municipality;
- c) a person owning or occupying property in the immediate neighborhood of a property which is the subject of a decision or act taken under this bylaw, 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 Town of Brookfield;
- d) any ten (10) voters or property owners within the municipality who, by signed petition to the Panel having jurisdiction, allege that any relief requested by a person under this bylaw, if granted, will not be in compliance with the policies, purposes or terms of the plan or regulations of the Town of Brookfield; and
- e) any department or administrative subdivision of the state owning property or any interest therein within the Town of Brookfield or adjoining municipality, and the Vermont Agency of Commerce and Community Development.

**JUNK YARD** - A yard for deposit, storage or resale, whether in connection with another business or not of any junk or discarded material or cars.

**LAND DEVELOPMENT** - The division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or

structure or any mining, excavation or landfill, any change in use of any building or other structure or land or extension of use of land.

**LOT** - Land occupied or to be occupied by a main building and its accessory buildings or other uses, together with required open spaces, having not less than the minimum area, width, and depth required for a lot in the district and having frontage on a public highway, or access to such a highway by a permanent right of way approved by the Planning Commission pursuant to 24 V.S.A. Section 4412(3) and Section 4.2 of these regulations.

**LOT AREA** - The total area within the property lines of the lot meeting the district requirements of these regulations.

**LOT FRONTAGE** - That portion of a lot of land which is adjacent and parallel to a public highway, as defined by 19 V.S.A. Section 1 or a permanent right of way approved by the Planning Commission pursuant to 24 V.S.A., Section 4412(e) and Section 4.2 of these regulations.

**MOBILE HOME PARK** - Any parcel of land under single or common ownership or control which contains, or is designed, laid out, or adapted to accommodate two or more mobile homes.

**NONCONFORMING LOT** - A lot that does not conform to the dimensional requirements of these bylaws, including but not limited to lot area or frontage, but that was in conformance with all applicable laws, ordinances and regulations prior to the enactment of these bylaws, including a lot improperly authorized as a result of error by the Administrative Officer.

**NONCONFORMING STRUCTURE** - A structure or part of a structure that does not conform to these bylaws, including but not limited to requirements pertaining to bulk, dimensions, height, area, yards, density, or off street parking or loading, but that was in conformance with all applicable laws, ordinances and regulations prior to the enactment of these bylaws, including a structure improperly authorized as a result of error by the Administrative Officer.

**NONCONFORMING USE** - A use of land that does not conform to these bylaws but did conform to all applicable laws, ordinances and regulations prior to the enactment of these bylaws, including a use improperly authorized as a result of error by the Administrative Officer.

**NONCONFORMITY** - A nonconforming use, structure, or lot.

**NUISANCE FACTOR** - Any offensive, annoying, unpleasant, or obnoxious thing or practice; a cause or source of annoyance; especially a continuing or repeated invasion or disturbance of another's rights; including the actual or potential emanation of any physical characteristic of activity or use which can be perceived by or affects a human being, or the generation of an excessive or concentrated movement of people or things, or any other characteristic detrimental to the value of an adjacent property.

**OFFICE** - A room, set of rooms, or building where the business of a commercial, industrial, professional, or governmental organization is conducted.

**OUTSIDE RECREATION FACILITIES** - A principal use of land together with any accessory buildings which typically involves the sale of a service not limited to tennis courts, golf

courses, hiking trails, skating rinks, playfields, horse riding and driving, wildlife sanctuaries, cross country skiing and outdoor swimming pools. The term specifically excludes outdoor movie theaters, firing ranges, bowling alleys, health spas or driving ranges, race tracks and other bike activities.

**PANEL** - The Board of Adjustment or Planning Commission.

**PARKING AREAS** - An area of land on a lot designated or used exclusively for the maneuvering and storage of motor vehicles.

**PARKING SPACE** - A defined space which is at least ten feet wide and twenty feet long outside of the right of way or driveway used for the parking of one motor vehicle which affords practical access to the road or right of way and maintained sufficiently to permit year round use.

**PLANNED RESIDENTIAL DEVELOPMENT** - A method for concentrating residential units (clustering) to preserve woodland, meadows or available space on a single tract of land without reducing the requirement for density in the district.

**PRINCIPAL BUILDING** - A dominant building or portion thereof, the use of which is fundamental and superior to any use of land.

**PRINCIPAL USE** - The use or uses dominating a lot such use or uses being fundamental and superior to any other uses on a lot.

**PUBLIC BUILDINGS** - A building owned by a municipality, county, state, or federal government or a quasi public building that is property tax exempt such as a church, private school, medical clinic, hospital, library, or museum.

**PUBLIC UTILITY** - The use of land or structures under the control and ownership of a person, corporation, partnership, or unit of government or other legal entity whose principal purpose is for the economical provision of services to the public, the use of said land or structure being entirely or partially above ground for, but not limited to, the manufacture and transmission of electricity; the operation of telephone switching stations or exchanges; the distribution of water or gas; and the collection and treatment of waste water. This definition excludes electric generation or transmission facilities regulated under 30 V.S.A. § 248, which are not regulated by these bylaws.

**REPAIR, SERVICE, AND BODY SHOP** - A shop where work is done commercially in fixing and reconditioning objects and machinery.

**SCHOOL** - Includes public, private, and nursery school, college, university, and accessory uses, but shall not include commercially operated schools of business, dancing, driving, beauty culture, or similar business establishments.

**SETBACK** - Required depth of yard relative to buildings and structures, excluding signs measured from the center of the public highway.

**SHORELAND** - An area of land defined as being between the normal mean water mark of a lake or pond and a line 500 feet distant from such mean water mark.

**SHORELINE** - The normal mean water mark of a lake or pond.

**STEEP SLOPE** - A slope which is typically 25% or more in gradient. (25 vertical feet in 100 horizontal feet).

**STRUCTURE** - An assembly of materials with fixed location on the ground, or attached to an object having an affixed location on the ground including towers, antennae, disks, but excluding mailboxes, fences, roads, or driveways.

**SUBDIVISION** - The act of division of a parcel of land by sale, gift, lease, mortgage foreclosure, court ordered partition or the filing of a plot plan on the Town Records where the act creates, or is intended to create, two or more lots. A subdivision shall be deemed to have taken place when a lot is divided by a federal or state highway or a class 1 municipal highway. The division of a lot by a class 2, 3 or 4 municipal highway, a trail, an ancient road, a right-of-way, or a waterway shall not in and of itself cause the lot to be deemed subdivided.

**SUBSURFACE SEWAGE DISPOSAL SYSTEM** - Any sewage disposal system which treats and disposes of domestic sewage underground and therefore whose proper installation and safe functioning is dependent on suitable conditions of soils, slopes, bedrocks, and water tables.

**SURFACE WATER** - Any body of water such as brooks, streams, rivers, ponds, or lakes, and including the natural channels of intermittent brooks, streams, and rivers.

**USE, CONDITIONAL** - A use which may be permitted only by approval of the Board of Adjustment, following a public hearing.

**USE, PERMITTED** - A use which may take place in any district as set forth by these regulations, excluding illegal uses and non conforming uses.

**TELECOMMUNICATIONS FACILITY** - All equipment and locations of equipment with which a telecommunications provider transmits and receives the waves that carry its services. Amateur radio towers of less than 75 feet in height will be exempt from the provisions of Section 4.16.

**VARIANCE** - A deviation from the strict application of the provision of the regulation relating to side and rear and front setbacks, frontage requirements, and lot sizes for a particular property as authorized by the Development Board of Adjustment and which is conveyed with the property.