

ZONING ORDINANCE

TOWN OF WILMINGTON, VERMONT

Effective March 5, 1968

Amended:

January 29, 1969

December 16, 1969

November 7, 1972

March 2, 1993

May 8, 2001

Section 7: PUD and 7.B.(2), Section 13:Definitions

August 17, 2005

Compliance with Statutory Requirements of Act 115, Effective 09/07/05

August 17, 2005

Section 6.B. (2), Parking and Access, Effective 09/07/05

November 15, 2006

Section 6(A)(2), Reduction of Setback Requirements, Effective 12/06/06

November 15, 2006

Section 6(B)(2) Minimum Requirements in Commercial Districts, Effective 12/06/06

April 18, 2012

Article I, Administration

May16, 2012

Article V, Enactment and Purpose

Table of Contents

Section 1: Title, Enactment, Interpretations, and Administration (repealed)	3
Section 2: Purpose (repealed).....	3
Section 3: Existing Use of Buildings and Land:	3
Section 4: Districts.....	5
Map Section 4	7
Section 5: Agricultural Use	8
Section 6: Permitted Uses and Minimum Requirements of Districts	8
Section 7: Conditional Uses	11
Section 8: Camps	14
Section 9: Administration and Enforcement (repealed).....	14
Section 10: Appropriate Municipal Panels (AMP) (repealed).....	15
Section 11: Zoning Permits and Violations (repealed).....	17
Section 12: Adoption, Amendment & Repeal Process	18
Section 13: Definitions.....	20
Section 14: Municipal Uses and Special Limitation	23
Section 15: Appeals.....	24
Section 16: Severability	26
Exhibit “A” (See Section 10 E Variances).....	26

Section 1: Title, Enactment, Interpretations, and Administration

(repealed and replaced with Article I)

Section 2: Purpose

(repealed and replaced with Article I)

Section 3: Existing Use of Buildings and Land:

A. Nonconformities [Subchapter 7, §4412 (7)]

- (1) This ordinance shall not apply to existing buildings and structures nor to the existing use of any building or structure or of land to the extent to which they were used at the time of the adoption of this ordinance; excepting however:
 - (a) Existing Building Setback: Buildings existing at the time of adoption of this ordinance may be added to in any direction up to twenty (20) feet from the public road limits and up to ten (10) feet from any property line.
 - (b) Once a non-conforming **use** is changed to a use permitted in the district where it is located, then it may not be changed back to a non-conforming use;
 - (c) Any non-conforming **use**, which is not actively engaged/ pursued for a period of not less than **twelve (12)** months shall be considered as abandonment or discontinuance of the non-conforming use and the property shall become subject to the all of the regulations and requirements of the current Zoning Bylaws;
 - (d) Any non-conforming **building or structure** which is left vacant for a period of not less than **twelve (12)** months shall be considered as abandoned and the property shall become subject to all of the regulations and requirements of the current Zoning Bylaws;
 - (e). However, nothing herein contained shall prevent the substantial restoration within **twelve (12) months** and the continued use of a restored non-conforming building or structure and nonconforming use, damaged by fire or other casualty. Written notification, including a plot plan (to scale) showing structure (with dimensions), setback distances from roads, rights of way, easements or streams prior to the commencement of any construction shall be filed with the Zoning Administrator's office. Failure to notify Zoning Office within **six (6) months** shall constitute abandonment and the property shall become subject to all of the regulations and requirements of the current Zoning Bylaws
- (2) This ordinance shall not prevent the expansion, extension or alteration of any nonconforming **commercial use**, existing at the time of the adoption of this ordinance, provided that no

building existing at the time of adoption of this ordinance may be added to or constructed in any direction nearer than twenty (20) feet from the public road limits or ten (10) feet from any property line.

- (3) A change from one non-conforming **commercial** use to another non-conforming **commercial** use shall not be permitted except by the procedure established in Conditional Use Section of this Ordinance.

B: Existing Small Lots: [Subchapter 7, § 4412 (2)]

- (1). Any undeveloped lot in existence prior to March 5, 1968, may be developed for the purposes permitted and in compliance with all regulations for the district in which it is located, even though not conforming to minimum lot size requirements, if such lot is not less than one-eighth acre in area with a minimum width or depth dimension of forty (40) feet and has sufficient wastewater capacity.
- (2) Merger: It is the express intent of this Ordinance that existing small lots, which subsequently come under common ownership with one or more contiguous lots **shall not** be deemed **merged** and shall be developable in according with the provisions of (1) above.

C. A lot which conforms with this ordinance by virtue of a variance or special exception shall not be altered without further variance or special exception being granted.

Section 4: Districts

[Subchapter 7, § 4414 (1)]

For the purpose of this ordinance, the Town of Wilmington is hereby divided into the following districts:

- A. Residential
- B. Commercial

The Commercial District shall be bounded as follows:

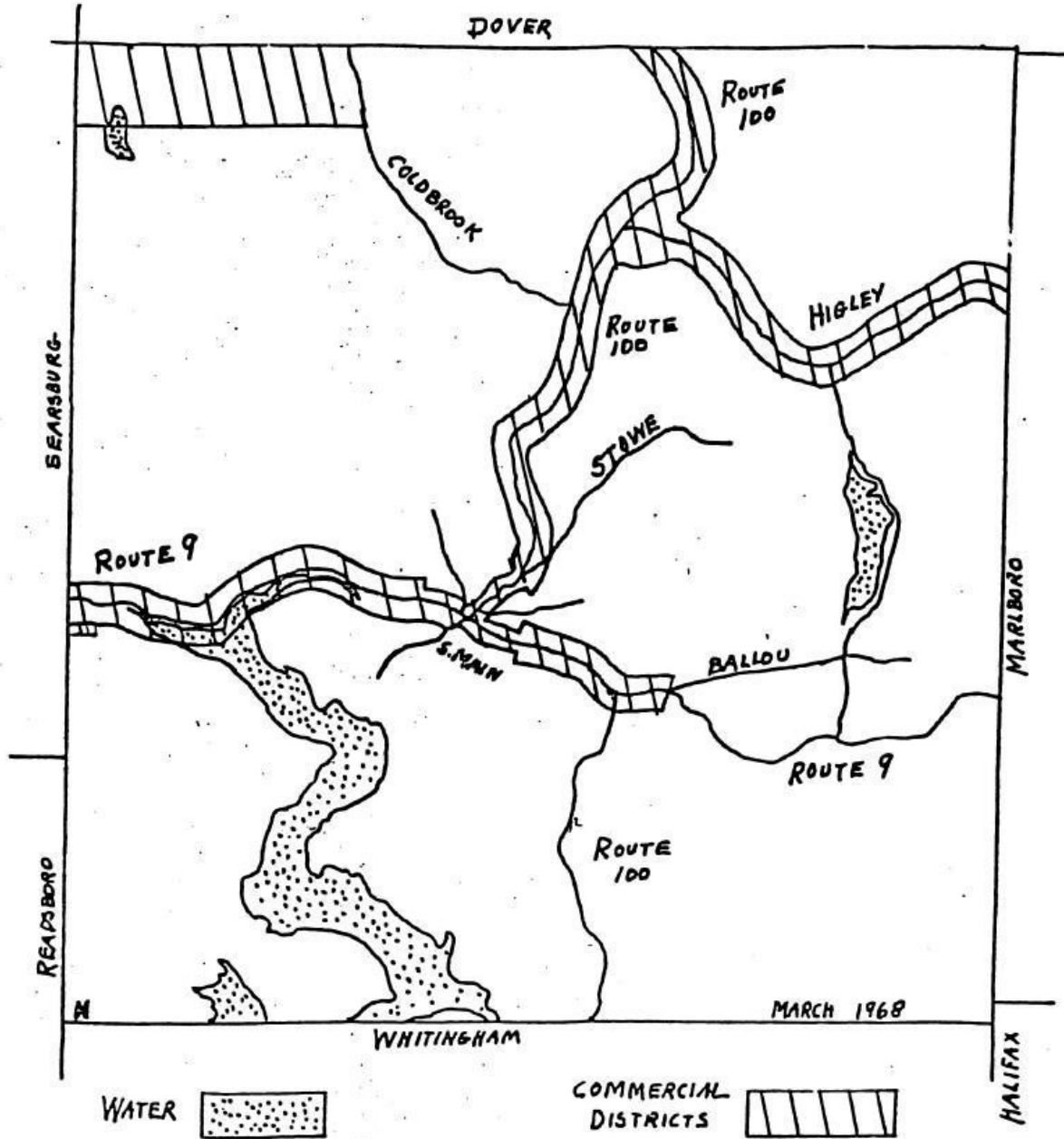
1. The northerly side of Route 9 as presently situated from its intersection with the Town Line of the Town of Searsburg to a line drawn perpendicular to the centerline of said Route 9 at the westerly end of the building known as “Bishop’s Garage” upon premises now or formerly owned by Ervin and Maxine Bishop, such northerly side to be 600 feet deep measured perpendicularly from the centerline of Route 9.
2. The southerly side of Route 9 as presently situated from its intersection with the Town Line of the Town of Searsburg to the centerline of South Main Street as presently situated, such southerly side to be 600 feet deep measured perpendicularly from the centerline of Route 9 excepting parcel #502002.000 which shall be 750 feet deep measured perpendicularly from the centerline of Route 9.

3. The northerly side of Route 9 as presently situated from a line drawn perpendicular to the centerline of said Route 9 at the westerly end of the building known as "Bishop's Garage" upon premises now or formerly owned by Ervin and Maxine Bishop, to the center of the bridge crossing Beaver Brook (near the Congregational Church Parsonage, so-called), such northerly side to be 300 feet deep measured perpendicularly from the centerline of Route 9.
4. The southerly side of Route 9 as presently situated from the centerline of South Main Street to the center of the bridge crossing Beaver Brook (near the Congregational Church Parsonage, so-called), such southerly side to be 300 feet deep measured perpendicularly from the centerline of Route 9.
5. Both sides of Route 9 as presently situated from the center of the bridge crossing Beaver Brook (near the Congregational Church Parsonage, so-called) to the point of junction of the centerline of Ballou Hill Road with the centerline of Route 9, each side to be 600 feet deep measured perpendicularly from the centerline of Route 9.
6. Both sides of Route 100 as presently situated from its intersection with the Town Line of the Town of Dover to the point of the junction of the centerline of Stowe Hill Road with the centerline of Route 100, each side to be 600 feet deep measured perpendicularly from the centerline of Route 100.
7. Both sides of Route 100 as presently situated from the point of junction of the centerline of Stowe Hill Road with the centerline of Route 100 to the point of intersection of Route 100 with Route 9, each side to be 300 feet deep measured perpendicularly from the centerline of Route 100.
8. Both sides of the Higley Hill Road, so-called, as presently situated from its intersection with the Town Lines of the Town of Marlboro to its intersection with Route 100, each side to be 600 feet deep measured perpendicularly from the centerline of Higley Hill Road.
9. The land lying northerly of a line which runs westerly from Coldbrook Road as presently situated on a line parallel with the north line of the Town of Wilmington and which line begins on Coldbrook Road at the point where the south line of the premises presently owned by Guy Hawkins and wife meets such road; westerly of Coldbrook Road; southerly of the north line of the Town of Wilmington; and easterly of the west line of the Town of Wilmington.

The Residential District shall be all portions of the Town of Wilmington which are not designated as being in the Commercial District.

The boundaries of the districts are generally shown on the zoning map of the Town of Wilmington, which map is hereby declared to be a part of this ordinance. The descriptions of the districts as contained in the wording of this ordinance shall take precedence over the zoning map in the event there should be any difference between the words herein used and the general representation of such districts on said map.

Map Section 4



Section 5: Agricultural Use

[Subchapter 7, § 4413 (d)]

Any land in the Town of Wilmington may be used for Agricultural purposes as defined by the Secretary of Agriculture, Food and Markets. This includes the display and sale of farm produce raised on the premises as well as the construction of farm structures on the premises.

Written notification, including a plot plan must be filed with the Zoning Office prior to the commencement of any construction. **Plot Plans MUST** be to scale and **MUST** show all boundary/lot line distances, easements and rights of way, all existing structures and **All NEW** structures with size dimensions and set back dimensions from relevant property lines. Please locate & identify roads & brooks. Acceptable Plot Plan/Survey sizes are 17: x 22” or smaller.

Section 6: Permitted Uses and Minimum Requirements of Districts

A. Residential Districts

1. Agricultural uses, as set forth above and the following uses are the only uses permitted in a Residential District:

(a) Residential uses:

- (1) Single and double family dwellings, *including* mobile homes and modular housing.
- (2) One Accessory Apartment –created within, attached or detached, which is subordinate to an owner occupied single-family dwelling where property can demonstrate sufficient wastewater capacity; unit size may not exceed the percent (%) of total habitable floor area of single family dwelling as shown in the table below; applicable setback, coverage and parking requirements of Ordinance must be met. [Subchapter 7, § 4412(E)]

Habitable Sq Ft of Single Family Dwelling	Unit Size - % of Habitable SF Dwelling
<i>0 to 1500 Sq Ft</i>	<i>50%</i>
<i>1501 to 3000 Sq Ft</i>	<i>40%</i>
<i>3001 and up</i>	<i>30%</i>

- (3) Customary home industry, home occupation, or professional service, carried on by a resident of the premises entirely within a building provided such use does not change the primarily residential character thereof and that such use does not create a nuisance, odor, or noise off the premises, and provided that no large quantity of material is stored outside the building.
- (4) Accessory uses, including buildings for automobiles, equipment, supplies, pets or animals.

(5) A family childcare home serving six (6) or fewer children shall be considered to constitute a permitted single family residential use of property.

(6) A residential care home or group home, to be operated under state licensing or registration, serving not more than eight persons who have a handicap or disability as defined in 9 V.S.A. § 4501, shall be considered to constitute a permitted single family residential use of property, except that no such home shall be so considered if it located within 1,000 feet of another existing or permitted residential care home.

2. Minimum Requirements in Residential Districts. All residential buildings and structures permitted in the Residential District shall be erected and used in conformity with the following minimum requirements:

Lot Size: A lot used for such building or structure shall be at least one acre in area, except that accessory uses shall also be permitted on such lot.

Set Back: A building shall be placed on a lot at least forty (40) feet from the public road limits and twenty (20) feet from any other property line.

Reduction of Setback Requirements: The Administrative Officer shall approve a zoning permit application for the construction of a single family dwelling and all accessory buildings on a lot that does not comply with the minimum lot size of one (1) acre, provided that all of the following criteria are met:

1. The lot was legally created.
2. The lot is not less than one-eighth (1/8) acre in area with a minimum width or depth dimension of forty (40) feet. Applicant shall submit a survey of the lot by a Vermont licensed surveyor, and shall have said surveyor pin the lot.
3. The lot has, or will have, a water supply system that complies with the Wastewater System and Potable Water Supply Rules, effective January 1, 2005 or a valid State Waste Water Permit.
4. The lot has, or will have, a wastewater system that complies with the Wastewater System and Potable Water Supply Rules, effective January 1, 2005 or a valid State Waste Water Permit.
5. The percentage by which the setback is reduced from the minimum setback required shall not exceed the percentage by which the lot size is less than the minimum lot size. For example, if the lot area is 77% of the minimum lot size, the required setback(s) may be reduced by no more than 23% from the minimum setback.
6. Under no circumstances shall any setbacks be less than 10 feet from abutting property lines or 20 feet from the public road limits.
7. The footprint of the dwelling unit and all accessory buildings shall not exceed twenty-four percent (24%) of the square footage of the non-conforming lot.

Frontage: Each lot which abuts upon a public road shall have at least one hundred fifty (150) feet frontage on such public road. No land development may be permitted on lots which do not have frontage on a public road or public waters or, with the approval of the Development Review Board, access to such a road or waters by a permanent easement or right-of-way at least twenty (20) feet in width. [Subchapter 7, §4412(3)]

Floor Area: A dwelling of one floor shall have a minimum square foot area of six hundred and fifty (650) square feet. A dwelling having two floors shall have a first floor area of at least five hundred (500) square feet.

Parking and Access: At least one parking area of at least four hundred (400) square feet and a driveway of not less than sixteen (16) feet in width at the public road limits shall be provided.

B. Commercial Districts

1. Agricultural uses and the following uses are the only uses *permitted* in a Commercial District:

(a) Residential uses:

(1) Same uses as are permitted in Residential District under Section 6 A 1 hereof.

(b) Commercial uses:

(1) Motels, hotels, lodges, tourist homes or similar establishments letting rooms, whether or not meals are served.

(2) Professional business offices or studios.

(3) Accessory uses.

2. Minimum Requirements in Commercial Districts.

Existing buildings located within the commercial district may be developed for any use allowed in the ordinance.

Multiple uses on any one parcel are unlimited in the commercial districts. Lot coverage limits set forth in the ordinance shall determine the number of new buildings permitted on a lot. All buildings and structures permitted in the Commercial District shall be erected and used in conformity with the following minimum requirements:

(a) Residential use requirements in Commercial District are the same as in Residential District.

(b) Commercial use requirements in Commercial District are:

Lot Size: A lot used for such building or structure shall be at least one acre in area, except that accessory uses shall also be permitted on such lot.

Set Back: A building shall be placed on a lot at least forty (40) feet from the public road limits and forty (40) feet from any other property line.

Frontage: Each lot which abuts upon a public road shall have at least one hundred fifty (150) feet frontage on such public road. No land development may be permitted on lots which do not either have

frontage on a public road or public waters or, with the approval of the *Development Review Board* access to such a road or waters by a permanent easement or right-of-way at least twenty (20) feet in width. [Subchapter 7, §4412 (3)]

Coverage: The total ground floor area of all buildings on a lot shall not exceed twenty-five per cent of the lot area.

Parking and Access: At least two hundred (200) square feet of parking space outside the public road limits for every three persons to be accommodated on the premises, and at least one driveway. All driveways must be a minimum of twenty (20) feet wide at the public road limits. These requirements shall not apply to property located in the Design Control District established by the Wilmington Design Control Regulations.

Section 7: Conditional Uses

The following conditional uses may be permitted when approved by the Development Review Board. Before giving its approval, the Development Review Board shall hold a duly warned public hearing and shall find that the requirements of this ordinance have been met; and further, that the proposed condition use shall not result in an undue adverse affect on the capacity of existing or planned community facilities traffic on roads and highways in the vicinity, the character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the Town Plan, or any other by-laws then in effect.

A. Conditional Uses Permitted in Either District Are:

1. Group service uses.
 - (a) Churches, parish hall and community or fraternal structures.
 - (b) Golf courses, tennis courts, water impoundments, swimming pools and similar recreational, participating athletic facilities, even though operated commercially.
2. Multiple family dwellings including condominiums and apartment houses [Subchapter 7, § 4412 (1)(D)]
3. Children's camp.
4. Dumps and junkyards.
5. Accessory uses.
6. Utilization of renewable energy resources
7. Trailer parks which comply with the Vermont Mobile Home Park Law (Act 291) and the Wilmington Trailer Park Ordinance.
8. Planned unit developments if in compliance with Section 7. E. of this Ordinance.

B. Conditional Uses Permitted in Residential Districts Are:

1. Professional business offices and studios.
2. Motels, hotels, lodges, tourist homes, or similar establishments letting rooms whether or not meals are served to houseguests.
3. Accessory uses.

C. Conditional Uses Permitted in Commercial Districts Only Are:

1. Retail stores, restaurants, drive-in stands or salesrooms.
2. Automobile service and filling stations and garages for the sale and repair of vehicles.
3. Manufacturing, processing and wholesaling facilities.
4. Accessory uses.
5. Any other legal use not defined above.

D. A change from one non-conforming use to another non-conforming use may be permitted in either district by the Development Review Board provided that the Board shall follow the procedures and make the findings required by this section for conditional uses.

E. Planned Unit Developments (P.U.D.)

In accordance with the provisions set forth in Subchapter 7, § 4417 of the Act, and where permitted by the zoning district, the modification of the zoning district regulations by the Planning Commission is permitted simultaneously with site plan approval, under the following procedures.

The purpose of the P.U.D. provision is to encourage planned communities or community centers for residential, commercial, and/or industrial/service/recreational uses or any combination thereof; innovation in design and layout; and more efficient use of land; to facilitate the adequate and economic provision of streets and utilities; to preserve the natural and scenic qualities of open land; to provide for a mixture of compatible uses at different intensity; and to provide for the development of lands which because of physical, topographical or geological conditions could not otherwise be developed.

A P.U.D. means an area of land, controlled by a landowner, to be developed as a single entity for a number of dwelling units, and commercial, and/or industrial/service/recreational uses, if any; the plan for which does not correspond in lot size, bulk or type of dwelling, commercial or industrial use, density, lot coverage and required open space to the regulations of the district within which it is located.

1. A site plan shall be submitted to the Development Review Board showing the location, height and spacing of buildings, open space and landscaping, streets, driveways and off-street parking spaces, water and sewage facilities, proposed grading and drainage, fire protection, natural or man-made features, and physical conditions of the site. The application shall be accompanied by a statement setting forth the nature of all proposed modifications to the zoning regulations and shall specifically identify the Section and sub-section of the Ordinance that

address Conditional Uses, if any, for the district within which the project is located. Uses shall be limited to those permitted and conditional uses within either district.

2. Nothing herein shall prohibit the development of a P.U.D. to be used for residential purposes only.

The following general and specific standards shall be met in order for the Development Review Board to approve the application.

1. The P.U.D. shall be consistent with the Town Plan.

2. Mixed uses shall be arranged so as to be compatible and assure visual and aural privacy for residents of the project.

3. The development plan is proposed over a satisfactory period of time in order that adequate municipal facilities and services may be assured in a timely manner.

4. The overall density of the project shall not exceed the number of dwelling units and commercial and industrial uses which could be constructed, in the Development Review Board's judgment, if the land were subdivided into lots in accordance with district lot area requirements.

5. The P.U.D. is an effective and unified treatment of the development possibilities on the project site, and the development plan makes appropriate provision for preservation of streams and stream banks, steep slopes, wet areas, soils unsuitable for development, forested areas, and unique natural and manmade features.

6. All other zoning requirements of the district, except for those that specifically may be waived or varied under the provisions of this Article shall be met. Said requirements shall include the Standards for Conditional Uses contained in Section 7 of this Ordinance.

Upon the approval of Site Plan, the lot area, dimensional and coverage requirements in the Zoning Ordinance may be waived or varied. Any such waiver or variation shall be specifically set forth in terms of conditions which may include but are not limited to the design, location and spacing of building and the size of lots and open spaces. Such conditions shall be noted or appended to the plat.

If the P.U.D. results in lands available for parks, recreation, open space or other municipal-type facilities, the Development Review Board, as a condition of its approval, may establish such conditions on the ownership, use and maintenance of such lands as it deems necessary to assure the preservation of such lands for their intended purposes.

3. Bonds for Performance.

The Development Review Board may require of any landowner or other person requesting approval under this Section 7 or otherwise requesting a modification from provisions of this ordinance that a bond, with or without surety and for such term and in such amount as the Development Review Board deems proper, be filed with the Town of Wilmington guaranteeing the performance of any obligations undertaken in connection with such approval or modification.

Section 8: Camps

This ordinance shall not apply to vacation homes such as camps, cabins, camping trailers, camping trucks and similar structures for overnight, occasional or vacation use if they are located more than 1000 feet from all public roads and are not visible from a public road. For the purpose of this section, a camp shall be a structure used less than three months in any twelve consecutive months as a human habitation. Longer occupancy requires compliance with the minimum requirements for single family dwelling use.

Section 9: Administration and Enforcement

(repealed and replaced with Article I)

Section 10: Appropriate Municipal Panels (AMP)

(repealed and replaced with Article I)

Section 11: Zoning Permits and Violations

(repealed and replaced with Article V)

Section 12: Adoption, Amendment & Repeal Process **[Subchapter 9, §4441 and § 4442]**

This ordinance and the boundaries of the zoning districts established hereunder, may be amended or repealed in accordance with the requirements and procedures set forth in Subchapter 9 of the Act.

- (1) Any bylaw for a municipality shall be prepared by OR at the direction of the Planning Commission and shall have the purpose of implementing the Town Plan;
- (2) An amendment or repeal of a bylaw prepared by any other person or body (as directed by the Planning Commission) shall be submitted in writing, along with any supporting data, to the Planning Commission.
- (3) The Planning Commission shall prepare and approve a written report on the proposal, which states how the bylaw, or repeal thereof, furthers the Town Plan and ensures consistency between the Town Plan and the Bylaw.
- (4) Planning Commission shall hold at least one (1) public hearing on any proposed bylaw, amendment, or repeal and shall publish a NOTICE OF PUBLIC HEARING not less than fifteen (15) days prior to the date of the public hearing in a newspaper of general circulation in the municipality affected. Said Notice shall include date, place and purpose of hearing and in addition

to publication in the newspaper shall be posted in three (3) or more public places within the municipality.

(5) Fifteen (15) days prior to the first hearing a copy of the proposed bylaw, amendment, or repeal and written report of Planning Commission shall be delivered, certified mail, return receipt requested to:

- (a) Chairperson of Planning Commission of each abutting municipality;
- (b) The Clerk of each abutting municipality;
- (c) Executive Director of the Regional Planning Commission in which the municipality is located;
- (d) Department of Housing and Community Affairs within the Agency of Commerce and Community Development

(6) Following the hearing, the Planning Commission may make revisions to a proposed bylaw, amendment, or repeal and written report and then shall submit these documents to the Select Board.

(7) Simultaneously with its submission to the Select Board pursuant to number (6) above, the Planning Commission shall file with the Clerk of the municipality a copy of the proposed bylaw, amendment, or repeal, and the written report, for public review.

(8) Upon receipt of a proposed bylaw, amendment or repeal the Select Board shall not less than 15 days but not more than 120 days from the receipt thereof, hold the first of one (1) or more public hearings to review said documentation. Documentation received by the Select Board shall be made available to the public on request.

(9) The Select Board may make changes to the proposed bylaw, amendment, or repeal:

- (a) Minor changes must be made no less than 14 days **before** the final hearing date;
- (b) Major changes in concept, meaning, or extent of the proposed bylaw, amendment or repeal shall require the Select Board to warn a new public hearing or hearings;
- (c) If **any part** of the proposal is changed the Select Board, at least 10 days prior to the final hearing, shall file a copy of the changed proposal with the Clerk of the Municipality and with the Planning Commission
- (d) The Planning Commission shall amend the report prepared to reflect the changes made by the Select Board and shall submit that amended report to the Select Board at or prior to the public hearing.

Routine Adoption Procedures – §4442(c)(1), (2)

Unless otherwise determined, a bylaw, amendment or repeal **shall** be adopted by a majority of the members of the Select Board at their meeting held after the final public hearing and shall become effective 21 days after adoption.

However, a rural town, by action of the Select Board **OR** by vote of the town at a special or regular meeting duly warned on the issued, may elect to require that bylaws, amendments or repeals shall be adopted by vote of the Town by Australian ballot at a special or regular meeting duly warned on the issue. That procedure shall then apply until rescinded by the voters at a regular or special meeting of the Town.

Petition for Popular Vote (Vote of the Citizens of the Town) §4442 (d)

Notwithstanding the above the Select Board vote on a bylaw, amendment, or repeal is subject to being overturned if:

A petition, signed by five percent (5%) of the voters of municipality, is filed within twenty (20) days of the Select Board vote, requesting a meeting of the municipality to consider the bylaw, amendment or repeal. In that case, a meeting of the municipality shall be duly warned for the purpose of acting by Australian ballot upon the bylaw, amendment or repeal.

Section 13: Definitions

Words and terms not defined in the Wilmington Zoning Ordinance shall be interpreted in accordance with the Vermont Statute Annotated or Black’s Law, the most recent addition.

Unless otherwise expressly stated, the following words shall have the meaning herein indicated. The word "person" includes a partnership, corporation or other entity. The word "shall" is mandatory, not directory.

Accessory Apartment: Means an efficiency or one-bedroom apartment that is clearly subordinate to the single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, sanitation. [§ 4412 (E)]

Accessory Use: A use incidental to the principal use of land or building.

Agriculture: “Agricultural activity” includes, but is not limited to, the growing, raising and production of horticultural and silvicultural crops, grapes, berries, trees, fruit, poultry, livestock, grain, hay and dairy products.

Building: Any structure, including mobile homes, camps, camp trailers, camping trucks, enclosed and isolated by exterior walls constructed or used for residence, business, industry, other public or private purposes, or uses accessory thereto, excluding structures or the storage of crops.

Canopy: Any freestanding or attached permanent roof-like structure, generally designed and constructed to provide overhead protection from the weather.

Cluster House: A dwelling on a lot which is smaller in size than the lot size required by this ordinance but which lot when added to its proportionate area of common land available to it and other cluster house lots, will be equal to or exceed the lot size requirements of this ordinance.

Commercial Use:	Any use of land or buildings for business purposes, including but not limited to selling at retail or wholesale a product, goods or services.
Common Land:	Land owned or controlled jointly by owners of cluster houses available to them on equal and common basis and for their exclusive use. Such land shall be controlled by a recorded covenant referred to in each deed and approved by the Selectmen. The covenant shall be amended only upon majority approval of the Selectmen. However, common land may include land which is not owned or controlled by, or for the exclusive use of the cluster house owners, provided that such land is restricted for a definite period of time to use or uses which have been approved by the Selectmen in writing.
Duly Warned:	Notice by publication of the date, place and purpose in a newspaper having general circulation in Wilmington and notice posted in <i>three</i> or more public places in Wilmington at least fifteen (15) days prior to hearing or meeting, as provided in § 4444 (a) (1) (2) of the Act.
Dwelling:	A building or part of a building which contains living and sleeping accommodations for permanent occupancy for one family.
Drive-In Stand:	A building in which food or drink is prepared primarily for sale and consumption on the premises but outside the building.
Farm Structure:	A building, enclosure, or fence for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with accepted agricultural or farming practices, including a silo, as “farming” is defined in subdivision 6001(22 of Title 10, but excludes a dwelling for human habitation.[<i>Subchapter 7. §4413 (d) (1)</i>
Frontage:	That portion of a lot which is adjacent to and faces upon a public road.
Group Service:	A service which is customarily performed or provided for a number of persons at the same time or which customarily involves the participation or presence of a number of persons as opposed, for example, to the customary services provided or performed on an individual basis by the doctor or repairman.
Home Industry:	An activity which is clearly incidental and secondary to the use of the premises for residential purposes and which is carried on by a member of the family residing on the premises.
Lot:	A parcel of land occupied or to be occupied by a building or mobile home together with such open spaces as are required by the provisions of this ordinance.
Land Development:	The division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement

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

- Mobile home: Any structure so constructed as to permit its being conveyed upon the public streets, and designed to permit occupancy as a dwelling for one or more persons, except for utilities, while in such condition, and also including camping trailers and camping trucks.
- Multi-Family Dwelling: A building or part of a building which contains living and sleeping accommodations for permanent occupancy for three or more families.
- Non-Conformities: Means a nonconforming use, structure, lot, or parcel
- Nonconforming Lots or
Parcels: Means lots or parcels that do not conform to the present bylaws covering dimensional requirements but were in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a lot or parcel improperly authorized as a result of error by the Zoning Administrator. *[Subchapter 1, § 4303(13)]*
- Nonconforming
Structure: means a structure or part of a structure that does not conform to the present bylaws but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a structure improperly authorized as a result of error by the Zoning Administrator. *[Subchapter 1, § 4303(14)]*
- Nonconforming Uses: Means use of land that does not conform to the present bylaws but did conform to all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a use improperly authorized as a result of error. *[Subchapter 1, § 4303(15)]*
- Premises: A lot as defined in this section, including any buildings thereon.
- Property Line: The line dividing adjacent lots.
- Public Road: For the purpose of this ordinance, a public road is a thoroughfare, driveway servicing more than one dwelling, road, highway or public way, whether or not maintained or owned by the State, Town or other municipal corporation. "Road" shall mean the entire width of the right-of-way. Where no width is defined, right-of-way shall be considered to be 25 feet from the center line on each side.
- Restaurant: A building inside of which meals are served exclusively on tables or counters provided for that purpose.
- Set Back: The distance between the nearest portion of a building on a lot and the road right-of-way or a property line.

Street Line: The line dividing the public road and a lot. Where the width of a public road is not established or cannot be determined, the street line shall be considered to be twenty-five (25) feet from the center of the public road.

Structure: Any assembly of materials for occupancy or use including, but not limited to, a building, mobile home or trailer, canopy or tower, billboard, sign, wall or fence taller than eight (8) feet, except a wall or fence on an operating farm.

Section 14: Municipal Uses and Special Limitation

A. Nothing in this ordinance shall prevent the use of land or structures for any municipal purpose, whether on land owned or leased by the Town or operated under contract with the Town.

B. Limitations on Municipal Bylaws: [Subchapter 7, § 4413 of the Act]

The following uses may be regulated only with respect to location, size height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use:

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

C. Except as otherwise provided by 24 V.S.A. §4413 and by 10 V.S. A. §1976 any ordinance enacted with respect to any land development that is subject to regulation under state statutes, the more stringent or restrictive regulation applicable shall apply.

Section 15: Appeals

Notice of Appeal to Development Review Board

Any **interested person** as defined under the Act [Subchapter 11, §4465] may appeal a decision or act of the Zoning Administrator within 15 days of the date of the decision or act by filing a notice of appeal with the Secretary of the **Development Review Board**, or the Municipal Clerk if no Secretary has been elected, and by filing a copy of the notice with the Zoning Administrator.

A notice of appeal filed under this section shall be in writing and include the following information, in accordance with the Act [Subchapter 11, §4466]:

- (1) the name and address of the appellant,
- (2) a brief description of the property with respect to which the appeal is taken,
- (3) a reference to applicable provisions of these regulations,
- (4) the relief requested by the appellant, including any request for a variance from one or more provisions of these regulations, and
- (5) the alleged grounds why such relief is believed proper under the circumstances.

Appeals to Environmental Court

In accordance with the Act [Subchapter 11, §4471], an **interested person** who has participated in a regulatory proceeding of the **Development Review Board** may appeal a decision rendered by the **Development Review Board** within 30 days of such decision, to the Vermont Environmental Court. Appeals to Environmental Court shall also meet the following requirements:

- (1) “Participation” in a **Development Review Board** proceeding shall consist of offering, through oral or written testimony, evidence of a statement of concern related to the subject of the proceeding.
- (2) The notice of appeal shall be filed by certified mailing, with fees, to the Environmental Court and by mailing a copy to the Zoning Administrator, who shall supply a list of interested persons (including the applicant if not the appellant), to the appellant within five (5) working days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person. If any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.

Interested Persons

The definition of an interested person under the Act [Subchapter 11, §4465(b)] includes the following:

- (1) a person owning title to property, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by a bylaw, who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case;
- (2) the Town of Wilmington or any adjoining municipality;
- (3) a person owning or occupying property in the immediate neighborhood of a property which is the subject of a decision or act taken under these regulations, who can demonstrate a physical or environmental impact on the person’s interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes or terms of the plan or bylaw of that municipality;

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

Section 16: Severability

(repealed and replaced with Article I)

Exhibit "A" (See Section 10 E Variances)

Renewable Energy Structures.

Where a variance is requested for a structure that is primarily a renewable energy resource structure, in accordance with the Act [§4469(b)], the Board may grant such variance only if *all* of the following facts are found in the affirmative and specified in its written decision:

- (1) It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with these regulations;
- (2) The hardship was not created by the appellant;
- (3) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and
- (4) The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.

Variances within the Flood Hazard Area.

In addition to requirements under Section 10 E, variances for development within the Flood Hazard Overlay District shall be granted by the Board only:

- (1) in accordance with the Act and the criteria for granting variances found in CFR Section 60.6 of the National Flood Insurance Program;
- (2) upon determination that during the base flood discharge the variance will not result in increased flood levels; and

- (3) upon determination that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

In granting a variance, the Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect.