LAND USE AND DEVELOPMENT REGULATIONS

for the

Town of Berkshire, Vermont

ADOPTED JULY 14, 2025

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The Berkshire Planning Commission

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TABLE 1.1 MUNICIPAL PERMITS AND APPROVALS: TOWN OF BERKSHIRE			
Permit/Approval	**Required for:**	**Issued by:**	**See:**
Zoning Permit	All land development as defined in Article 10, including signs, accessory structures, conversions and changes of use, unless specifically exempted from these regulations under Section 3.1.	Zoning Administrator	Section 3.1
Waste Water Permit	On-Site Sewage Disposal Systems.	Agency of Natural Resources	Section 5.10
Access by Right-of-Way Approval	Development without frontage on a maintained public road or public waters.	DRB	Section 5.3
Site Plan Approval	All development except for one and two household dwellings, forestry and agriculture, unless otherwise specifically exempted.	DRB	Section 3.2 (C)
Conditional Use Approval	All uses classified as conditional uses under each district in Table 4.1.	DRB	Section 3.2 (B)
Variance Approval	Requests for a variance from the provisions of these regulations	DRB	Section 3.2 (D)
Certificate of Compliance	Use of a dwelling or structure constructed after the effective date of these regulations for which a zoning permit has been issued.	Zoning Administrator	Section 2.10
Subdivision Approval	All subdivisions of land, as defined in Article 10, including boundary line and lot line adjustments.	DRB	Article 7
Sketch Plan Approval	All applications for subdivision approval	DRB	Section 7.2
Preliminary Plan Approval	All applications for major subdivisions [the creation of 4 or more lots]	DRB	Section 7.3
Final Plan Approval	All applications for subdivision approval	DRB	Section 7.4
Plat Recording	All approved subdivisions of land, including boundary line and lot line adjustments.	DRB	Section 7.5

ARTICLE 1. AUTHORITY AND PURPOSE

Section 1.1 AUTHORIZATION, ENACTMENT, AND AMENDMENT

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

Section 1.2 PURPOSE

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

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

A) To meet the Town’s obligations to the community at large, as identified in the Berkshire Municipal Plan, while at the same time recognizing the rights of individual property owners;

B) To maintain the rural, agricultural character of the Town, including the historic settlement pattern of small hamlets separated by rural countryside;

C) To protect important natural resources and agricultural use of land, while at the same time providing sufficient space in appropriate locations for residential, commercial, and industrial development and for community facilities;

D) To protect natural, cultural, and scenic resources, as identified in the Berkshire Municipal Plan;

E) To encourage the continuation of agriculture, while at the same time recognizing the need for a diversified and stable economic base;

F) To provide for and maintain a safe, convenient, and functional transportation network for vehicular, pedestrian, and recreation use within the Town;

G) To provide safe and affordable housing for all segments of the population;

H) To ensure that the rate of growth does not exceed the Town’s ability to provide for needed facilities and services, and to ensure the reasonable, functional, and orderly development of all utilities, facilities, and services;

I) To protect the public and individual landowners against harm or loss from contamination of drinking water, failed septic systems, fire, flood, explosions, excessive noise, air pollution, and other pollutants or dangers.

Section 1.3 INTERPRETATION AND APPLICABILITY

A) No land development (as defined under Article 10 of this Regulation) shall commence in the Town of Berkshire except in compliance with these Regulations.

B) This regulation shall not repeal, abrogate, or impair any other applicable land use controls (including statutes, regulations, rules, ordinances, permits, easements, deed restrictions, covenants or other similar devices) previously adopted or issued. The provisions of this Regulation shall be interpreted as minimum requirements, shall take precedence over any less restrictive or concurrent controls, and shall be consistently applied.

C) Except where specifically defined in Article 10 of this Regulation, all words shall carry their customary meanings. Any interpretations of words or provisions in this Regulation by the Zoning Administrator may be appealed to the Development Review Board (DRB) for a declaratory ruling. The DRB shall publish (and update from time to time) such rulings of interpretation, to ensure consistent and uniform application of these regulations.

Section 1.4 AMENDMENT

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

Section 1.5 EFFECTIVE DATE

A) The Regulations shall take effect on the date of their adoption by the Town of Berkshire, in accordance with the Act (4442).

B) On the date these bylaws become effective, they shall amend in their entirety the Land Use and Development Regulations for the Town of Berkshire then in effect.

Section 1.6 SEVERABILITY

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

ARTICLE 2. ADMINISTRATION AND ENFORCEMENT

Section 2.1 ZONING ADMINISTRATOR

A) This Regulation shall be administered and enforced by a Zoning Administrator, nominated for a three (3) year term by the Planning Commission and appointed by the Selectboard. The Zoning Administrator may be removed from office for cause by the Selectboard after consultation with the Planning Commission. The Zoning Administrator shall be compensated in an amount established by the Selectboard.

B) The Zoning Administrator shall administer this Regulation literally, and strictly, according to the plain meaning of its term, and shall have no authority to permit land development that is not in conformance with this Regulation. In addition, the Zoning Administrator shall administer this Regulation uniformly. The Zoning Administrator shall make reasonable inspections as they deem necessary to determine compliance and shall maintain a full and accurate record, available to the public, of all applications and fees received; permits issued, denied and appealed; inspections made; and reported violations.

C) In the absence or disability of a Zoning Administrator, or in case of a conflict of interest, an acting Zoning Administrator shall be nominated by the Planning Commission and appointed by the Selectboard. The acting Zoning Administrator is empowered in the same manner as provided in (A) and (B) of this Section.

Section 2.2 PLANNING COMMISSION

A) The Planning Commission shall consist of not less than five (5) nor more than seven (7) members appointed by the Selectboard in accordance with the Act (Sections 4321-4323). Any member of the Commission may be removed at any time by a unanimous vote of the Selectboard. The Planning Commission shall:

   1) Prepare amendments to these Regulations and other regulations as permitted by the Act.
   2) Prepare and update the Town Plan every eight (8) years and prepare amendments to the Plan as necessary.
   3) Have party status to respond to projects under “Act 250,” “Section 248” and “Section 248a.”

Section 2.3 DEVELOPMENT REVIEW BOARD (DRB)

A) The DRB shall consist of not less than five (5) nor more than nine (9) members, the numbers and terms of appointment to be determined by the Selectboard. Members of the DRB shall be appointed by the Selectboard. The DRB may consist of members of the Planning Commission. Vacancies also shall be filled by appointment of the Selectboard for unexpired terms and upon expiration of terms. Any member of the DRB may be removed for cause by the Selectboard upon notice of written charges and after a public hearing.

B) The DRB shall have the following duties:

   1) To hear and decide upon applications for appeals of decisions by the Zoning Administrator.
   2) To hear and decide upon applications for requests for variances.
   3) To hear and decide upon applications for conditional use approval.
   4) To review and decide upon applications for site plan approval.

5) To review and decide upon applications for access by right-of-way for lots without frontage.

6) Any other reviews as required in the Regulations.

C) The Board shall adopt Rules of Procedure and ethics policies with regard to conflicts of interest to guide its official conduct in accordance with the requirements of the Act (4461) and Vermont's Open Meeting Law (V.S.A. 310-314).

Section 2.4 PUBLIC NOTICE

A) A warned public hearing shall be required for conditional use review, appeals of decisions of the Zoning Administrator, variances, subdivision review, site plan review, and all other types of development review requiring a hearing. Any public notice for a warned public hearing shall be given not less that fifteen (15) days prior to the date of the public hearing by all of the following:

1) Publication of the date, time, place, and purpose of the hearing in a newspaper of general circulation in the municipality;

2) Posting of the same information in three (3) or more public places within the municipality, including the posting of a notice on a form provided by the Town of Berkshire within view from the public right-of-way nearest the property for which application is being made;

3) Written notification to the applicant and to owners of all properties adjoining the property subject to development without regard to public rights-of-way, which includes a description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal;

4) For hearings on subdivision plats located within five hundred (500) feet of a municipal boundary, written notification to the clerk of the adjoining municipality.

Section 2.5 MEETING AND HEARING REQUIREMENTS

A) All meetings and hearings of the DRB, except deliberative and executive sessions, shall be open to the public.

B) Pursuant to Section 4464 of the Act, the DRB shall hold all public hearings within 120 days of the application being deemed complete by the Zoning Administrator.

C) For the conduct of a hearing, and the taking of any action, a quorum shall not be less than the majority of members of the DRB. Any action of a DRB shall be taken by concurrence of the majority of the members of the DRB (vacancies and absences must be counted).

D) The DRB shall keep minutes of all its proceedings, showing the outcome of each vote, record of its examination, and other official actions, filed in the Town Clerk's Office as public records.

E) Public hearings of the DRB shall be noticed and warned in accordance with Section 2.4 above. In any public hearing of the DRB, there shall be an opportunity for each person wishing to achieve status as an interested person for the purposes of appeal under Section 2.9 to demonstrate that the criteria, as defined in Article 10, are met. The DRB shall keep record of the name, address and participation of each of these persons.

F) The DRB may:

1) examine or cause to be examined, any property, maps, books, or records bearing upon matters concerned in that proceeding;

2) require the attendance of any person having knowledge concerning the application;

3) require an independent technical review of one or more aspects of an application such as, but not limited to, a traffic study, environmental impact analysis, or fiscal impact analysis, to be paid by the applicant.

4) the DRB may recess a hearing on any application or appeal pending submission of additional information, provided that the next public hearing date and place is announced at the hearing.

Section 2.6 DECISIONS

A) The DRB shall issue a written decision within forty-five (45) days after the adjournment of the hearing. Failure to issue a decision within the forty-five (45) day period shall be deemed approval and shall be effective on the forty-sixth (46th) day. In addition:

1) All decisions shall be issued in writing and shall separately state findings of fact and conclusions of law. Findings of fact shall explicitly and concisely restate the underlying facts that support the decision, based exclusively on recorded evidence. Conclusions of law shall be based on the findings of fact. The decisions shall also include a statement of the time within which appeals (Section 2.9) may be taken.

2) When deciding in favor of the applicant, the DRB may attach conditions and safeguards as it deems necessary to implement the purposes of the Act, these Regulations, and the municipal plan currently in effect. Conditions of approval may include:
   a) the submission of a three-year performance bond, escrow account, or other form or surety acceptable to the Berkshire Selectboard as provided in Section 3.2(A)(4); and/or
   b) a requirement that no zoning permit be issued for an approved development until required improvements have been satisfactorily installed in accordance with the conditions of approval.
   c) a requirement for the phasing of development as necessary to avoid or mitigate any undue adverse impacts to existing or planned community facilities.

3) All decisions shall be sent to the applicant or appellant by certified mail within the forty-five (45) day period. Copies of each decision shall also be mailed to every person or body appearing and having been heard at the hearing and be recorded in the municipal office in accordance with the Act.

Section 2.7 RECORDING REQUIREMENTS

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

Section 2.8 COMBINED REVIEW

A) In cases where a development proposal requires more than one Board review or approval, the DRB may warn and hold a joint hearing for the purpose of reviewing and acting on the proposal. In cases where a joint hearing cannot be conducted to address each necessary review, the proceedings for each review shall occur concurrently or semi-concurrently (initiating one review process while the preceding process is nearing completion).

B) To the extent feasible, the review process shall be conducted in the following order, as applicable:

1) Site Plan; then
2) Access by right-of way; then
3) Requests for Waivers or Variances; then
4) Conditional Use Review; then
5) Subdivision Review (preliminary and final)

C) All notice requirements and provisions applicable to each purpose of the hearing shall be complied. Notice for combined review, to the extent feasible, shall be made in the same public notice. In the case of differing notice requirements, the process which provides more notice, by amount of time or by other means, shall apply.

D) All decision requirements and deadlines applicable to each purpose of the proceedings shall apply. Separate written decisions shall be issued for each review conducted as part of the combined review, but shall be coordinated where possible.

Section 2.9 APPEALS

A) **Appeals of decisions of the Zoning Administrator**

1) Requests for appeals of decision(s) by the Zoning Administrator shall be made by interested persons by filing a written notice of appeal with the DRB within fifteen (15) days of the act or decision at issue. An “interested person” is described in Section 4465 of the Act and in Article 10.

2) A notice of appeal filed under this Section shall be in writing and include the following information, in accordance with the Act (Section 4466):

   a) The name and address of the appellant.
   b) A brief description of the property with respect to which the appeal is taken.
   c) A reference to applicable provisions of these regulations.
   d) The relief requested by the appellant.
   e) The alleged grounds why such relief is believed proper under the circumstances.

B) **Appeals of decisions by the DRB**

1) In accordance with the Act (Section 4471), an interested person who has participated in a Regulatory proceeding of the DRB may appeal a decision rendered by the DRB within thirty (30) days of such decision, to the Vermont Environmental Court. Additionally, they shall also meet the following requirements:

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

Section 2.10 CERTIFICATE OF COMPLIANCE

A) In accordance with the Act [4449(a)(2)], after the effective date of these Regulations, a Certificate of Compliance issued by the Zoning Administrator shall be required prior to the use or occupancy of any land or structure, or part thereof, for which a zoning permit has been issued.

B) An application for a Certificate of Compliance shall be provided with the zoning permit issued by the Zoning Administrator. The applicant shall submit the application and fee prior to the use or occupancy of the land or structure.

C) Within thirty (30) days of receipt of the application for a Certificate of Compliance, the Zoning Administrator may inspect the premises to ensure that all work has been completed in conformance with the zoning permit and associated approvals, including all applicable permit conditions. A Certificate of Compliance may be issued for unfinished residential structures provided that the Zoning Administrator can determine it meets all applicable zoning permit conditions. If the Zoning Administrator fails to either grant or deny the Certificate of Compliance within thirty (30) days of submission of an application, the certificate will be deemed issued on the thirty-first (31st) day. Regarding the determination that the permitted use or structure meets all setback requirements, the Zoning Administrator may rely on any information contained in the zoning permit application regarding the location of parcel boundaries. In the event that there is a discrepancy between the information provided by the applicant and true facts, the Town does not waive future enforcement authority with the issuance of a Certificate of Compliance.

D) If a permit from the Environmental Protection Rules of the State of Vermont is required for the disposal of domestic or other wastes or effluent, a Certificate of Compliance shall not be issued by the Zoning Administrator until evidence of such approval, has been filed with the Zoning Administrator.

E) If an applicant has determined that a certificate as explained in 30 V.S.A. 51 (residential building energy standards) or 30 V.S.A. 53 (commercial building energy standards) is required for any land development, a signed copy of such certificate shall be provided to the Zoning Administrator before the issuance of a Certificate of Compliance.

F) If an applicant has applied for a Certificate of Compliance for the installation of a new mobile home or manufactured home, the applicant shall provide the Zoning Administrator with a copy of a completed HUD Form 309 (as required in 24 C.F.R. 3285 and 3286) before the Certificate of Compliance is issued.

Section 2.11 VIOLATIONS

A) **Violations.** The commencement or continuation of any land development, subdivision, or use, which is not in conformance with these Regulations, is a violation. Any person, who is found in violation of these Regulations, shall be fined not more than the amount permitted under the Act (Section 4451). Each day that a violation is continued shall be a separate offense. All fines imposed and collected shall be paid to the Town of Berkshire.

B) **Filing a Complaint.** Whenever a violation of these Regulations occurs, or is alleged to have occurred, any person may file a written complaint with the Zoning Administrator. The complaint shall state fully the causes and basis for the alleged violation. The Zoning Administrator shall properly record such complaint, immediately investigate, and act as appropriate in accordance with these Regulations.

C) **Notice of Violation**. No violation may be enforced unless the alleged offender has had at least seven (7) business days' notice by certified mail that a violation exists and has failed to satisfactorily respond or correct the violation. The warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven (7) day period, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven (7)

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

D) **Enforcement.** In accordance with 24 V.S.A. §§ 4451, 4452, the Zoning Administrator shall commence or cause to be commenced in the name of the municipality any appropriate action, injunction or other proceeding to enforce the provisions of these Regulations.

1) **Vermont Superior Court - Environmental Division**. The Zoning Administrator may pursue or cause to be pursued any appropriate action, injunction or other proceeding in the name of the municipality to enforce the provisions of these Regulations through the Environmental Division of Vermont Superior Court. All fines imposed and collected for violations shall be paid over to the municipality.

2) **Civil Enforcement Pursuant to 24 VSA** § **1974a.** The Zoning Administrator may pursue or cause to be pursued enforcement action in the name of the municipality through the Judicial Bureau if the penalty for all continuing civil ordinance violations is $800.00 or less. All enforcement matters under Title 24, Chapter 117 greater than $800.00 shall be brought in the Vermont Superior Court – Environmental Division. Penalties shall be imposed for violations of any provision of these Regulations in accordance with 24 VSA §1974a and the schedule below:

a) A civil penalty of $50 may be imposed for the initial violation of these Regulations. The penalty for the second offense shall be $100, and the penalty for each subsequent offense shall be $200.

b) A waiver fee may be collected, in lieu of a civil penalty, for any person who declines to contest a municipal complaint and pays the following waiver amounts for each violation. The waiver fee shall be set at $25 for the first offense, $50 for the second offense, and $100 for each subsequent offense.

3) **Limitation on Enforcement.**

a) The municipality shall observe any limitations on enforcement proceedings relating to municipal permits and approvals as set forth in 24 V.S.A. §4454. An action, injunction or other enforcement proceeding relating to any municipal land use permit may be instituted within 15 years of the date the alleged violation first occurred, and not thereafter. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.

b) No action, injunction or enforcement proceeding may be instituted to enforce an alleged violation of a municipal land use permit which received final approval from the applicable board, commissioner, or officer of the municipality after July 1, 1998, unless the municipal land use permit or a notice of the permit was recorded in the land records of the municipality as required by 24 V.S.A. §4449.

c) Nothing in this Section shall prevent any action, injunction or other enforcement proceeding by a municipality under any other authority it may have, including, but not limited to, a municipality's authority under Title 18 relating to the abatement or removal of a public health risk or hazard.

ARTICLE 3. DEVELOPMENT REVIEW

Section 3.1 ZONING PERMIT

A) **Applicability.** No land development or use subject to these Regulations may commence in the Town of Berkshire without a zoning permit issued by the Zoning Administrator. Land development listed in Section 3.1(E) is exempt. Specific activities included in the definition of land development that require a zoning permit include, but are not limited to, the following:

- Erecting a new structure
- Moving a structure
- Adding footprint area or height to an existing structure
- Initiating a new land use
- Changing from one type of land use to a different land use
- Moving an existing land use to another parcel
- Grading, excavation, and placement of fill

B) **Application Requirements.** An application and a plan, drawn to scale, for a zoning permit shall be submitted to the Zoning Administrator on forms provided by the Town, along with the required application fees. The plan shall show the following information in sufficient detail to determine whether the proposal is in conformance with these Regulations:

1) the dimensions of the lot, including property boundaries;
2) location, size, shape, height of existing and proposed buildings and structures;
3) location of existing and proposed easements, rights-of-way, sidewalks, and utilities;
4) location of natural features such as watercourses, wetlands, floodplains, rock outcroppings, and stands of trees;
5) setbacks from property boundaries, right-of-way, surface waters, and wetlands; and
6) any other information that may be needed to determine compliance with these Regulations.

C) **Issuance of Zoning Permit.** A zoning permit shall be issued by the Zoning Administrator only in accordance with the Act (Section 4449) and these Regulations. If, in the opinion of the Zoning Administrator, a proposal for a permitted use as set forth in these Regulations is not in conformance with the provisions of these Regulations, the Zoning Administrator shall deny the zoning permit. The Zoning Administrator must refer all applications requiring Board approval, including conditional use review, site plan review, variance approval, access by right-of-way approval, and/or subdivision review, to the DRB.

1) Within thirty (30) days of receiving a completed permit application, including all materials and fees, the Zoning Administrator shall either issue or deny a permit in writing, or refer the application to the DRB for their review and action. Each permit or denial issued shall include a statement of the time in which appeals may be made under Section 2.9. Failure to act on the permit request within thirty (30) days shall constitute deemed approval of the permit on the thirty-first (31st) day.
2) The applicant must post a permit notice on a form prescribed by the municipality within view from the public right-of-way most nearly adjacent to the subject property for a fifteen (15) day appeal period during which time appeals would be accepted. Applicants are advised that if the posting provision is not satisfied, an interested person could question the validity of the permit. The notice shall contain a statement of the appeal period and information as to where a full description of the project and approval can be found.

3) Within three (3) days of issuing a permit, the Zoning Administrator shall post a copy in the Town Clerk's Office until the expiration of the appeal period and shall provide a copy of the permit to the listers. Within thirty (30) days of issuing a permit the Zoning Administrator shall deliver a copy of the permit to the Town Clerk for recording in the municipal land records.

4) All permits are issued for a specific site and are not transferable to any alternative site or parcel. All permits shall run with the land and are valid and binding upon any heir, assign or successor who acquires an undivided, whole interest in the property.

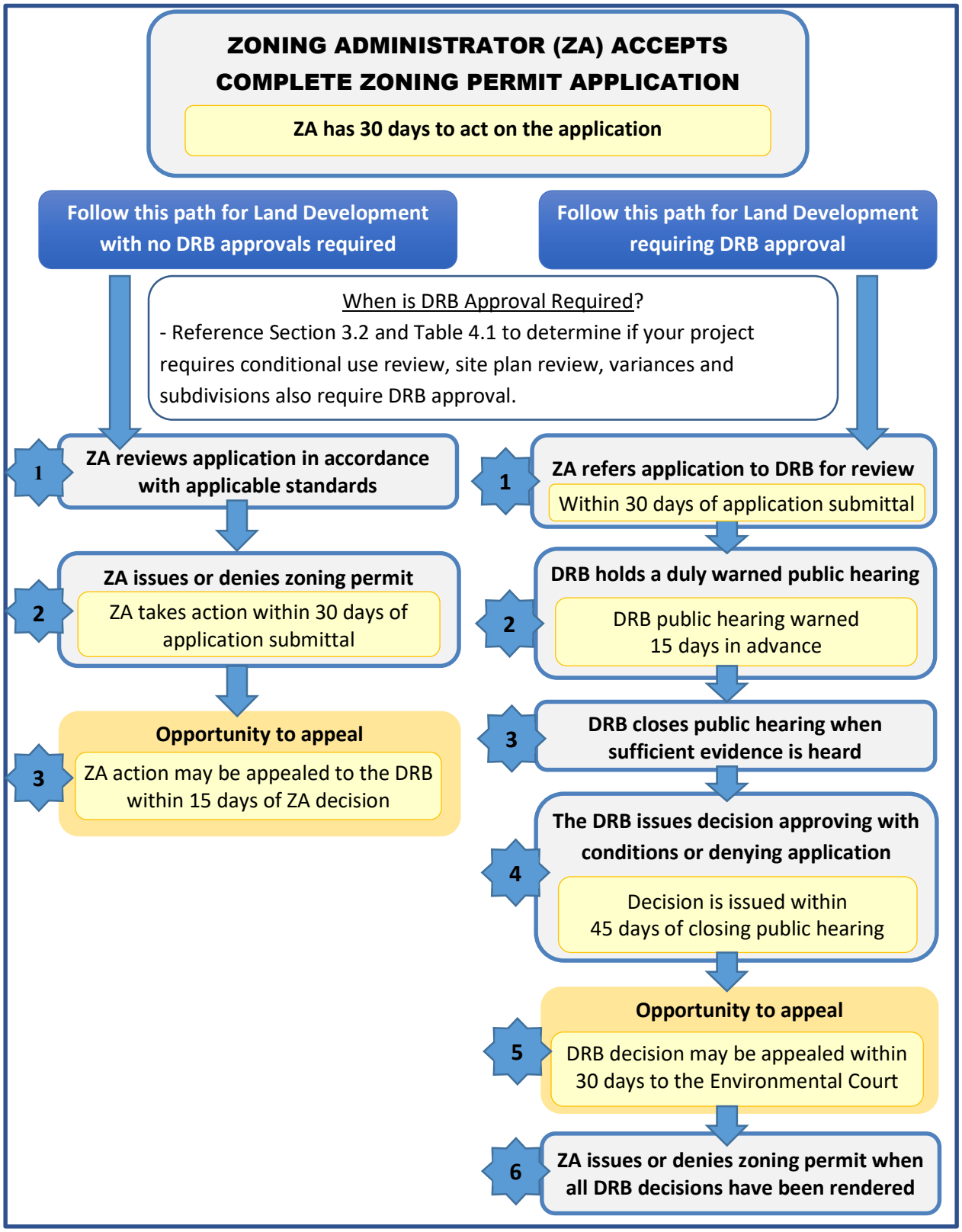
D) **Effective Dates**

1) **Zoning Permits.** No zoning permit shall take effect until the time for appeal under Section 2.9 has passed or, in the event that a notice of appeal is properly filed, until final adjudication of the appeal. All development approved under this Regulation shall be completed or established within two (2) years from the date of issuance of the permit, unless the permit specifies otherwise. The Zoning Administrator shall decide as to whether the development has been completed or established. Failure to complete or establish the proposed development shall render the applicant in violation of this Regulation. At a minimum, established development must include the complete construction of an access, a foundation, and a water supply and wastewater system.

2) **Permit Extensions.** The Zoning Administrator may administratively issue one (1) permit extension of not more than two (2) years from the date of application, if the application for an extension is made in writing prior to permit expiration, and it is determined by the Zoning Administrator that the extension is justified due to delays in the issuance of other necessary permits, project financing, or other unforeseen circumstances.

3) **Board Approvals.** Approvals granted by the DRB shall expire upon the expiration of the zoning permit issued subsequent to Board approval. The Board may grant a longer period of time for a zoning permit and associated Board approvals to remain in effect, as specified in the Board's written approval, to accommodate phased development or projects that reasonably may require more than two (2) years to complete.

Figure 3.1. Timeline for Zoning Permits and Approvals



E) **Exemptions**

1) **State Exemptions.** The following types of land development are specifically exempted from municipal land use permitting by state law. Therefore, no municipal zoning permit or approval under these regulations shall be required for:

   a) Public utility power generating plants and transmission facilities that are regulated by the Vermont Public Utility Commission under 30 V.S.A. § 248 including wind generation facilities and solar generation facilities.

   b) Required agricultural and silvicultural practices, including the construction of farm structures, as those practices are defined by the Secretary of Agriculture, Food and Markets or the Commissioner of Forests, Parks and Recreation, respectively, under subsections 1021(f) and 1259(f) of Title 10 and section 4810 of Title 6.

      i. For purposes of these regulations, “farm structure” means a building, enclosure, or fence for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with accepted agricultural or farming practices, including a silo, as “farming” is defined in subdivision 6001(22) of Title 10, but excludes a dwelling for human habitation.

      ii. A person shall notify the Zoning Administrator in writing of the intent to build a farm structure, shall provide a site plan with the proposed facility, and a letter of determination from the Agency of Agriculture, Food and Markets indicating that the proposed structure is a farm structure. The structure shall abide by setbacks approved by the Secretary of Agriculture, Food and Markets. No municipal land use permit for a farm structure shall be required.

   c) Hunting, fishing or trapping on public or private land as specified by the state [under 24 V.S.A. §2295].

2) **Local Exemptions.** The following types of land development are locally exempted from requirements to receive a municipal zoning permit or approval under these regulations. However, such structures and uses shall still be subject to minimum standards required in these regulations:

   a) A zoning permit is not needed for the reconstruction of a destroyed structure, if construction is completed within one (1) year with the same footprint and number of bedrooms. If a reconstruction does not fit the aforementioned criteria, all applicable local permits and approvals apply.

   b) One detached accessory structure less than 100 square feet and less than 35 feet tall, unless located in the flood hazard overlay district (See Article 9). All attached accessory structures require a zoning permit.

   c) Interior renovations that do not change the use of a structure (except as required in Article 9).

   d) Handicapped ramps.

   e) Patios and decks less than 100 square feet in size

   f) Sidewalks located on a property with a single or two-household dwellings and used to provide access to the single or two-household dwellings.

   g) Stairs used to access structures provided that the stairs are not located within a setback.

h) Recreational trails on public lands.

i) Driveways providing access to single household dwellings. All driveways shall still be required to meet the all standards for driveway in these regulations including the standards in Section 5.3 - Access Requirements and Driveways.

j) Fire escapes required per the Vermont State Fire and Building Safety Code.

k) Grading, filling and excavation in association with carrying out permitted land development.

l) Minor grading and excavation associated with road and driveway maintenance (e.g., including culvert replacement and resurfacing), lawn and yard maintenance (e.g., for gardening or landscaping), or which is otherwise incidental to an approved use. This specifically does not include Grading, Landfilling and Earth Resource Extraction regulated under Section 6.4.

m) Above ground swimming pools are exempt from the provisions of these regulations.

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

A) **Application.** Applicants for development requiring site plan, conditional use, or variance approval shall submit all applicable application materials listed Table 3.1 to the Zoning Administrator for consideration by the DRB, including any associated fee and any written request for a waiver of required application materials.

1) **Additional application requirements Flood Hazard Area Overlay District**. Proposals for development within the Flood Hazard Area Overlay District must include information required in Article 9.

2) **Waivers of Application Requirements.** The application shall not be considered complete by the DRB until all application materials have been submitted. The DRB may waive one or more of the listed items in the event they determine the items to be unnecessary for the comprehensive review of the application. The DRB shall start the hearing by discussing the waivers and approval or denial of such waiver shall be issued in writing by the DRB.

3) **Notification and Review Procedure.** Upon receipt of a complete application, the DRB shall schedule a public hearing, warned in accordance with Section 2.4. The DRB may recess the convened hearing to require the submission of additional information from the applicant or to allow for the submission of information from other interested parties. The DRB shall issue a written decision in accordance with Section 2.6 within forty-five (45) days from the date of the final public hearing.

4) **Bonding.** The DRB may require that the developer tender a performance guarantee in the form of a public improvements bond, escrow account, or other form of surety acceptable to the Berkshire Selectboard in an amount to cover the total cost for completion all landscaping and/or public improvements. Performance guarantees shall be valid and binding for three (3) years. No zoning permit allowing construction of any portion of a proposed development shall be issued by the Zoning Administrator until the applicant has paid the full amount of any required performance guarantee. Any performance guarantee shall not be released by the DRB until the applicant has completed all improvements covered by the guarantee in accordance with the DRB's decision and the improvements have been inspected and found satisfactory by the Zoning Administrator.

TABLE 3.1 APPLICATION REQUIREMENTS: CONDITIONAL USE, SITE PLAN, AND VARIANCE REVIEW			
Application Requirements:			
Application provided by the Town of Berkshire; one original and one complete copy of a plan, drawn to scale, with north arrow and date of preparation; and required application fees. If requested by the DRB, plans shall be prepared by a licensed engineer, surveyor, or architect, the name of which shall be noted on the map. The plan shall show the following information in sufficient detail to determine whether the proposal is in conformance with these regulations:			
	Site Plan	**Cond. Use**	**Vari-ance**
1) the dimensions of the lot, including property boundaries;	✓	✓	✓
2) location, size, shape, height of existing and proposed buildings and structures;	✓	✓	✓
3) location of existing and proposed easements, rights-of-way, sidewalks, and utilities;	✓	✓	✓
4) location of natural features such as watercourses, wetlands, floodplains, rock outcroppings, and stands of trees;	✓	✓	✓
5) setbacks from property boundaries, right-of-way, surface waters, and wetlands;	✓	✓	✓
6) location and dimension of parking areas, loading and unloading facilities, and points of ingress and egress of vehicles to and from the site to public streets;	✓	✓	
7) location, height, and lumens of outdoor lighting;	✓	✓	
8) topography indicating contours at intervals of not more than two (2) feet;	✓		
9) soils;	✓		
10) landscaping and screening; and	✓		
11) any other information that may be needed to determine compliance with these Regulations.	✓		
In addition, each application shall include:			
Construction sequence and time schedule for completion of each phase of development	✓		
Estimated daily and peak traffic generation	✓	✓	
Statement of how the proposed development fits the purposes of the land use district in which it is located		✓	
Expected impact on existing and planned community facilities		✓	
For nonconforming uses or structures, statement of how the proposal meets standards in Section 5.2.	✓	✓	
A statement describing the variance requested from one or more provisions of these Regulations and the alleged grounds why such relief is believed proper under the circumstances based on the five (5) statutory criteria listed in Section 3.2 (E) and Section 4449 of the Act.			✓

TABLE 3.1 APPLICATION REQUIREMENTS: CONDITIONAL USE, SITE PLAN, AND VARIANCE REVIEW			
For land development accessing a State Highway: A letter of intent from the Agency of Transportation confirming that the Agency has reviewed the proposed site plan and is prepared to issue an access permit under 19 V.S.A. § 1111.	✓		
Any other information that the DRB requires to ensure that the provisions of these regulations are met.	✓	✓	

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

1) The DRB may grant Conditional Use approval for land development conforming with this Regulation and the standards set forth in Section 4414 of the Act, provided the proposed Conditional Use does not result in an undue adverse effect on any of the following:

   a) The capacity of existing or planned community facilities;
   b) For all conditional uses other than multi-household dwellings of 4 units or less, the character of the area affected;
   c) Traffic on roads and highways in the vicinity;
   d) Regulations and Town Plan currently in effect; or
   e) Utilization of renewable energy sources.

2) In granting Conditional Use approval, the DRB may attach additional conditions, if deemed necessary, to implement the purpose of the Town Plan, this Regulation, and pursuant to Section 4414 of the Act. The DRB may also impose specific conditions to ensure the safety and general welfare of surrounding properties, the neighborhood or area affected by the proposed use, and the community at large. Such conditions may include, but are not limited to:

   a) Minimum and maximum lot size;
   b) Distance from adjacent nearby users;
   c) Performance standards pursuant to Section 4414 of the Act and Section 5.7 of this Regulation;
   d) Minimum off-street parking and loading facilities pursuant to Section 5.4;
   e) Landscaping and fencing (Section 8.2);
   f) Design and location of structures and service areas;
   g) Size, location, and design of signs pursuant to Section 5.5; or
   h) Any other factors regulated under these regulations.

3) Pursuant to Section 4464 of the Act, conditions attached by the DRB for a residential development or residential portion of a mixed-unit development shall not:
   a) Require a larger lot size than the minimum required for the zoning district in Table 4.1.
   b) Require more parking spaces than the minimum required under Section 5.4.
   c) Limit the size of building footprint or height beyond the standards of Section 4.2.
   d) Limit the density of dwelling units beyond the standards of Table 4.1 or Section 7.2 for conservation subdivisions.
   e) Otherwise disallow a development to abide by the minimum or maximum applicable standards unless it meets the criteria of Section 4464(b)(7)(B).

C) **Site Plan Review.** Any use or structure requiring site plan approval shall not be permitted by the Zoning Administrator until the DRB grants such approval.

1) The DRB shall consider the following objectives in its review of site plan applications:

a) Maximum safety of vehicular traffic circulation between the site and the street network (Section 5.3 and Section 8.5);
b) Adequacy of circulation, parking and loading facilities with particular attention to safety (Section 5.4);
c) Adequacy of landscaping and screening with preference towards native species and retention of existing vegetation where possible (Section 8.2);
d) Protection of utilization of renewable resources;
e) Adequacy of pedestrian and cyclist circulation and safety (Section 5.3 and Section 8.5); and
f) Proposed roadways shall meet the Selectboard's Road Standards (Section 8.5).

D) **Variance Review.** An applicant may apply for a variance from the provisions of these Regulations from the DRB for any structure.

1) **Standards.** The Board may grant a variance, and render a decision in favor of the appellant, only if **all** the following facts are found, and the findings are specified in its written decision:

a) There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of the Regulation in the neighborhood or district in which the property is located.
b) Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformance with the provisions of the Regulation, and that authorization of a variance is therefore necessary to enable the reasonable use of the property.
c) Unnecessary hardship has not been created by the applicant.
d) The variance, if authorized, will not alter the essential character of the neighborhood or district in which property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.
e) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the Regulation and from the Town Plan.

2) When deciding in favor of the applicant for a variance, the DRB may attach conditions that are necessary to implement the Act and/or the Town Plan.

3) For a variance from the provisions of these Regulations that is requested for a structure that is primarily a renewable energy resource structure, the Board may grant a variance only if it finds that the relief requested meets all requirements listed in the Act (section 4469(b)) and are specified in its decision.

ARTICLE 4. ZONING DISTRICTS AND STANDARDS

Section 4.1 ESTABLISHMENT AND INTERPRETATION OF ZONING DISTRICTS

A) To implement the provisions of this Regulation, the Town of Berkshire is divided into the following districts:

-(EV) EXTENDED VILLAGE DISTRICT
-(RL) RURAL LANDS DISTRICT
-(WHP) WELLHEAD PROTECTION DISTRICT
-(FHA) FLOOD HAZARD AREA OVERLAY DISTRICT

B) The Official Zoning Map consists of the Town of Berkshire Zoning Map. The location of the zoning districts is on the Official Zoning Map, which is adopted by reference and declared to be part of this Regulation and may only be amended in accordance with Sections 4441 and 4442 of the Act.

C) Zoning boundaries shown within the lines of roads, streams or transportation rights-of-way shall be deemed to follow the centerline. The abandonment of roads shall not affect the location of zone boundaries. When the Zoning Administrator cannot determine the location of a zoning district boundary, the DRB shall interpret the district boundary.

D) Any interpretation of zoning district boundaries by the Zoning Administrator may be appealed to the DRB for a declaratory ruling.

E) Where a boundary between districts divides a lot, the regulations of the less restrictive district may apply in that section of the more restrictive district that lies within fifty (50) feet of the district boundary.

Section 4.2 ZONING DISTRICT STANDARDS: USES AND STRUCTURES

A) **Principal and Accessory Structures.**

1) **Principal Structures.** In all zoning districts, there shall be only one principal structure on a lot.

2) **Accessory Structures.** Accessory structures may be permitted by the Zoning Administrator only in connection with a principal structure. Accessory structures shall be incidental to a principal structure, shall be on the same parcel with a principal structure and include only land uses permitted in the particular zoning district.

B) **Structure Standards**

1) **Dimensional Requirements**. All structures must meet the district dimensional requirements and all other applicable provisions of this Regulation.

2) **Height.** Building height is measured vertically from the highest point on top of the structure, to the average (of the highest and lowest) finished grade at the foundation or base (Figure 4.1). No structure shall exceed thirty-five (35) feet in height above ground level unless approved by the

DRB under site plan review (agriculture structures are exempt). The DRB may permit structures in excess of thirty-five (35) feet provided the structure does not constitute a hazard and provided that the portion above thirty-five (35) feet shall remain unoccupied except for normal maintenance.

3) **Foundation.** No principal structure shall be erected or occupied without permanent foundations and permanent siding. Pole-barn construction shall be regarded as having permanent foundations.

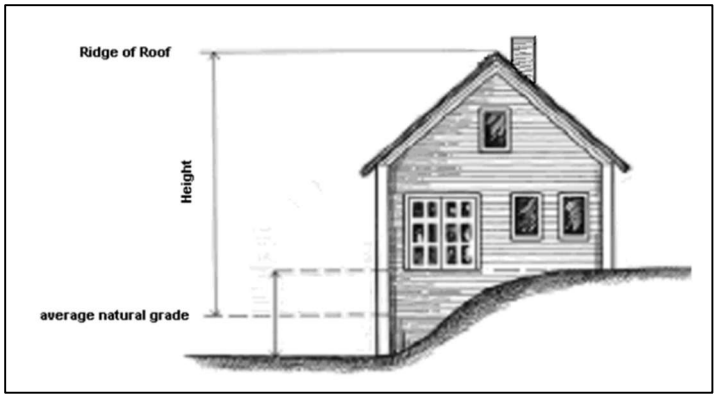


Figure 4.1 – Measuring Height – Building height is measured vertically from the highest point on top of the structure, to the average (of the highest and lowest) finished grade at the foundation or base.

C) **Principal and Accessory Uses.**

1) **Principal Uses.** In all zoning districts there shall be only one principal use on a parcel unless approved as a mixed-use development (Section 6.5).

2) **Accessory Uses**. Accessory uses may be permitted by the Zoning Administrator subject to the following requirements. Conditional use review and site plan approval is required for accessory uses to land development except for uses meeting the definition of an accessory dwelling unit, accessory on-farm business, or home occupation.

a) **Accessory Dwelling Units.** Accessory dwelling units, as mandated by 24 VSA 4412 (1)(E), shall be regulated as set forth in Section 6.3 and shall be considered accessory uses.

b) **Accessory On-Farm Businesses.** Accessory On-Farm Businesses, as mandated by 24 VSA 4412 (11), shall be regulated as set forth in Section 6.12 and shall be considered accessory uses.

c) **Relation to Principal Uses**. Accessory uses are permitted only in connection with a principal use. Accessory uses shall be incidental to principal uses and on the same lot as a principal use permitted in the particular zoning district. It is the burden of the applicant to provide evidence that a particular use is accessory.

D) **Types of Land Uses and Land Use Standards.** Table 4.1 establishes the review standards for each type of land use in each district. Within each district land uses are designated as:

- permitted (P);
- permitted with site plan review (P/S);
- conditionally permitted (C);
- conditionally permitted with site plan review (C/S); or
- prohibited (X).

1) **Permitted Uses**. Permitted uses are marked in Table 4.1 by the letter ‘P’ or ‘P/S’. In districts where they are allowed, permitted uses require a zoning permit and may be approved by the Zoning Administrator subject to the zoning permit standards in Article III. Permitted uses may also require site plan review.

2) **Conditional Uses**. Conditional uses are marked in Table 4.1 by the letter ‘C’ or ‘C/S’. Conditional uses require approval by the DRB according to the conditional use provisions in Section 3.2 as a prerequisite to the Zoning Administrator issuing a zoning permit. Conditional uses may also require site plan review.

3) **Prohibited Uses**. Where a use listed in Table 4.1 is not designated as permitted, conditional or exempt in a zoning district (when the cell is marked with a X) such use is prohibited and shall not be allowed in that zoning district.

4) **Exempt Uses**. Exempt uses are not marked in Table 4.1 and these uses are exempt and do not require a zoning permit. See the state and local exemptions listed in Section 3.1.

5) **Uses Not Identified**. Uses not specifically listed as permitted or conditional uses in Table 4.1 shall be considered prohibited unless such use is approved by the DRB as a conditional use according to Section 3.2 and the standards and procedures below:

   a) The DRB must find that the use is of the same general character as one or more uses permitted or allowed as conditional uses in the zoning district in which the use is proposed. The burden of proof to show that the proposed use is of the same general character as allowed uses in the area shall be on the applicant.

   b) The DRB will determine the minimum lot size, setbacks, lot frontage and other requirements for the use based on the zoning district regulations and specific use standards for similar uses. In no case will the minimum lot size, setback or frontage be less than the minimum otherwise required in the district.

   c) The Planning Commission shall be given 15 days' notice of the conditional use public hearing and may submit written or oral recommendations to the DRB relative to the acceptability of the proposed use.

TABLE 4.1: DIMENSIONAL STANDARDS AND USES BY ZONING DISTRICT					
		Extended Village District	**Rural Lands District**	**Wellhead Protection District**	**Section Reference**
Dimensional Standards					
Minimum Lot Size	With East Berkshire Fire District Water Service	¼ Acre	5 Acres	10 Acres	4.2(B)
	Without East Berkshire Fire District Water Service	½ Acre			
Min. Frontage		75 ft	200 ft	250 ft	4.2(B)
Min Setback/Road (measured from center line of road)		45 ft	75 ft	75 ft	4.2(B)
Min. Setback/Yard		15 ft	30 ft	50 ft	4.2(B)
Min Setback from rivers and streams		See Section 9.3(A)(1)	See Section 9.3(A)(1)	See Section 9.3(A)(1)	9.3(A)(1)
Min Setback from ponds		100 ft	100 ft	100 ft	4.2(B)
Maximum Height of Structures		35 ft	35 ft	35 ft	4.2(B)
Use Key "P" – Permitted Use "C" – Conditional Use "S" – Site Plan Review "X" – Prohibited					
Residential Uses					
Accessory Dwelling Unit to Single Family Dwellings		P	P	P	6.3
Mobile Home Park		X	C/S	X	6.7
Multi-household dwelling		C/S	X	X	
Seasonal Dwelling		P	P	C	
Senior Multi-household Housing		P/S	P/S	X	
Single household dwelling		P	P	C	

Two household dwelling	P	P	C	
Commercial Uses				
Agribusiness	X	C/S	C/S	
Accessory On-Farm Business	P	P	P	6.12
Accessory Use	P or C/S	P or C/S	P or C/S	4.2(C)(2)
Campground	X	C/S	C/S	
Commercial Scale Indoor Recreation (includes theater, amusement hall, bowling, etc.)	P/S	C/S	X	
Commercial Scale Outdoor Recreation (includes golf, riding stables, skiing, etc.)	X	C/S	X	
Child Care Home (w/ no more than 6 full time and 4 part time children)	P[1]	P[1]	P[1]	
Child Care Facility (w/ more than 6 full time and part time children)	C/S	C/S	X	
Earth Resource Extraction	X	C/S	X	6.4
Gas Stations	C/S	X	X	
Home Occupation	P	P	P	6.2
Home Industry	C/S	C/S	C/S	6.2
Light Industry/ Manufacturing	C/S	C/S	X	
Lodging Establishments	C/S	X	X	
Mixed Use	P/S	X	X	6.5
Professional and Business Services	P/S	C/S	X	
Retail Sales	P/S	X	X	
Residential Lodging (Room and Board Houses)	P/S	C/S	X	
Restaurant	P/S	X	X	
Salvage Yards	X	C/S	X	6.9
Saw Mills	X	C/S	X	
Warehousing and Storage Facilities	X	C/S	X	
Other Uses				
Adaptive Re-use of Historic Structures	C/S	C/S	X	6.11
Non-profit clubs	C/S	C/S	X	
Public facilities and services	P/S	P/S	P/S	6.8
State Licensed or Registered Residential Care Home serving 8 or fewer persons with a handicap or disability	P[2]	P[2]	P[2]	
State Licensed or Registered Group Home serving over 8 persons	C/S	C/S	X	
Telecommunications Facilities	C/S	C/S	X	6.10
Footnotes				
[1]Child care homes are considered permitted single household uses of property. As long as a valid zoning permit is in place for a single household dwelling, no additional permit or approval is required. Note: Any structural alterations or other land development associated with these uses that are not exempt and shall require a zoning permit.				

[2]A residential care home or group home to be operated under state licensing or registration, serving not more than eight persons who have a disability as defined in 9 V.S.A. § 4501, shall be considered by right to constitute a permitted single-family residential use of property, except that no such home shall be so considered if it is located within 1,000 feet of another existing or permitted such home. As long as a valid permit is in place for a single household dwelling, no additional permit or approval is required. Note: Any structural alterations or other land development associated with these uses that are not exempt and shall require a zoning permit.

Section 4.3 DISTRICT OBJECTIVES

A) **Extended Village District**. The purpose of the Extended Village District is to maintain and support the role of the village as a focus of many social and economic activities in Berkshire and to provide for residential, commercial and other compatible development that serves the need of the community. Such development should maintain the traditional density and overall social and physical character of the village, including their historic and scenic resources, but should not exceed the capability of the lands, waters, services and facilities to accommodate such density.

B) **Rural Lands District.** The purpose of the Rural Lands District is to conserve the integrity and natural qualities of rural open space for the betterment and future use of the community. The District will provide for rural residential development and compatible commercial establishments at a density the land can support without central water or sewage disposal and that maintains the forest and agricultural character of the Town.

C) **Wellhead Protection Overlay District.** The purpose of the Wellhead Protection District is to maintain or improve the quality of Berkshire's and Enosburg's water resources, including surface and ground waters, and to ensure that surface water bodies and corridors are protected and well managed.

D) **Flood Hazard Area Overlay District.** The purpose of the Flood Hazard District is to promote public health, safety, and general welfare in the following ways:

- To meet the requirements for community eligibility in the National Flood Insurance Program and to thereby ensure continued availability of flood insurance to property owners.
- To encourage conservation and open space uses of flood hazard areas; for example:
  - agricultural uses, such as general farming, pasture, orchards, grazing, outdoor plant nurseries, truck farming, and forestry.
  - recreational uses, such as parks, picnic grounds, golf courses or driving ranges, archery or shooting ranges, trails, hunting and fishing areas, and boat launching sites.
  - residential uses, such as lawns, gardens, parking areas, and play areas.
- To require (where development is proposed) reasonable measures to promote health and safety and to minimize property damage due to flooding. In the event that the provisions of this Section of the Regulation conflict with other Sections of this Regulation, the more stringent shall apply.

ARTICLE 5. GENERAL REQUIREMENTS

Section 5.1 APPLICABILITY

A) The following standards shall apply to all land development, as defined in Article 10 – Definitions, in all zoning districts. If there is conflict between a standard in this section and a standard in another part of these regulations, the more restrictive shall apply.

Section 5.2 NONCONFORMITIES

A) **Applicability**. The following provisions shall apply to all structures, uses, and lots in lawful existence prior to the effective date of these regulations or subsequent amendments, which do not conform to the requirements of these Regulations. In accordance with the Act, this Regulation shall not prevent the normal continuation and maintenance of lots, structures and uses of land that lawfully existed prior to the adoption of this Regulation.

B) **Nonconforming Uses.** A preexisting use of land or use of structures that does not conform to the allowable use provisions of the zoning district in which the use is located shall be deemed a nonconforming use.

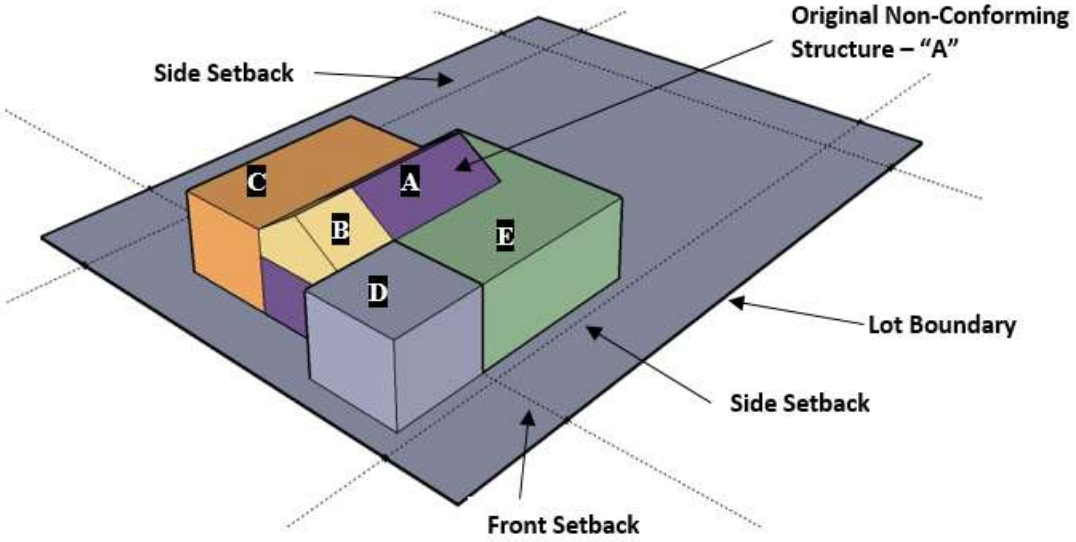
   1) Any nonconforming use may be continued indefinitely, but shall not be re-established after being abandoned (as defined in Article 10 of these Regulations) for a period of twelve (12) months or after being changed to a conforming use.

C) **Non-conforming Structures.** A pre-existing structure that does not conform to those requirements imposed by these Regulations regarding setbacks, height, lot size, or with other dimensional requirements imposed by this Regulation, or which does not meet the parking area requirements, shall be deemed a nonconforming structure.

   1) Any nonconforming structure may be continued indefinitely, but shall be subject to the following provisions:
      a) The DRB may allow, as a conditional use, the extension, change, relocation, alteration or enlargement of a nonconforming structure providing such action does not increase the degree of nonconformance (see Figure 5.1) and meets the conditional use standards.
      b) In the event that a nonconforming structure is destroyed (as defined in Article 10 of these Regulations), a zoning permit is not needed for reconstruction if the reconstruction commences within one (1) year of destruction within the same footprint.

Figure 5.1 Increasing the Degree of Nonconformity

The Building 'A' is the original nonconforming structure, which encroaches into the setback. Additions 'B' does not increase the degree of nonconformance because it is an addition over the existing footprint of building 'A.' Addition 'C' does not increase the degree of nonconformance because it extends no further into the setback area than Building 'A.' Addition 'D' increases the degree of nonconformance because it encroaches further into the setback than Building 'A'. Addition 'E' does not increase the degree of nonconformance because it is not within the setback area.



D) **Pre-existing Small Lots.** Any lot that is legally subdivided, is in individual, separate, and nonaffiliated ownership from surrounding properties, and is in existence on the date of enactment of any Regulation, including an interim Regulation, shall be deemed a preexisting small lot.

1) Any preexisting small lot may be developed for the purposes permitted in the district in which it is located, even though the small lot no longer conforms to minimum lot size requirements of the new Regulation or interim Regulation, provided such a lot is not less than one-eighth (1/8) acre in area, or not less than forty (40) feet in width or depth.

2) If a lot not conforming to the minimum lot size requirements in the district in which it is located is or subsequently comes under common ownership with one or more contiguous lots, the nonconforming lot(s) shall not be deemed merged and shall be considered separate lots.

Section 5.3 ACCESS REQUIREMENTS AND DRIVEWAY STANDARDS

A) **Access to Lots without Required Frontage.** Land development may be permitted on lots that do not have frontage either on a public road or public waters only with the approval of the DRB through site plan approval under Section 3.2. Access to such a lot shall be provided by a permanent easement or right-of-way at least twenty (20) feet wide or a Class IV road. In addition to other review criteria, the Board may consider the intended use of the property, safety, traffic, and road and site conditions in granting, conditioning or denying the approval.

B) **Curb Cuts.** Access onto public highways is subject to the approval of the Berkshire Selectboard, and for state highways, the approval of the Vermont Agency of Transportation. As a condition to access permit approval, compliance with all local ordinances and regulations pertaining to roads and land development is required. Access permits must be obtained prior to the issuance of a zoning permit.

C) **Driveways.** Driveways, which serve one (1) or two (2) lots, shall meet the standards below. Private and public roads which serve three (3) or more lots shall meet the standards in Section 8.5.

1) All driveways entering onto roads must be constructed to meet the Vermont Agency of Transportation B-71 Standards for Commercial and Residential Driveways including specifications for grade, culverts, and ditching.

2) The use of common land or shared driveways is encouraged and may be required in order to minimize the number of access points onto a road. Shared driveways shall not be required to meet the setback standards.

3) Driveways shall be accessible by emergency service vehicles, and shall logically relate to topography so as to ensure reasonable grade and safe intersections with public roads.

Section 5.4 PARKING AND LOADING REQUIREMENTS

A) The following minimum off-street parking requirements shall be provided and maintained in case of new construction, alteration, or change of use:

1) Residential Structures - 2 spaces per dwelling (which may include spaces within a garage or carport)

2) Lodging Establishments - 1 space per bedroom

3) Professional or Business Offices - 1 space per 200 sq. ft. of floor area

4) General Retail - 1 space per 250 sq. ft. of retail floor area

5) Restaurants - 1 space per employee plus 1 space per 4 seats

6) Industrial - space per 500 sq. ft. of floor area

7) For any uses or structures not provided for in these Sections, it shall be the burden of the applicant to demonstrate to the DRB, if approval is required, that they can provide adequate parking necessary to eliminate the need for parking on public roads.

B) No parking lot (defined as an area which provides five (5) or more parking spaces) shall be located in the area between the front lot line and the building wall most parallel to the front lot line. Parking lots shall be appropriately screened to preserve the qualities of the neighborhood where they are located. Appropriate screening should include tress, hedges or other landscaping that will serve to shield vehicular lights from adjoining landowners.

C) The DRB may require additional parking and loading spaces for non-residential uses if it is found that the above standards are not sufficient. The DRB may also impose limits on the number of spaces provided. The DRB may also grant waivers to the above standards, upon application, if the applicant can demonstrate specific factors that will limit the need for parking. Shared parking for compatible uses is encouraged.

D) Pursuant to Section 4428 of the Act, an existing nonconforming parking space shall count toward the parking requirements of an existing residential building if new residential units are added to the building.

E) **Off-Site Parking.** If approved by the DRB, residential parking spaces may be provided off-site within 250 feet of the parcel. A written legal agreement between the owner of the off-site parking and the owner of the residential development is required. The legal agreement shall guarantee access to, use of, and management of designated off-site parking spaces.

Section 5.5 SIGN REGULATIONS

A) A zoning permit shall be required prior to the erection, construction or replacement of any outdoor sign, which must include a detailed drawing or blueprint showing construction details, including all structural and supporting elements; lettering and/or pictorial composition; lighting, including type and positioning; the sign position in relation to adjacent buildings, structures, public and private rights of way; and the sign position in relation to building and structural elements (roof eaves, facades, etc.). The following signs will be exempt from this Regulation:

1) Public highway signs
2) Non-advertising signs placed for directional or safety purposes
3) Temporary auction, lawn sale, or real estate signs, not to exceed two (2) in number and not to exceed nine (9) square feet in area. Temporary signs shall be removed when they have fulfilled their function.
4) Signs on motor vehicles except where determined by the DRB to be circumventing the purpose of this Section.
5) A sign not exceeding four (4) square feet in area which announces the name, address and home occupation of the occupant of the premises on which the sign is located.

B) The following signs shall be prohibited in all zoning districts:

1) Signs which impair highway safety.
2) Roof signs and wall signs which extend above the roof line.
3) Signs which project over public rights-of-way or property lines.
4) Beacons

C) The following requirements shall apply to all signs:

1) No sign may be illuminated by flashing lights of any kind or color, and no sign shall have neon, moving lights, moving parts or fluorescent paint.
2) Roof and wall signs shall not extend above the roofline.
3) No placement of an in-ground sign may be in excess of ten (10) feet in height (measured from the ground level to the top of the sign or support structure, whichever is higher).
4) No more than two (2) business signs may be permitted on any business or industry premises.
5) The display area of each sign shall not exceed twenty (20) square feet, except that a single double-faced sign may be erected with a display not to exceed twenty (20) square feet on each side.
6) In-ground signs shall be located at least 30 feet from the centerline of the road. In-ground signs shall not be required to meet the front setbacks standards for the district in which they are located and shall not be located in the public right-of-way.

Section 5.6 STEEP SLOPES

A) Steeply sloping lands (over 25 percent grade) are prone to severe erosion if disturbed. Erosion and the resulting overland flow of soil sediments into streams, ponds and public roads, are detrimental to water quality and aquatic life, and a potential hazard to public safety. Land development on steep slopes greater than 25 percent in grade shall comply with the following regulations

a) No land development shall be allowed on slopes exceeding 25 percent.

b) Slopes exceeding 25 percent that are created by an extraction or quarrying use approved per Section 6.4 – Extraction of Soils, Land, and Gravel shall be exempt from this section.

Section 5.7 PERFORMANCE STANDARDS

A) The following standard of performance must be met and maintained by all uses in all districts. Agricultural uses are exempt from these provisions in the Rural Lands, Forest, and the Wellhead Protection Districts. No use of land or structure shall:

1) Emit odors, noise, dirt, noxious smoke or gasses or other disturbances that are offensive and uncharacteristic to the surrounding area, or which cause damage to any home, business, vegetation or other property, or which endanger the health, safety or welfare of the neighborhood.

2) Present an unreasonable risk as to fire, explosion, or hazard to any adjacent property or to vehicular traffic.

3) Cause sewage or other harmful waste to be discharged into any watercourse or into any disposal facility beyond its proper capacity. All local, state, and federal health standards shall be complied with.

4) Have lighting, signs, or surfaces which create glare and which could impair the vision of a driver of any motor vehicle.

B) No flammable or explosive liquids, solids, or gasses shall be stored in bulk (more than five hundred (500) gallons) above ground unless they are located at least fifty (50) feet from any lot line, or five (5) feet for underground storage. All materials shall be stored in a manner and location that is in compliance with applicable federal, state, and local rules and regulations.

Section 5.8 ABANDONMENT OF STRUCTURES/USES, DESTROYED STRUCTURES AND DEMOLITION

A) **Abandonment of Uses.** Any use regulated under these Regulations shall be deemed abandoned and not reestablished if the use has been discontinued for at least one (1) year. Once the use of a property has been deemed abandoned, a zoning permit must be acquired to resume the original use. This standard shall not apply to single household or two household dwelling uses.

B) **Abandonment of Structures.** Any structure shall be deemed abandoned when it has not been used for at least one (1) year. Abandoned structures must be either maintained or demolished. There is no time limit on how long a structure may remain abandoned provided it is maintained.

C) **Demolition of Structures.** Demolition of structures is the intentional removal or dismantling of a structure either for the purpose of replacement or returning to grade. Prior to any demolition, a zoning permit must be obtained from the Zoning Administrator. A certificate of compliance is not required for a zoning permit to demolish a structure.

1) Within one (1) year after any structure has been demolished, all structural materials and debris shall be removed from the site, and any remaining excavation shall be covered over or filled to the natural grade and seeded by the owner to prevent erosion.

2) All applicable local permits and approvals must be obtained before any reconstruction following demolition.

D) **Destroyed Structures.** Destroyed structures are those that have been lost through accident or act of nature (fire, floods, etc.) and are treated differently than structures which have been demolished or abandoned (intentional losses of structure).

1) A zoning permit is not needed for the reconstruction of a destroyed structure, if reconstructed within one (1) year with the same footprint. If a reconstruction does not fit the aforementioned criteria, all applicable local permits and approvals apply.

2) Within one (1) year after the abandonment of any destroyed structure, or if active work on an uncompleted construction project on a destroyed structure has not occurred in such period, the owner shall either:
   a) remove all debris and structural materials and restore the site to a smooth grade, or
   b) resume construction of the structure.

Section 5.9 WASTEWATER SYSTEMS

A) **Applicability and Standards.** All wastewater must be discharged into a properly designed and constructed disposal system or properly constructed alternative facility. This includes, but is not limited to, wastewater disposal systems for seasonal dwellings, single household homes, two household homes, and multi-household homes, and commercial and industrial properties in accordance with the Wastewater System and Potable Water Supply Rules, dated September 29, 2007 or as revised from time to time, by the Vermont Department of Environmental Conservation.

B) **Disposal System Construction Permit.** All structures which generates wastewater must receive a Wastewater System and Potable Water Supply permit from the Agency of Natural Resources and a copy of the design plans with the engineer's signature and stamp and submit a copy to the town for records, before commencement of construction on the property. If, according to the Agency of Natural Resources, a Wastewater System and Potable Water Supply permit is not required, written proof of such shall be provided to the Zoning Administrator by the property owner/applicant. Before issuance of a Certificate of Compliance, the applicant must submit a letter to the ZA from the engineer qualifying that the septic system is built according to the state permit standards.

   The Zoning Administrator may conduct a review of state Wastewater System and Potable Water Supply permits, and may carry out onsite inspections.

ARTICLE 6. SPECIFIC USE STANDARDS

Section 6.1 APPLICABILITY

A) The following standards shall apply to the specified uses in all zoning districts where such uses are allowed (See Table 4.1). Specified uses may be subject to site plan review or conditional use review. If there is a conflict between a standard in this Section and a standard in another part of these Regulations, the more restrictive shall apply.

Section 6.2 HOME BUSINESSES

A) **Home Occupations:** No provision of these regulations shall infringe upon the right of any resident to have a home occupation provided that the standards of this section are met. A home business that uses a minor portion of a dwelling for an occupation which is customary in residential areas and that does not change its character is a home occupation.

1) Home occupations are permitted as an accessory use in all districts where residential uses are permitted

2) In order to ensure that a home occupation will not change the character of the residential area, it will comply with all the following standards.

a) The home occupation must be clearly incidental and secondary to the residential use of the property and shall be conducted wholly within the principal or accessory structures.

b) A home occupation shall not exceed twenty-five percent (25%) of the total usable floor area in a dwelling or an accessory structure.

c) A home occupation shall be carried on by permanent residents of the dwelling unit, with not more than two (2) employees who are not residents of the dwelling unit.

d) Outdoor storage, displays, or equipment associated with a home occupation, other than those that are customarily associated with a residential use, are prohibited.

e) Retail sales or services on-site are limited to the sale of goods or services produced on the premises, and related products, by appointment only.

f) No traffic shall be generated in substantially greater volumes than would normally be expected from a residential use in the neighborhood.

g) Parking shall be provided off street and shall not be located in any setback areas.

h) A sign is not allowed except as exempt in Section 5.5.

i) The home occupation shall not produce noise, smoke, vibration, dust, glare, or odors discernable on any adjoining property.

B) **Home Industries:** No provision of these regulations shall infringe upon the right of any resident to have a home industry provided the standards in this section are met.

1) A home industry requires conditional use and site plan review. The home industry must comply with the requirements of Section 3.2 for conditional uses, as well as the requirements below.

a) The home industry shall be conducted wholly within the principal dwelling unit or accessory structures.

b) A home industry shall not exceed fifty percent (50%) of the total usable floor area of the dwelling unit, whether located in the dwelling or in an accessory structure.

c) The home industry shall be conducted by the residents of the premises and no more than three (3) non-resident year-round employees.

d) Exterior storage of materials used in the home industry shall be screened according to provisions provided in Section 8.2 and shall be characteristic of a residential property. No exterior storage of materials shall be allowed in the setback areas and there shall be no public display of goods or wares visible from the road.

e) Retail sales or services on-site are limited to the sale of goods or services produced on the premises, and related products.

f) No traffic shall be generated in substantially greater volumes than would normally be more than characteristic for immediate neighborhood as a whole. This includes, but is not limited to, delivery truck traffic.

g) Parking shall be provided off street and shall not be located in any setback areas.

h) One sign per home industry may be permitted as follows:
   i. A sign not to exceed eight (8) square feet in sign area and six (6) feet in height.
   ii. No sign shall be illuminated.
   iii. No sign shall project over public rights-of-way or property lines.

i) The home industry shall not produce noise, smoke, vibration, dust, glare, odors, electrical interference or heat greater than what is expected in a residential neighborhood.

TABLE 6.1 Comparisons of Standards for Home Businesses

Standard	Home Occupation	Home Industry
Level of Review	Permitted	Conditional & Site Plan Review
Allowable Size	Not over 25% of the total usable floor area in a dwelling	Not over 50% of the total usable floor area in a dwelling
Location	Within a principal dwelling or accessory structure.	Within a principal dwelling or accessory structure
Non-resident Employees	Maximum: 2	Maximum: 3
Exterior Storage	None	With approval
Signs	None, except as exempt in Section 5.5.	1 sign with a maximum sign area of 8 sq ft.
Retail Sales	Products and services produced on premises and related products by appointment only.	Products and services produced on premises and related products.

TABLE 6.1 Comparisons of Standards for Home Businesses		
Standard	**Home Occupation**	**Home Industry**
Traffic Generation	Not more than characteristic for residential use in area.	Not more than characteristic for immediate neighborhood as a whole. This includes, but is not limited to, delivery truck traffic.
Parking	Restricted from setback areas.	Restricted from setback areas.

Section 6.3 ACCESSORY DWELLINGS

A) One accessory dwelling to a single household dwelling, which meets the requirements below, may be allowed as a permitted use of property provided that the following standards are met:

1) Floor space shall not exceed thirty percent (30%) of the floor space of the existing living area of the single household dwelling or nine hundred (900) square feet, whichever is greater, and shall clearly be subordinate to the primary single household dwelling; and
2) Shall be a distinct unit; and
3) Shall have facilities, and provisions for independent living, including sleeping, food preparation, and sanitation; and
4) One of the residences is occupied by the owner; and
5) The property has sufficient wastewater capacity (Section 5.9); and
6) All applicable standards in Article 4 – Zoning Districts and Standards and Article 5 – General Requirements are met including parking standards (Section 5.4).

Section 6.4 GRADING, LANDFILLING AND EARTH RESOURCE EXTRACTION

A) **Applicability**. This section applies to 1) earth resource extraction operations, including but not limited to quarries and sandpits, involving the extraction of more than 50 cubic yards per year of soil, sand, rock or gravel; and 2) any other grading or landfilling of more than 200 cubic yards per year of such materials. Grading or landfilling under this section involves change of grade through placement of off-site earth resource material or on-site movement of earth resource material.

B) **Review**. Conditional use and site plan approval shall be required subject to Section 3.2

C) **Application Requirements.** In obtaining conditional use and site plan approval for the land development described above, an applicant shall provide the following information in addition to the application materials required for conditional use and site plan review under Section 3.2.

1) A site plan showing depth of excavation, proximity to roads or adjacent properties and existing and proposed grade created by removal or addition of material;
2) A fencing and screening plan subject to Section 8.2.
3) An erosion and sedimentation control plan describing methods of control measures during and after construction of proposed development; and
4) A description of the proposed methods of operation including types and quantity of equipment and trucks, location and method of waste disposal and a transportation plan addressing both on and off-site trucking activities.

D) **Specific Review Standards:**

1) Filling shall only be conducted with clean material such as sod, loam, sand, gravel, or quarried stone. Biodegradable material shall not be considered clean fill.

2) The effect upon the use of adjacent property by reason of noise, dust or vibrations shall be evaluated and no undue adverse effect shall be created.

3) Operation of equipment and extraction of materials from the site may be limited.

4) A buffer strip of not less than one hundred (100) feet shall be maintained between the location of any extraction of materials and all property lines, and all bodies of water.

5) A fence shall enclose all areas of standing water, exceeding two (2) feet in depth, and areas with slopes in excess of thirty percent (30%).

6) Upon cessation of extraction of materials or upon the expiration of DRB approval, the site shall be rehabilitated in accordance with a plan approved by the DRB.

7) The DRB may require a performance bond or other surety guarantee sufficient to cover the cost of rehabilitation of the site at the conclusion of operations.

Section 6.5 MIXED USES

A) In designated districts, more than one principal use may be permitted within a single principal structure or on a single lot subject to conditional use review in accordance with Section 3.3 and the following provisions:

1) Each of the proposed uses is otherwise allowed as permitted or conditional use in the district in which mixed use is proposed.

2) The combined uses meet all applicable standards for the district in which the mixed use is proposed, including minimum setbacks and frontage, and minimum lot size.

3) The mixed use meets all applicable general regulations and use provisions contained in Articles 5 and 6.

Section 6.6 MOBILE, MODULAR, AND PREFABRICATED HOUSING

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

Section 6.7 MOBILE HOME PARKS

A) No person shall construct, expand, or alter a mobile home park without site plan and conditional use approval per Section 3.2 of these Regulations. Pursuant to state law, a mobile home park shall be defined as a parcel of land, under single ownership or control, which is used (or is to be used) to accommodate three (3) or more homes. Mobile Home Parks are subject to the following provisions:

1) A mobile home park shall have a contiguous use area of not less than five (5) acres nor more than thirty (30) acres.

2) A strip of land at least one hundred (100) feet wide shall be maintained as a landscaped area abutting all mobile home park boundaries. No mobile home unit or office, utility or service building may be placed in this buffer area. However, the Board may reduce or eliminate this landscaped area requirement if such modification or waiver will make it possible to preserve a scenic view from the park, provided that privacy for adjacent property owners can be maintained.

3) The minimum mobile home lot size shall be one acre unless all lots are served by offsite sewage disposal, in which case the minimum lot size shall be fifteen thousand (15,000) square feet. If both water supply and sewage disposal are offsite, the minimum lot size shall be five thousand (5,000) square feet.

4) Each mobile home lot shall have at least fifty (50) feet of frontage on a mobile home park road. At minimum, mobile home park roads shall be constructed to private road standards (Section 8.5). All mobile home park roads shall be private roads unless constructed to Town standards and accepted by the Selectboard to become a public road.

5) A minimum side and rear yard setback of five (5) feet and a minimum setback from access roads of twenty (20) feet are required for each mobile home lot.

6) Sewage disposal and water supply shall comply with these regulations. All electric, telephone and other utility lines shall be underground.

B) In accordance with the requirements of the Act (Section 4412(7)(B)), if a mobile home park is a nonconformity under these Regulations, the entire mobile home park is treated as a nonconformity for purposes of discontinuance or abandonment.

Section 6.8 PUBLIC FACILITIES

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

1) State or community owned and operated institutions and facilities.

2) Public and private schools and other educational institutions certified by the State Department of Education.

3) Churches and other places of worship, convents, and parish homes.

4) Public and private hospitals.

5) Regional solid waste management facilities certified under 10 V.S.A. Chapter 159.

6) Hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. Section 6606a.

7) Emergency shelters as defined by 24 V.S.A. § 4303.

8) Hotels and motels converted to permanently affordable housing developments as defined by 24 V.S.A. § 4303.

Section 6.9 SALVAGE YARDS

A) New or expanded salvage yards may be allowed within designated zoning districts subject to review and approval by the Berkshire Selectboard under separate State Statute [24 V.S.A., Chapter 61, and Subchapter 10 Section], conditional use review, site plan review, and the following provisions:

1) A minimum of three (3) contiguous acres shall be required for new yards.

2) Salvage yards shall be set back at least one hundred (100) feet from all property lines, road rights-of-way, surface waters, and wetlands.

3) Salvage yards shall be screened year-round from public view; additional landscaping, fencing or other forms of screening may be required as appropriate.

4) Salvage yards shall be secured as necessary to protect public health, safety, welfare, and neighboring properties.

5) Exterior lighting shall be the minimum required for security and safe operation.

6) All performance standards under Section 5.7 shall apply.

7) The on-site storage of materials shall not adversely affect surface, ground or drinking water supplies in the vicinity of the yard.

8) Conditions and limitations may be imposed with regard to traffic generated, hours of operation, and the on-site storage of hazardous materials in order to protect neighboring properties, public infrastructure including roads, and the character of the area in which the yard is located.

9) A site restoration plan shall be required. All materials shall be removed from the site within twelve (12) months of the cessation or abandonment of operations; and the site shall be restored to a safe, usable condition. Site restoration, including the cleanup and disposal of hazardous materials, shall be subject to all applicable state and federal regulations. The DRB may require a bond or other surety per Section 3.2(A) to ensure restoration of the site.

Section 6.10 TELECOMMUNICATIONS FACILITIES

A) **Applicability.** New or expanded telecommunication facilities that are not subject to 30 V.S.A. §248a, including but not limited to towers and accessory structures, are subject to conditional use review, site plan review, and the provisions of this section. In conformance with 24 V.S.A. §4412(9), the DRB may permit new or expanded telecommunications facilities if the DRB finds that the facility will impose not more than a de minimus impact on all applicable standards in these regulations.

1) Notwithstanding the requirements of Subsection (A), wireless telecommunications equipment subject to this section to be mounted on existing towers, utility poles, silos, steeples or other existing structures may be permitted by the Zoning Administrator without conditional use review and site plan review provided that:

   a) No changes are made to the height or appearance of such structure except as required for mounting;
   b) The height of the antenna as mounted does not exceed maximum district height requirements under Article V;
   c) No panel antenna shall exceed 72 inches in height or 24 inches in width;
   d) No dish antenna shall exceed 3 feet in diameter; and
   e) Any accompanying equipment shall be screened from view.

2) A Certificate of Public Good from the Public Utility Commission under 30 V.S.A. §248a preempts these regulations and may be required for the construction or installation of telecommunications facilities that are to be interconnected with other telecommunications facilities proposed or already in existence. The Public Utility Commission determines jurisdiction.

B) **Exemptions.** The following are considered to be de minimis alterations and are specifically exempted from the provisions of this section and no zoning permit shall be required:

1) Placement of an antenna used to transmit, receive, or transmit and receive communications signals on that property owner's premises if the area of the largest face of the antenna is not more than 15 square feet, and if the antenna and any mast support do not extend more than 12 feet above the roof of that portion of the building to which the mast is attached.

2) Antenna structures less than twenty (20) feet in height with a primary function to transmit or receive communication signals for commercial, industrial, municipal, county, or state purposes.

3) Telecommunication facilities that are used exclusively for municipal radio dispatch service or emergency radio dispatch service and which do not exceed 100 feet in height.

4) A single ground or building mounted radio or television antenna or satellite dish not exceeding 36 inches in diameter which is intended solely for residential use, and does not, as mounted, exceed 40 feet in height above the lowest grade at ground level.

5) All citizens band radio antennae or antennae operated by a federally licensed amateur radio operator which do not exceed a height of 50 feet above the grade level, whether free standing or mounted, and which meet all setback requirements for the district in which they are located.

C) **Supplemental Application Requirements.** In addition to the application requirements set forth in Article 3.2, applications for new towers shall also include the following:

1) A report from a qualified and licensed professional engineer which describes tower height, construction design and capacity, including cross-sections, elevations, potential mounting locations, and fall zones.

2) Information regarding the availability of existing towers and buildings located within the service area of the proposed site, including written documentation from other facility owners within the area that no suitable sites for the proposed facility are available at existing facilities.

3) A letter of intent committing the tower owner and their successors to allow the shared use of the tower if an additional user agrees in writing to meet reasonable terms and conditions for shared use.

4) Written documentation that the proposed tower shall comply with all requirements of the Federal Communications Commission, and the Federal Aviation Administration.

5) Any additional information needed to determine compliance with the provisions of these regulations.

D) **Construction Standards.** Telecommunications facilities shall conform to the following construction standards:

1) The facility shall not be built on speculation. If the applicant is not a telecommunication service provider, the applicant shall provide a copy of a contract or letter of intent showing that a telecommunication service provider is legally obligated to locate a wireless telecommunication facility on lands owned or leased by the applicant.

2) All towers, including antennae, shall be less than 200 feet in height as measured from the lowest grade at ground level to the top of the highest structure or component.

3) All telecommunication facilities shall comply with the setback provisions of the zoning districts in which facilities are located. Notwithstanding the above, in order to ensure public safety, the

minimum distance of any wireless telecommunication facility to any property line, dwelling, or occupied structure shall be no less than the height of the tower, including antennas or other vertical appurtenances. This setback shall be referred to as a fall zone. In the event that an existing structure such as a barn silo, church steeple, or utility pole is proposed as a mounting for a wireless telecommunication facility, a fall zone setback may not be required.

4) The facility will not be illuminated by artificial means and will not display any lights or signs except for such lights and signs as required by Federal Aviation Administration, federal or state law, or these regulations.

5) The DRB may require the applicant to provide a bond, or other form of financial guarantee acceptable to the DRB, to cover the cost of removal of the facility, should the facility be abandoned or cease to operate.

6) The applicant demonstrates that the facility will be in compliance with all FCC standards and requirements regarding radio frequency radiation. The owner of a wireless telecommunication facility shall, on a yearly basis, file a certificate to the Zoning Administrator showing that it is in compliance with all FCC standards and requirements regarding radio frequency radiation, and that adequate insurance has been obtained for the facility.

7) The facility will be properly identified with appropriate warnings indicating the presence of radio frequency radiation.

8) The proposed equipment is installed on an existing wireless telecommunication facility, unless it is demonstrated by the applicant that such co-location is not structurally or spatially possible.

9) The facility provides reasonable opportunity for the installation and operation of other telecommunications equipment (co-location).

10) Unless otherwise approved by the DRB, an abandoned or unused wireless telecommunication facility shall be removed within 2 years of abandonment or cessation of use. The applicant may apply to the DRB for an extension for removal. If the facility is not removed or an extension granted within 2 years of abandonment or cessation of use, the DRB may cause the facility to be removed. The costs of removal shall be assessed against the facility owner.

11) Unused portions of a wireless telecommunication facility shall be removed within 1 year of the time that such portion is no longer used. Replacement of portions of a facility previously removed shall require a new permit.

E) **Additional Criteria.** In addition to the conditional use standards and site plan standards in Section 3.2, and the construction standards in (F) above, the DRB shall approve an application for a wireless telecommunications facility when it finds that the application does not impose more than a de minimus impact on the following criteria:

1) New towers shall be sited and designed to minimize their visibility. New or modified towers and antennae shall be designed to blend into the surrounding environment to the greatest extent feasible, through the use of existing vegetation, landscaping and screening, the use of compatible materials and colors, or other camouflaging techniques.

2) Access roads, and all accessory utility buildings and structures shall be designed to aesthetically blend in with the surrounding environment and meet all other minimum requirements for the district in which they are located. Ground-mounted equipment shall be screened from view. Setback, landscaping and screening requirements may be increased as appropriate based on-site conditions, and to protect neighboring properties and uses. All utilities proposed to serve a telecommunications site shall be installed underground.

Section 6.11 ADAPTIVE RE-USE OF HISTORIC STRUCTURES

A) Purpose. Adaptive reuse is intended to encourage the continued viability, reuse, restoration and rehabilitation of historically, culturally or architecturally significant structures within the Town of Berkshire. The adaptive reuse of such a structure is allowed in certain zoning districts as provided in Table 4.1 and is subject to conditional use review and site plan review under Section 3.2, and the standards below.

B) **Applicability.** Structures eligible for adaptive reuse are limited to those which:

1) Are no less than 50 years old and:
   a) are listed in, or eligible for listing in, the Vermont Architectural Resource Inventory (previously the Historic Sites and Structures Survey) for the Town of Berkshire; or
   b) have historical, cultural, or architectural significance to the Town, as determined by the Development Review Board upon application. The Development Review Board may make a determination regarding the eligibility of a particular structure for adaptive reuse in consultation with the Vermont Division of Historic Preservation or a qualified architect or architectural historian.

C) **Application Requirements.** In addition to application requirements for conditional use review and site plan review in Article 3, the application for an adaptive reuse shall also include following:

1) Elevation drawings showing the existing view and proposed renovations for all walls that are proposed to have alterations, including new or altered windows or doors.

2) Written documentation of the structure's significance (particularly historical significance) prepared by a qualified architect, architectural historian, or the Vermont Division of Historic Preservation.

D) **Standards.** Adaptive re-use requires conditional use and site plan review. The adaptive re-use must comply with the requirements of Section 3.2 for conditional uses, as well as the requirements below.

E) **Uses.** In addition to any permitted and conditional use allowed within the zoning district in which the structure is located, the following uses may be allowed in structures eligible for adaptive reuse, as determined by the Development Review Board, regardless of the zoning district in which the structure is located:

1) Permitted and conditional use allowed within the district in which the structure is located;

2) Accessory dwelling unit;

3) Single and multi-family dwelling;

4) Home occupations and home industries (see Section 6.2);

5) Light industrial uses;

6) Professional and business services having a total floor area of not more than 2,000 sq. ft.;

7) Restaurant;

8) Lodging;

9) Cultural facility (see Section 10.2);

10) Retail store with a total display and sale area of not more than 2,000 sq. ft.;

11) Community Center (see Section 10.2);

12) Other similar uses; or

13) A combination of the above uses.

Section 6.12 ACCESSORY ON-FARM BUSINESSES

A) Applicability. An Accessory On-Farm Business as defined in 24 V.S.A. §4412 is an activity that is operated by the farm owner, one or more persons residing on the farm parcel, or the lessee of a portion of the farm and comprises one or both of the following:

1) Non-Event Accessory Business Activities: the storage, preparation, processing, and sale of qualifying products, provided that the qualifying products are produced on a farm; the sale of products that name, describe, or promote the farm or accessory on-farm business, including merchandise or apparel that features the farm or accessory on-farm business; or the sale of bread or baked goods. This may include but is not limited to farm stores, farm stands and prepared food sales of principally produced products.

2) Event Accessory Business Activities: Educational, recreational, or social events that feature agricultural practices or qualifying products, or both. Such events may include tours of the farm, farm stays, tastings and meals featuring qualifying products, and classes or exhibits in the preparation, processing, or harvesting of qualifying products.

B) **Application Requirements.** An applicant shall provide the following information in addition to application materials required under Article 3.

1) A letter from the Vermont Agency of Agriculture, Food, and Markets providing an official farm determination for the farm on which the activity is proposed.

C) **Review.** Accessory on-farm businesses require a Zoning Permit as a permitted use in all zoning districts (see Section 3.1).

ARTICLE 7. SUBDIVISION REVIEW

Section 7.1 APPLICABILITY AND APPLICATION REQUIREMENTS

A) Whenever any subdivision of land is proposed subdivision approval by the DRB is required prior to undertaking:

1) any sale, conveyance, or lease of any subdivided portion of a property; or
2) any construction, building development, grading, or land clearing (excluding forestry, or agricultural or surveying activities) associated with the subdivision of land; or
3) the issuance of any permit for any land development involving land to be subdivided; or
4) the filing of a subdivision plat with the Town Clerk.

B) **Subdivision Classifications.** For the purpose of these Regulations, subdivisions shall be classified as boundary line adjustments, minor subdivisions, or major subdivisions in accordance with the following:

1) **Boundary Line Adjustments.** Applications for boundary line adjustments that do not create any additional lots, make conforming lots nonconforming, or increase the nonconformance of any existing lot or use, may be exempted from sketch plan review and proceed immediately from application to final plan and plat review (and shall meet the application requirements of plan and plat review). Boundary line adjustments that do not meet these standards shall be reviewed as minor subdivisions.
2) **Minor Subdivision.** Minor subdivisions shall include any subdivision of a parcel into three (3) or fewer lots.
3) **Major Subdivision.** Major subdivisions shall include any subdivision of a parcel of land into four (4) or more lots. Conservation subdivisions (see Section 7.9) shall be reviewed as major subdivisions.

Amendments to all existing subdivisions shall be reviewed under final plan and plat review.

C) **Waivers.** The DRB may waive or modify one or more application requirements and/or subdivision standards under Section 7.8 if the DRB determines that the requirement or standard:

1) is not necessary in the interest of the public health, safety and general welfare; and
2) will not have the effect of nullifying the intent and purpose of applicable provisions of these Regulations, the Berkshire Town Plan and/or other municipal regulations and ordinances in effect.

All waiver requests shall be submitted in writing by the subdivider with the sketch plan. It shall be the responsibility of the subdivider to provide sufficient information to allow the DRB to justify the waiver. The approval or denial of a waiver request shall be addressed in the sketch plan decision for minor subdivisions and in the preliminary plan/plat decision for major subdivisions.

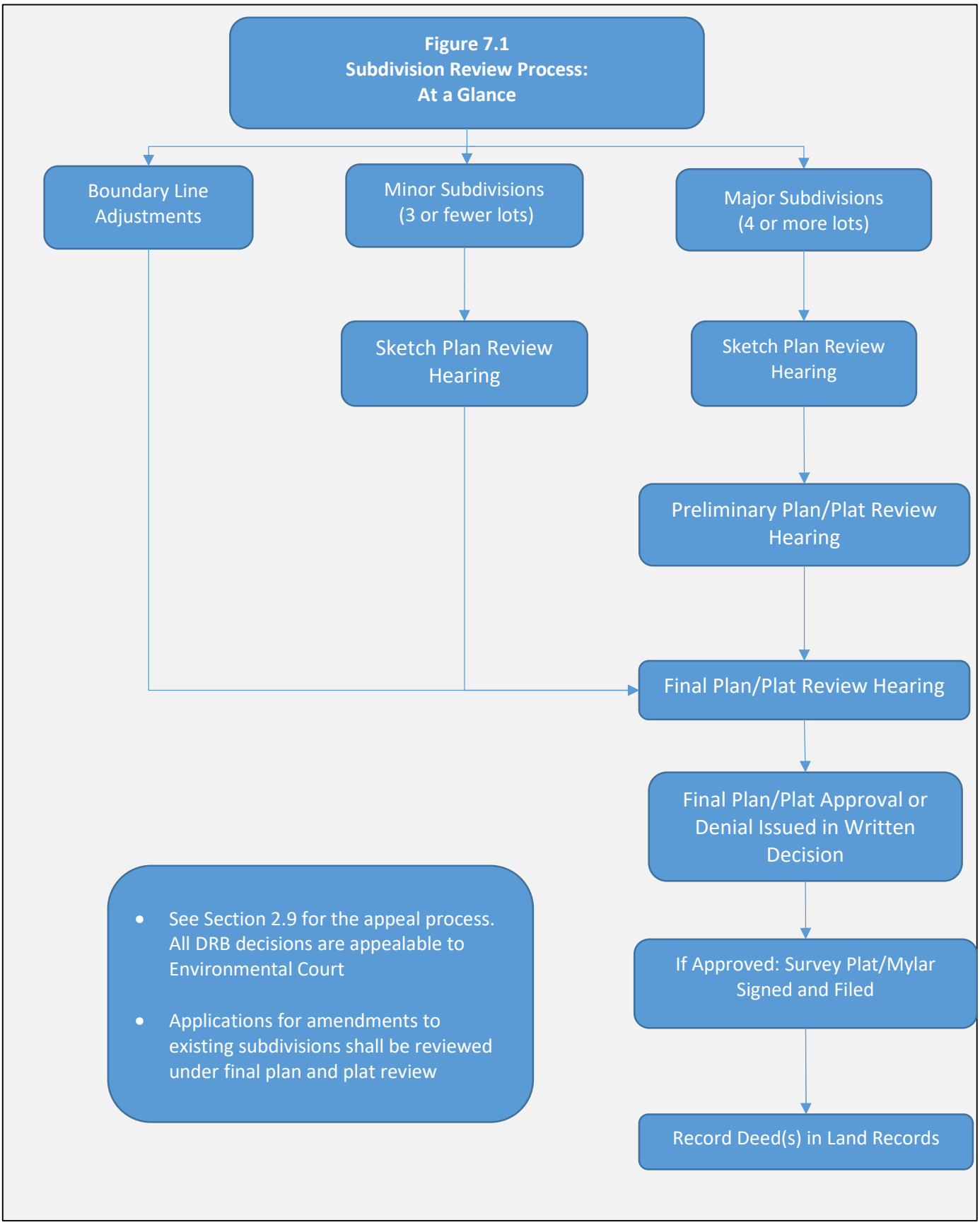


Figure 7.1
Subdivision Review Process:
At a Glance
Boundary Line Adjustments
Minor Subdivisions (3 or fewer lots)
Major Subdivisions (4 or more lots)
Sketch Plan Review Hearing
Sketch Plan Review Hearing
Preliminary Plan/Plat Review Hearing
Final Plan/Plat Review Hearing
Final Plan/Plat Approval or Denial Issued in Written Decision
If Approved: Survey Plat/Mylar Signed and Filed
Record Deed(s) in Land Records
See Section 2.9 for the appeal process. All DRB decisions are appealable to Environmental Court
Applications for amendments to existing subdivisions shall be reviewed under final plan and plat review

TABLE 7.1 SUBDIVISION APPLICATION REQUIREMENTS			
Application Information	**Sketch**	**Preliminary Plan**	**Final Plan and Plat**
1) Application form [number of copies]	1 original & 3 copies	1 original & 3 copies	1 original & 3 copies
2) Application fee [to be set by Selectboard]	✓	✓	✓
3) Name of project, if any	✓	✓	✓
4) Name, address of applicant [landowner and/or subdivider]	✓	✓	✓
5) Written description of proposed development plans, including number and size of lots; general timing of development	✓	✓	✓
6) Waiver request, in writing [optional]	✓	✓	
7) Names, addresses of all adjoining property owners	✓	✓	✓
Plan Requirements	**Sketch**	**Preliminary Plan**	**Final Plan and Plat**
1) Preparer information, certifications	✓	✓	✓
2) Scale (minimum 1 inch = 200')	✓	✓	✓
3) Date, north arrow, legend	✓	✓	✓
4) Project boundaries and property lines	Drawn	Drawn	Surveyed
5) Existing and proposed lot lines, dimensions	Drawn	Drawn	Surveyed
6) Adjoining land uses, roads, and drainage	✓	✓	✓
7) Zoning district designations and boundaries	✓	✓	✓
8) The location of natural and physical features located on the site, including buildings; roads, driveways, and parking areas; fences and walls; watercourses; wetlands; areas of slope in excess of 20%; historic or archeological resources	✓	✓	✓
9) A general indication of land cover, including forested areas and forest type, land in current or recent (prior to 3 years) agricultural production	✓	✓	✓
10) Existing and proposed elevations, contour lines		5' interval	5' interval
11) Existing and proposed roads, paths, parking areas, associated rights-of-way or easements	Drawn	Surveyed	Surveyed
12) Proposed building envelopes	✓	✓	✓
Plan Mapping Requirements (Continued)	**Sketch**	**Preliminary Plan**	**Final Plan and Plat**

TABLE 7.1 SUBDIVISION APPLICATION REQUIREMENTS			
Application Information	**Sketch**	**Preliminary Plan**	**Final Plan and Plat**
13) Proposed utilities, water and wastewater systems and associated rights-of-way or easements	✓	✓	✓
14) Road profiles; road, intersection, and parking area geometry and construction schematics		✓	✓
15) Proposed landscaping and screening		✓	✓
16) Proposed conservation buffer and/or open space easement areas		✓	✓
17) Property Boundary Survey Signed and Stamped by Licensed Land Surveyor: Property boundary surveys are required for all new subdivided lots. Property boundary surveys are required for the entire parent parcel (original parcel from which lots are subdivided) when: • it is 10 acres or less in size, and/or • greater than 50% is subdivided into lots See Section 7.5 for specific plat requirements.		✓ Paper	✓ Mylar, signature and stamp required for filing after approval
Supporting Information and Documentation	**Sketch**	**Preliminary Plan**	**Final Plan and Plat**
1) Site location map showing proposed subdivision in relation to major roads, drainage ways, and adjoining properties	✓	✓	✓
2) Statement of compliance with municipal plan and applicable local regulations	✓	✓	✓
3) Engineering reports (water and wastewater systems)		✓	✓
4) Existing and proposed traffic generation rates, volumes		Estimated	Estimated
5) Off-site easements (e.g. for water, wastewater, access)	Description	Draft	Final
6) Proposed phasing schedule	Description	Draft	Final
7) Legal Documents: A draft of all newly created or revised deeds, covenants, homeowner agreements, tenant association agreements, or other legal documents associated with the proposed development.	Description	Draft	Final
8) Proposed performance bond or surety		Description	Final
As may be Required by the DRB	**Sketch**	**Preliminary Plan**	**Final Plan and Plat**

TABLE 7.1 SUBDIVISION APPLICATION REQUIREMENTS			
Application Information	**Sketch**	**Preliminary Plan**	**Final Plan and Plat**
1) Stormwater and erosion control plan		As required under sketch plan approval	As required under sketch plan approval
2) Grading plan (showing proposed areas of cut and fill)			
3) Shoreland or open space management plan			
4) Site reclamation plan (for subdivisions involving extraction)			
5) Traffic impact analysis (current and proposed traffic volumes, capacities, levels of service, proposed improvements)			
6) Fiscal impact analysis (analysis of fiscal costs and benefits to the town)			
7) Historic and archeological assessment			
8) Environmental impact analysis (analysis of potential environmental impacts, proposed mitigation measures)			
9) Other			

Section 7.2 SKETCH PLAN REVIEW (MAJOR AND MINOR SUBDIVISIONS)

A) **Application Requirements.** The applicant shall submit to the Zoning Administrator one (1) original and three (3) copies of a subdivision application and proposed sketch plan as specified in Table 7.1 and the associated fee.

B) **Public Notice.** Within thirty (30) days of receipt of a complete sketch plan application, the DRB shall hold a public hearing on the sketch plan, warned in accordance with Section 2.4.

C) **Sketch Plan Hearing.** The applicant and/or an authorized representative shall attend the DRB hearing for the purpose of discussing the subdivision application and the proposed sketch plan. The DRB may request additional information needed to act on the sketch plan or may request that certain changes be made to subsequent submissions of the proposed plan.

D) **Action on Sketch Plan.** Within forty-five (45) days of the close of the public hearing on the sketch plan application, the DRB, based on information provided, shall issue in writing;

1) A decision on whether the subdivision is a minor subdivision to be reviewed under Section 7.4 or a major subdivision to be reviewed under Sections 7.3 and 7.4.

2) The granting or denial of any requests to waive any provisions of the subdivision regulations.

3) A decision of whether or not the proposed subdivision plan conforms to applicable subdivision standards or would be in conflict with the Berkshire Town Plan and other municipal regulations currently in effect.

4) Recommendations for changes in subsequent submissions, and/or requests for additional studies or supporting documentation.

5) The minutes of the hearing may suffice as the decision provided the factual bases and conclusions relating to the review standards are included in the minutes.

E) **Effect of Sketch Plan Approval.** The DRB decision and associated recommendations shall remain in effect for six (6) months from the date of issuance. Within six (6) months of the decision by the DRB, the applicant may apply to the DRB for preliminary plan review for a major subdivision under Section 7.3 or final plan and plat approval for a minor subdivision under Section 7.4.

Section 7.3 PRELIMINARY PLAN APPROVAL (MAJOR SUBDIVISIONS ONLY)

A) **Application Requirements.** Within six (6) months of approval of a sketch plan by the DRB, the applicant shall submit an application and associated fees for preliminary plan and plat approval that includes, unless otherwise specified or waived by the Board under Section 7.2(C), an original and three (3) copies of the information required for preliminary plan review as specified in Table 7.1.

B) **Public Notice.** Within thirty (30) days of receipt of a complete preliminary plan application, the Board shall hold a public hearing on the preliminary plan, warned in accordance with Section 2.4.

C) **Preliminary Plan Review.** Within forty-five (45) days of the date of adjournment of the public hearing, the DRB shall approve, approve with modifications, or disapprove the preliminary plan and associated plat based on a determination of whether or not the preliminary plan conforms to applicable subdivision review standards under Article 7 and 8, or would be in conflict with the Berkshire Town Plan and other municipal regulations in effect. The Board may also require conditions of approval with respect to requiring changes or modifications to the preliminary plat or the amount of improvement or amount of all bonds required as a prerequisite to the approval of the subdivision plat.

D) **Phasing.** At the time the DRB grants preliminary plan approval it may require the plat to be divided into two (2) or more phases to ensure project conformity with the Berkshire Town Plan currently in effect. Conditions may be imposed upon the filing of application for final plan and plat approval for each phase as the Board deems necessary to ensure the orderly development of the plat and to avoid overburdening of town facilities and services.

E) **Effect of Preliminary Plan Approval.** Approval of the preliminary plan shall not constitute approval of the final subdivision plan and plat. Following approval of the preliminary plan, the DRB may request the submission of a list of all applicable approvals being sought from municipal officials and/or agencies having jurisdiction over the project (e.g., Selectboard, Health Officer), and such state and federal agencies as may be required by law. Upon the expiration of all relevant appeal periods, the applicant may apply to the Board for final plan and plat approval under Section 7.4.

Section 7.4 FINAL PLAN AND PLAT REVIEW (APPLYING TO ALL SUBDIVISIONS)

A) **Application Requirements.** Within six (6) months of the date of sketch plan approval for minor subdivisions, or preliminary plan approval for major subdivisions, the subdivider shall submit an application for final subdivision plan approval, including plat approval. If the subdivider fails to do so, they will be required to resubmit for minor subdivisions a new sketch plan, or for major subdivisions a new preliminary plan, for approval subject to any new zoning and subdivision regulations. The application for final subdivision plan and plat approval shall include associated fees and, unless otherwise specified or waived by the DRB under Section 7.2(C), an original and three (3) copies of the information for final plan and plat review as specified in Table 7.1

B) **Public Hearing.** Within thirty (30) days of the date the Zoning Administrator deems that a final plan and plat application is complete, the Board shall hold a public hearing on the final plan and associated plat, warned and held in accordance with Section 2.4. Copies of the hearing notice shall

be sent, at least fifteen (15) days prior to the hearing date, to the clerk of an adjacent municipality in the case of a plat located within five hundred (500) feet of a municipal boundary.

C) **Final Plan and Plat Review.** Within forty-five (45) days of the date of adjournment of the public hearing, the DRB shall issue a written decision in accordance with Section 2.6 that will either approve, approve with conditions, or disapprove the final subdivision plan, based on a determination of whether or not the final plan and associated plat conform to these regulations.

D) **Effect of Final Plan and Plat Approval.** The approval of the DRB of a final plan and associated plat shall not be construed to constitute acceptance of any legal interest by the Town of any road, easement, utility, park, recreation areas, or other open space shown on the final plat. Such acceptance may be accomplished only by a formal resolution of the Selectboard, in accordance with state statute. Each approval for a final plan and plat may contain a time limit within which all improvements necessary for the subsequent development of the subdivided lots (e.g., roads, utilities) shall be completed, not to exceed three (3) years unless otherwise required or extended by the DRB.

Section 7.5 PLAT RECORDING REQUIREMENTS

A) Within one hundred eighty (180) days of the date of receipt of final plan and plat approval under Section 7.4(C), the applicant shall file three (3) copies of the final subdivision plat, including one (1) mylar copy and two (2) paper copies, for recording with the Town in conformance with the requirements of 27 V.S.A Chapter 17. Approval of subdivision plats not filed and recorded in this one hundred eighty (180) day period shall expire. The Zoning Administrator may; however, grant an extension for plat filing for an addition ninety (90) days in the event the applicant documents that other required local and/or state permits are still pending. The plat shall meet the following specifications:

1) Contain clear and legible data and information;

2) Be 18.0 inches by 24.0 inches in size;

3) Contain the stamp and signature of licensed Land Surveyor;

4) Contain a margin of 2.0 inches outside of the borderlines on the left side for binding and a 1.0-inch margin outside the border along the remaining sides;

5) Contain an inset location map clearly indicating the location of the land depicted and a legend of symbols used;

6) Contain plat scale ratios sufficient to allow all pertinent survey data to be shown, and graphic scale graduated in units of measure used in the body of the plat;

7) Display any building envelopes as required by the DRB;

8) Display all proposed road and pedestrian rights-of-way, as required under these Regulations, regardless of whether a proposed right-of-way is intended to be accepted by the Town. In the event that the right-of-way is not intended for acceptance by the Town, the mechanism by which the right-of-way is to be maintained, owned and/or conveyed shall clearly be documented; and

9) Meet all requirements of 27 V.S.A. Chapter 17.

B) Prior to plat recording:

1) The plat must be signed by the Chair of the DRB.

2) A signed certification is required from the licensed land surveyor who prepared the survey plat, indicating that all the permanent lot markers (pins) have been set, shall be provided to the Zoning Administrator.

3) When required as a condition of approval, the subdivider must file any performance bond or comparable surety with the Selectboard to ensure completion of any improvements in accordance with approved specifications.

Section 7.6 LEGAL REQUIREMENTS

A) Documentation and assurance shall be provided that all required road or other infrastructure improvements, associated rights-of-way and easements, and proposed roads and rights-of-way will be adequately maintained either by the applicant, a homeowners' association, or through other legal mechanisms. Such documentation shall be in a form approved by the DRB and filed in the Berkshire Land Records.

B) All required road or other infrastructure improvements shall be constructed to approved specifications in accordance with a construction schedule approved by the DRB. A performance bond or comparable surety may be required to ensure that all improvements are complete to specification. Such bond shall be posted in accordance with Section 3.2(A)(4) of these Regulations.

Section 7.7 SUBDIVISION AMENDMENTS

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

Section 7.8 SUBDIVISION DEVELOPMENT STANDARDS

A) **Applicability.** The DRB shall evaluate all subdivisions in accordance with the standards in this section, the standards in Article 8 – Development Review Standards, and any other applicable standards in these regulations. The DRB may, as a result of findings made concerning the proposed subdivision's conformance with these standards, require modification of subdivision design, phasing of the proposed subdivision, and/or additional measures to avoid or mitigate any undue adverse impacts likely to result from the proposed subdivision.

B) **Standards.** All subdivisions shall meet the following standards:

1) **Character of the Land.** All land to be subdivided shall be, in the judgment of the DRB, fit the character of the area or district in which the subdivision is located.

2) **Conformance with the Berkshire Town Plan and Other Regulations.** Subdivisions of land shall be in conformance with all applicable requirements of these Regulations, the Berkshire Town Plan currently in effect, and all other municipal bylaws, regulations and ordinances currently in effect.

3) **Compatibility with Existing Settlement Patterns.** Subdivisions shall be designed and laid out to achieve the purpose and desired settlement pattern of the district in which they are located. New subdivisions shall:

a) maintain and extend desired settlement patterns, including lot area and configuration, road layout, and building locations, for the neighborhood or district in which they are located;
b) maintain contiguous tracts of open land; and
c) connect to, and extend where appropriate, existing road, path, utility and open space corridors.

4) **Lot Layout.** Lot size and layout shall conform to zoning district dimensional requirements (frontage, lot and yard requirements, spaghetti lots, etc.) in Article 4 and the following standards:

a) Corner lots shall have sufficient width to permit a front yard setback from each road.
b) Side lot lines shall generally be at right angles to straight roads, or radial to curved roads.
c) Lots with irregular shapes (curves, jogs, dog-legs, etc.) shall not be created unless warranted by conditions of topography, the location of natural features, existing roads or new roads that meet the standards in Section 8.5.
d) Subdivisions shall be designed to minimize the length of future roadways, driveways, sewer lines, water lines, and utility lines.
e) Larger minimum lot sizes may be required by the Board based on site limitations unless modified or waived by the DRB.

5) **Establishment of Building Envelopes.** All lots may have a designated building envelope. Such building envelope shall be designed to identify and limit the location of principal and accessory structures, parking areas, and associated site development (excluding road and utility rights-of-way or easements) on one or more portions of a lot. The Board may require the identification of specific building footprints, if, in their judgment, such information as required to meet the standards set forth in these Regulations.

6) **Energy Conservation.** The siting of lots should maximize solar access where feasible, and landscaping should effectively be used to provide wind barriers and reduce heat loss or gain,

7) **Municipal Facilities and Services.** The proposed subdivision shall not create an undue adverse effect on municipal facilities or create an unreasonable demand for public services (for example, shall not result in an increase in student enrollment in excess of existing or planned school capacity) in accordance with the Town Plan.

8) **Fire Protection Facilities.** Adequate water storage or distribution facilities for fire protection within the subdivision shall be provided. The applicant shall submit documentation from the Berkshire Fire Department as to the adequacy of emergency access and fire protection facilities. Where required by the DRB, fire hydrants, dry hydrants, or ponds shall be installed by the subdivider per a schedule set by the DRB in their final subdivision decision.

Section 7.9 CONSERVATION SUBDIVISION

A) **Applicability and Purpose**. In the Rural Lands District an applicant that is proposing to subdivide a lot that is 20 acres or greater in size shall have the option to apply for a conservation subdivision instead of a conventional subdivision. The purpose of a conservation subdivision is to further the goals of the Rural Lands District by allowing the subdivision of smaller lots for future development and by allowing the subdivision of larger lots to be conserved in perpetuity for agricultural, forestry, or recreational uses.

B) **Review Process.** Conservation subdivisions shall be considered major subdivisions. The subdivision review process for major subdivisions outlined in this Article shall be followed.

C) **Conservation Subdivision Standards**.

1) **Dimensional Requirements.** A conservation subdivision shall consist of lots with development potential and the conserved lot. All lots to be subdivided shall meet the applicable standards in Table 7.2. These standards shall take precedence over the applicable dimensional standards in Article 4.

Table 7.2 – Conservation Subdivision Dimensional Standards	
Lots with Development Potential	
Minimum Lot Size	2 Acre
Minimum Frontage	150 feet
Minimum Setback/Road (measured from center line of road or ROW)	45 feet
Minimum Setback/Yard	15 feet
Minimum Setback from rivers and streams	See Section 9.3(A)(1)
Minimum Setback from ponds	100 feet
Maximum Height of Structures	35 feet
Conserved Lot	
Minimum Lot Size	60% of original ("parent") parcel
Minimum Frontage	200 feet
Minimum Setback/Road (measured from center line of road or ROW)	45 feet
Minimum Setback/Yard	15 feet
Minimum Setback from rivers and streams	See Section 9.3(A)(1)
Min Setback from ponds	100 feet
Maximum Height of Structures	35 feet

2) **Density.** Lot density for conservation subdivisions shall be calculated in the following way:

a) **Conserved Lot:** "Parent" Lot Size * .60 = Minimum Conserved Lot Size. Road ROW shall not count toward the conserved lot acreage.

b) **Development Lots:** "Parent" Lot Size / 5 (Minimum Lot Size for the Rural District) = Maximum Allowed Development Lots at least 2 acres in size.

c) Any fractional numbers resulting from the density calculation shall be rounded to the nearest whole number.

d) Development may be located on any portion of the "parent" parcel regardless of Zoning District in accordance with the standards set forth in these regulations.

3) **Lot Layout and Access.**

a) All lots shall be subdivided within a conservation subdivision to meet the standards for protecting natural resources identified in Section 8.3 and Article 9.

b) Proposed public and/or private roads shall be kept to a minimum in length. Lots shall be easily accessed from proposed public and/or private roads to decrease the length of future driveways. The DRB may require that adjacent lots within the conservation subdivision be accessed by a shared driveway as a condition of approval.

c) Corner lots shall have sufficient width to permit a front yard setback from each road.

d) Side lot lines shall generally be at right angles to straight roads, or radial to curved roads.

e) Lots with irregular shapes (curves, jogs, dog-legs, etc.) shall not be created unless warranted by conditions of topography, the location of natural features, existing roads or new roads that meet the standards in Section 8.5.

f) Conservation subdivisions shall be designed to minimize the length sewer lines, water lines, and utility lines.

4) **Lot Phasing.** An applicant may decide to complete a conservation subdivision in separate phases. If this is proposed by an applicant, the following standards shall apply:

c) The applicant shall submit a phasing plan with the subdivision application that will display the different phases within the proposed conservation subdivision. This phasing plan will show which lots will be subdivided within the current application (Phase 1) and which lots may be subdivided in the future (Phase 2, etc.). The applicant shall provide the DRB with a phasing schedule for when the additional lots may be subdivided in the future. This phasing schedule shall be non-binding.

d) Phase 1 shall be reviewed as a major subdivision. All subsequent phases shall be reviewed as a minor subdivision.

e) The conserved lot within a conservation subdivision shall be conserved during Phase 1. The applicant may propose to change the layout of the conserved lot in subsequent phases of the conservation subdivision provided all requirements for the conserved lot are still met.

5) **Legal Requirements for the Conserved Lot.**

a) A conserved lot shall only be used in perpetuity for agricultural, forestry, and/or recreational uses. The future use of the conserved lot shall be protected in perpetuity by a binding legal instrument that is recorded with the deed. A note shall also be added to the subdivision plat indicating the existence of the deed restriction. The conserved lot may be owned and managed through the following means:

i. Held in single fee-simple ownership by a private individual, a land trust or similar conservation-oriented non-profit organization, or a governmental entity, such as the Town of Berkshire (if authorized by the Selectboard).

ii. A homeowners' association may hold the land in common provided there is a homeowners' association covenant addressing use and maintenance of the land as a condition of the DRB approval.

iii. In addition to the outlined types of ownership, the applicant many propose that the conserved lot be protected by a permanent conservation easement provided to a land trust or similar conservation-oriented non-profit organization (with legal authority to accept such easements), or a permanent conservation easement provided to a governmental entity (such as the Town of Berkshire). If the easement is provided to a land trust or similar organization, the applicant shall provide documentation that the organization is organized to be in perpetual existence and the conveyance instruments shall contain an appropriate provision for retransfer in the event the organization becomes unable to carry out its functions.

b) There shall only be one conserved lot per conservation subdivision.

c) A conserved lot shall be located next to other conserved lots on adjacent lands, if they exist, to provide a contiguous connection between conserved lots created through a separate conservation subdivision or any other means.

d) Structures to be built on a conserved lot shall only be used to support agricultural, forestry, and/or recreational uses on the lot. The total size of all structures on a conserved lot shall not exceed 1000 square feet.

e) Water and wastewater infrastructure (wells, septic, leach field, etc.) serving the lots within the conservation subdivision may be located on the conserved lot provided that the infrastructure does not occupy more than 20% of the land on the conserved lot and provided that the applicant can demonstrate, to the satisfaction of the DRB, that the infrastructure will not disrupt or detract from the intended use of the open space.

6) **Uses.** Land uses on lots with development potential located within a conservation subdivision shall be the same as those land uses that are permitted, conditional, or prohibited by district as shown in Table 4.1.

D) **Additional Standards.**

1) Conservation subdivisions shall be in conformance with the Berkshire Town Plan currently in effect and all other municipal bylaws, regulations and ordinances currently in effect.

2) All standards in Article 5 – General Requirements and Article 8 – Development Review Standards shall apply to conservation subdivisions.

3) The standards in Section 7.8(B)(5) through Section 7.8(B)(9) shall apply to conservation subdivisions.

ARTICLE 8. DEVELOPMENT REVIEW STANDARDS

Section 8.1 EVALUATION AND APPLICATION STANDARDS

A) The DRB shall evaluate any application subject to their review (conditional use, site plan, subdivision, variance, etc.) in accordance with the standards in this article.

Section 8.2 LANDSCAPING AND SCREENING

A) **Applicability.** Landscaping and screening shall be required between all non-residential land uses subject to these regulations and adjacent residential dwellings. The DRB may also require landscaping or screening to be preserved and/or installed to establish a buffer or barrier between incompatible land uses to reduce noise, glare, or aesthetic impacts.

B) **Standards.** Landscaping and screening installed in Berkshire shall meet the following standards:

1) Landscaping and/or screening used to separate a non-residential land use from residential dwellings shall consist of a wall, stockade fence or evergreen landscaping (or combination) to a height of at least six (6) feet above grade level, on all sides.

2) An applicant shall use existing vegetation to meet these landscaping and/or screening standards when sufficient existing vegetation is present.

3) Street trees may be installed along public or private roads to create a canopy effect and/or maintain a pedestrian scale in the Extended Village District or where the DRB deems appropriate;

Section 8.3 PROTECTION OF NATURAL RESOURCES

A) **Significant Natural Features.** Land development shall be located and configured to avoid any undue adverse impact to significant natural features identified in the Berkshire Town Plan and defined in Article 10. This specifically includes areas with rare, threatened and endangered species, deer yards, bear habitat, and unique and fragile areas identified in the Berkshire Town Plan (Ayers Hill, Berkshire Copper Mine, Berkshire Kettle Hole). Methods for avoiding such undue adverse impacts include, but may not be limited to:

1) Locating and sizing building envelopes to exclude significant natural features;

2) Locating and sizing subdivision boundaries to exclude significant natural features;

3) Designating undisturbed buffer area to protect the identified significant natural feature(s);

4) Designing roads, driveways, and utilities to avoid and/or prevent the fragmentation of identified significant natural features and minimize undue adverse aesthetic impacts.

B) **Farm Land and Agricultural Soils.** Within the Rural Lands District, land development shall be located and configured to avoid undue adverse impacts to prime and statewide agricultural soils and other productive farmland. Methods for avoiding such undue adverse impacts shall include, but may not be limited to:

1) Locating building envelopes at field and orchard edges and/or on the least fertile soils;

2) Locating and sizing subdivision boundaries to prevent field fragmentation and preserve the most fertile soils;

3) Designating vegetated buffer areas between agricultural and other proposed uses to minimize land use conflicts;

4) Designing access roads, driveways, and utility corridors to follow existing linear features, and sharing access. Shared driveways may be required by the DRB to ensure that this standard is met.

Section 8.4 STORMWATER MANAGEMENT AND EROSION CONTROL

A) **Stormwater Management.**

1) **Stormwater Management Plan.** The preparation and implementation of a stormwater management plan, prepared by a professional engineer licensed by the State of Vermont, shall be required by the DRB.

2) **Standards.** Stormwater drainage, infiltration, retention and treatment facilities, including culverts and ditches, shall be designed to accommodate potential stormwater runoff from the subject property. The DRB shall require the applicant to maintain post-development peak storm flows at predevelopment levels. Land shall be developed and subdivided so as to retain the land's natural contours and to conserve the natural cover and soil. Permanent vegetation and erosion control measures shall be established according to a schedule as required by the DRB. All stormwater management facilities shall be designed in accordance with the best management practices (BMPs) for stormwater management in the Vermont Stormwater Management Manual Rule and Design Guidance as most recently amended.

B) **Erosion Control.**

1) **Sedimentation and Erosion Control Plan**. The DRB shall require the preparation and implementation of a sedimentation and erosion control plan to ensure site improvements, including excavation, road and driveway construction, and site clearing and grading does not unduly impact neighboring properties or surface waters during project construction. This plan shall be prepared by a professional engineer licensed by the State of Vermont.

2) **Standards.** All erosion control measures shall be designed in accordance with the best management practices (BMPs) for erosion control in the Vermont Low Risk Site Handbook for Erosion Prevention and Sediment Control as most recently amended.

Section 8.5 ROADS AND PEDESTRIAN ACCESS

A) **Applicability of Road Standards.** The following standards shall apply to all proposed public roads and to private roads serving three (3) or more non-agricultural parcels. In addition, these standards may be applied to private roads serving two (2) or fewer lots when the DRB determines such standards are necessary to provide suitable access to, or accommodate anticipated future subdivision. Acceptance of private roads by the Town is subject to the approval of the Berkshire Selectboard. Construction of these roads to these standards in no way ensures such acceptance.

B) **Road Design and Construction.** All roads shall be designed and constructed in accordance with Town standards currently in effect and shall generally conform to the dimensional and geometric design standards for local roads and streets contained within the Vermont Agency of Transportation's Standard A-76 and the Vermont Agency of Transportation Complete Streets Guidance Document, as most recently amended. Minimum design standards include the following:

1) Rights-of-way for all new roads shall be a minimum of fifty (50) feet in width.

2) Dead end roads and cul-de-sacs are specifically discouraged. No dead end road shall be permitted without a suitable turn around at its terminus. This must consist of a cul-de-sac with a radius of thirty-five (35) feet, or a “T” or “Y” configuration suitable to topography.

3) Roads shall logically relate to topography to minimize site disturbance, including the amount of cut and fill required, and to produce usable lots, reasonable grades and safe intersections in relation to the proposed use of land to be served by such roads. Road grades should be consistent with local terrain.

4) Roads shall, to the extent feasible, be designed and laid out to:
   a) to avoid undue adverse impacts to natural, historic, cultural and scenic resources;
   b) to be consistent with existing road patterns in village and other settlement areas;
   c) to maximize connectivity within the subdivision and to adjoining parcels and road networks;
   d) to follow existing linear feature, such as utility corridors, tree lines, hedgerows and fence lines.

C) **Drainage and Stormwater.** A stormwater drainage system shall be provided which is designed to control and accommodate stormwater collected on all proposed roads and/or parking areas in accordance with Section 8.4 of these Regulations and the Vermont Agency of Transportation’s Standard A-76.

D) **Coordination with Adjoining Properties.** The arrangement of roads in all subdivisions shall provide for continuation of roads from existing adjoining subdivisions and for proper projection of roads through adjoining properties which are not yet subdivided in order to facilitate necessary fire protection, movement of traffic, and construction or extension of needed utilities and public services, needed presently or when later required. Where, in the opinion of the DRB, topographical or other conditions make such continuance undesirable or impracticable, the above conditions may be modified.

E) **Access Permits.** In accordance with statute and Section 5.3, all road access shall be subject to the approval of the Vermont Agency of Transportation in the case of state highways and the Berkshire Selectboard in case of Town roads.

F) **Access Management.** In addition to access requirements under Section 5.3, to better manage traffic flow and safety, avoid congestion and frequent turning movements, preserve the carrying capacity of important travel corridors, and to avoid strip development, the following access management standards shall apply to all subdivisions:

1) Shared driveways and/or private roads providing access to multiple lots are encouraged and may be required to limit the number of access points onto public highways in accordance with Section 5.3.
2) If a subdivision has frontage on primary and secondary roads, access shall be from the one with the least amount of traffic unless the Board determines that topographical or traffic safety conditions make such an access impracticable.
3) Where extensions of new roads could provide future access to adjoining parcels, a right-of-way shall be provided.
4) The creation of reserved strips shall not be permitted adjacent to a proposed road in such a manner as to deny access from adjacent property to such road.

G) **Traffic.** Traffic to be generated by the proposed subdivision shall not create unreasonable traffic congestion or cause unsafe conditions on public roads in the vicinity of the subdivision. The DRB may request the preparation of a traffic impact study to identify impacts and mitigation measures necessary to ensure road safety and efficiency, the cost of which to be borne by the applicant. The implementation and installation, including road improvements, necessitated by the subdivision shall be the sole responsibility of the applicant.

H) **Upgrades to Existing Roads.** Where an existing access road is inadequate or unsafe, the DRB, in consultation with the Selectboard, may require the subdivider to upgrade the access road to the extent necessary to serve additional traffic resulting from the subdivision and to conform to these standards. Where a subdivision requires expenditures by the Town to improve existing road(s) to conform to these standards, the DRB may disapprove such subdivision until the Selectboard certifies that funds for the improvements have been ensured. The subdivider may be required to contribute to any or all of the expenses involved with road improvements necessitated by the project.

I) **Modification of Road Standards.** In the case of unusual topographical conditions or other circumstances which would make the strict adherence to these standards a substantial hardship, the Board may modify the strict application of one or more of these standards providing the applicant can demonstrate that the proposed road is accessible by emergency response vehicles, does not pose any threat to the safety of motorists or pedestrians, will not result in unreasonable maintenance requirements for landowners, and is designed in a manner that is consistent with other applicable standards or these Regulations.

J) **Pedestrian and Bicycle Access.** The DRB may require the creation of pedestrian rights-of-way or the construction of a sidewalk or multi-use path to facilitate pedestrian and bicycle circulation and to ensure access to adjoining properties, uses, or public facilities.

1) In order to facilitate pedestrian and bicycle access to schools, parks, playgrounds, or other nearby roads, the DRB may require perpetual unobstructed easements at least twenty (20) feet in width. Easements shall be indicated on the plat.

2) Unless specifically waived by the DRB, sidewalks shall be required along internal streets of major subdivisions and for development located within the Extended Village District, and may be required along major arteries within or bordering the subdivision, and to connect to existing sidewalks on adjoining properties.

Section 8.6 UTILITIES

A) **Location.** All utility systems shall be located as follows:

1) The applicant shall coordinate design with utility companies to insure adequate and suitable areas for under or above ground installation, both for the proposed land development, and areas adjacent to the land development.

2) Utility corridors shall be shared with other utility and/or transportation corridors to the greatest extent possible, and be located to minimize site disturbance, the fragmentation of agricultural land and open space, any undue adverse impacts to natural, cultural or scenic resources, and to public health.

B) **Utility Easements.** Utility easements of sufficient width shall be provided so as to serve both the proposed land development and existing and anticipated development adjacent to the proposed land development.

ARTICLE 9. FLOOD HAZARD AND RIVER CORRIDOR REGULATIONS

Section 9.1 STATUTORY AUTHORIZATION AND EFFECT

A) In accordance with 10 V.S.A. Chapter 32, and 24 V.S.A. Chapter 117 §4424, §4411 §4414, and 24 VSA Chapter 59, there is hereby established a bylaw for areas at risk of flood damage in the Town of Berkshire.

Section 9.2 STATEMENT OF PURPOSE

A) Avoid and minimize the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flooding related inundation and erosion;

B) Ensure that the selection, design, creation, and use of development in flood hazard areas, as defined in this article, is reasonably safe and accomplished in a manner that is consistent with public wellbeing, does not impair stream equilibrium, flood plain services, or the stream corridor,

C) Manage all flood hazard areas designated pursuant to 10 V.S.A. Chapter 32 § 753, the municipal hazard mitigation plan; and make the Town of Berkshire, its citizens, and businesses eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds as may be available.

Section 9.3 LANDS TO WHICH THESE STANDARDS APPLY

A) These standards shall apply to all development in the Town of Berkshire located within River Corridors and Special Flood Hazard Area (Flood Hazard Area Overlay District). The Flood Hazard Area Overlay District overlays other existing zoning districts and the regulations herein are the minimum standards that must be met before meeting the additional standards applicable in the underlying zoning district. These flood hazard areas include:

   1) The River Corridors as published by the Vermont Agency of Natural Resources (including the Statewide River Corridors and refinements to that data based on field-based assessments which are hereby adopted by reference) and/or a one-hundred (100) feet setback from the top of steam bank, or slope, from all rivers and streams in Berkshire with a drainage area greater than .5 square miles in size as included in the Vermont Hydrography Dataset (VHD). If the 100 feet setback area is greater in size than the mapped River Corridor area, the 100 feet setback area shall take precedence. Data regarding the size of drainage areas for all rivers and streams in Berkshire is available from the Vermont Agency of Natural of Resources and available from the Berkshire Zoning Administrator.

   2) The Special Flood Hazard Area identified in and on the most current flood insurance studies and maps published by the Department of Homeland Security (DHS), Federal Emergency Management (FEMA), and National Flood Insurance Program (NFIP), as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. § 753, which are hereby adopted by reference and declared to be part of these regulations.

B) **Base Flood Elevations and Floodway Limits.**

   1) Where available (i.e. zones A1-A30, AE, & AH), the base flood elevations and floodway limits (or data from which a community can designate regulatory floodway limits) provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps shall be used to administer the provisions of these regulations.

2) In Special Flood Hazard Areas where base flood elevations and floodway limits have not been provided by the National Flood Insurance Program (i.e. Zone A) in the Flood Insurance Study and accompanying maps, it shall be the responsibility of the applicant to develop the base flood elevation at the site using data available from state or federal agencies or other sources shall be obtained.

C) **Interpretation.** The information presented on any maps, or contained in any studies, adopted by reference, is presumed accurate.

1) If uncertainty exists with respect to the boundaries of the Special Flood Hazard Area or the floodway, the location of the boundary shall be determined by the Zoning Administrator (ZA). If the applicant disagrees with the determination made by the ZA, a Letter of Map Amendment from FEMA shall constitute proof.

2) If uncertainty exists with respect to the boundaries of the River Corridor, the location of the boundary shall be determined by the ZA. If the applicant disagrees with the determination made by the ZA, a letter of determination from the Vermont Agency of Natural Resources shall constitute proof.

D) **Precedence of Bylaw.** The provisions of these flood hazard bylaws shall not in any way impair or remove the necessity of compliance with any other local, state, or federal laws or regulations. Where this flood hazard regulation imposes a greater restriction the provisions here shall take precedence.

E) **Warning and Disclaimer of Liability.** This article does not imply that land outside of the areas of Special Flood Hazard Area, River Corridor, or land use permitted within Flood Hazard Area Overlay District will be free from flooding or flood damages. These standards shall not create liability on the part of the Town of Berkshire or any town official or employee thereof for any flood damages that result from reliance on the standards of this article or any administrative decision lawfully made thereunder.

Section 9.4 DEVELOPMENT REVIEW IN FLOOD HAZARD AREA OVERLAY DISTRICT

A) **Zoning Permit.** A zoning permit is required from the Zoning Administrator for development in Flood Hazard Overlay District. Development that requires conditional use approval, non-conforming use approval, or a variance from the DRB under this article must have such approvals prior to the issuance of a zoning permit by the Zoning Administrator. Any zoning permit issued will require that all other necessary permits from State or Federal Agencies have been received before work may begin.

B) **Permitted Development**. The following development is permitted and requires only a zoning permit from the Zoning Administrator provided that the development standards in Section 9.5 are met:

1) **Special Flood Hazard Area (excluding Floodway):**
a)Non-substantial improvements to existing structures
b)Accessory structures
c)Development related to on-site septic or water supply systems
d)Building utilities
e)At-grade parking for existing structures
f) Recreational vehicles
g)Lake or river access structures
h)Retaining wall/floodwalls
i) The removal of a building or other structure in whole or in part
j) New or replacement fuel storage tanks for existing structures

2) **Floodway and River Corridor**
   a)Recreational vehicles

C) **Conditional Use Review**. Conditional use approval by the DRB is required prior to the issuance of a zoning permit by the Zoning Administrator for the following development:

1) **Special Flood Hazard Areas (excluding Floodway):**
   a) Substantial improvement, elevation, relocation, or flood proofing of existing structures;
   b) Grading, excavation; or the creation of a pond
   c) Improvements to existing roads;
   d) Bridges, culverts, channel management activities or public projects which are functionally dependent onstream access or stream crossing;
   e) Public utilities;

2) **Floodway**
   a)All improvements to existing structures in the floodway

3) **River Corridor**
   a)Improvements to existing principal structures in the River Corridors that do not expand the footprint of the existing structure more than 500 square feet
   b)Accessory structures in the River Corridors, of 500 square feet or less, that represent a minimal investment
   c)Structure utilities
   d)At-grade parking for existing structures in the River Corridors

D) **Prohibited Development.** The following development is prohibited:

1) **Special Flood Hazard Areas**
   a)New residential or non-residential principal structures (including the placement of manufactured homes)
   b)Salvage yards
   c)New fill except as necessary to elevate structures above the base flood elevation
   d)Critical facilities
   e)All development not exempted, permitted, or conditionally permitted

2) **Floodway**
   a)New residential or non-residential structures (including the placement of manufactured homes)
   b)Salvage yards
   c)New fill except as necessary to elevate structures above the base flood elevation
   d)Accessory structures
   e)Critical facilities
   f) All development not exempted, permitted, or conditionally permitted

3) **River Corridor**
   a)New residential or non-residential structures (including the placement of manufactured homes)
   b)Salvage yards
   c)New fill (except where the River Corridor and Special Flood Area overlap in which case new fill can be used to elevate structures above the base flood elevation)
   d)Critical facilities
   e)All development not exempted, permitted, or conditionally permitted

E) **Exempted Development.** The following development is exempted from regulation under this article:

1) Maintenance of existing roads and storm water drainage.

2) Silvicultural (forestry) activities conducted in accordance with the Vermont Department of Forests and Parks Acceptable Management Practices.

3) Agricultural activities conducted in accordance with the Vermont Department of Agriculture's Required Agricultural Practices (RAP).

Section 9.5 FLOOD HAZARD AREA DEVELOPMENT STANDARDS

A) **Special Flood Hazard Area:**

1) **All Development -** All development shall be:
   a)Reasonably safe from flooding;
   b)Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure during the occurrence of the base flood;
   c)Constructed with materials resistant to flood damage;
   d)Constructed by methods and practices that minimize flood damage; and
   e)Constructed with electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
   f) Adequately drained to reduce exposure to flood hazards;
   g)Located so as to minimize conflict with changes in channel location over time and the need to intervene with such changes; and,
   h)Required to locate any fuel storage tanks (as needed to serve an existing building in the Special Flood Hazard Zone) a minimum of one foot above the base flood elevation and be securely anchored to prevent flotation; or storage tanks may be placed underground, if securely anchored as certified by a qualified professional.

2) In Zones AE, AH, and A1-A30 where floodways and/or base flood elevations have not been determined, development shall not be permitted unless a registered professional engineer certifies that the cumulative effect of the proposed development, when combined with all other existing and anticipated encroachment, will not result in any increase in water surface elevation of a base flood levels during the occurrence of the base flood more than one foot at any point within the community. The demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and certified by a registered professional engineer.

3) **Substantial Improvement.** Structures to be substantially improved in Zones A, A1-30, AE, and AH shall be located such that the lowest floor is at least two feet above base flood elevation. This shall be documented, in as-built condition, with a FEMA Elevation Certificate.
   a. For historic structures that would meet the definition of substantial improvement if not for their historic structure designation, the improved or repaired building shall meet the following mitigation performance standards for areas below the base flood elevation:
      i. Any future damage to enclosures below the lowest floor shall not result in damage to the foundation, utility connections, or elevated portions of the building or nearby structures;
      ii. Utility connections (e.g. electricity, water, sewer, natural gas) shall be protected from inundation and scour of be easily repaired;
      iii. The building foundation shall be structurally sound and reinforced to withstand a base flood event;
      iv. The structure's historic designation shall not be precluded;
      v. The likelihood of flood waters entering the structure during the base flood is reduced; and
      vi. There shall be no expansion of uses below base flood elevation except for parking, storage, building access, or, in cases of non-residential buildings, where the space is dry floodproofed.

4) **Non-residential Development:**
   a) Shall meet the standard in Section 9.5(A)(3); or;
   b) Shall have the lowest floor, including basement, elevated to or above the base flood elevation or together with attendant utility and sanitary facilities be designed so that two feet above base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A permit for a building proposed to be floodproofed shall not be issued until a registered professional engineer or architect has reviewed the structural design, specifications and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.

5) **Basements.** Fully enclosed areas below grade on all sides (including below grade crawlspaces and basements) are prohibited.

6) Fully enclosed areas that are above grade, below the lowest floor, and below base flood elevation, shall:
   a) Be used solely for parking of vehicles, building access, or storage.
   b) Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs shall be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

7) **Recreational Vehicles:** Recreational vehicles shall be fully licensed and ready for highway use.

8) **Small Accessory Structures:** A small accessory structure of 500 square feet or less, that represents a minimal investment, need not be elevated to the base flood elevation provided the structure is placed on the building site so as to offer minimum resistance to the flow of floodwaters and shall meet the criteria in Section 9.5(A)(6).

9) **Water Supply Systems:** New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

10) **Sanitary Sewage Systems:** New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.

11) **On-Site Waste Disposal Systems:** On-site wastewater disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

12) **Watercourse Carrying Capacity:** The flood carrying capacity within any altered or relocated portion of a watercourse shall be maintained and any alteration or relocation shall not result in any decrease of stream stability.

13) **Bridges and Culverts**: Bridges and culverts, which by their nature must be placed in or over the stream, must have a stream alteration permit from the Agency of Natural Resources where applicable.

14) **Subdivisions:** Subdivisions and Planned Unit Developments must be accessible by dry land access outside the special flood hazard area.

15) **AO Zones.** Existing buildings, including manufactured homes, to be substantially improved in Zone AO shall have the lowest floor, including basement, elevated above the highest adjacent grade, at least as high as the depth number specified on the community's FIRM, or at least two feet above grade if no depth number is specified.

16) **Flood Storage Capacity:** Development shall not result in net loss of flood storage capacity, except as needed to fill an existing basement or mitigate an existing structure.

B) **Floodway Areas:**

1) Encroachments or development above grade and less than one foot above the base flood elevation, are prohibited unless hydrologic and hydraulic analyses are performed in accordance with standard engineering practice, by a licensed professional engineer, certifying that the proposed development will:

   a) Not result in any increase in flood levels (0.00 feet) during the occurrence of the base flood;
   b) Not increase any risk to surrounding properties, facilities, or structures from erosion or flooding;
   c) Not increase base flood velocities; and
   d) Meet all standards in Section 9.5(A).

2) Public utilities may be placed underground, and the analyses may be waived, where a licensed professional engineer certifies that there will be no change in grade and the utilities will be adequately protected from scour.

C) **River Corridors:**

1) Improvements to existing structures, and any associated fill as needed to comply with elevation requirements outlined in Section 9.5(A), shall not decrease the distance between the existing principal building and the top of bank;

2) Accessory structures may be located within 50 feet of the existing principal building provided that the location does not decrease the distance between the existing principal structure and the top of bank.

3) Development shall not increase the susceptibility of the development, or other properties, to potential fluvial erosion damage.

4) Development shall not increase the potential of materials being swept onto other properties, or into the stream or river, and shall not increase the potential of causing damage to other properties from fluvial erosion;

5) Development shall not cause an undue burden on public services and facilities including roads, bridges, culverts, and emergency service providers during and after fluvial erosion events.

6) Bridge and culvert projects shall have a Stream Alteration Permit; and

7) Channel management activities must be authorized by the Agency of Natural Resources.

Section 9.6 STANDARDS FOR REVIEW OF NONCONFORMING STRUCTURES

A) The DRB may approve the repair, relocation, replacement, or enlargement of a nonconforming structure within a regulated flood or other hazard areas, subject to compliance with applicable federal and state laws and regulations, and the standards in Section 5.2 and provided that the following criteria are met:

1) The proposed development is in compliance with all the Development Standards in Section 9.5 of this bylaw;

2) A nonconforming structure that is substantially damaged or destroyed may be reconstructed only in circumstances when the structure cannot be relocated to a less hazardous location on the parcel. The lowest floor of the reconstructed structure shall be rebuilt to one foot or more above the base flood elevation, and the structure shall otherwise comply with all requirements of the National Flood Insurance Program;

3) Nonconforming structures and nonconforming uses shall be considered abandoned where such structures or uses are discontinued for more than one (1) year; and

4) An individual manufactured home lot in an existing manufactured home park that is vacated shall not be considered a discontinuance or abandonment of nonconformity. Replacement manufactured homes shall be placed so as to meet the development standards in this bylaw.

Section 9.7 VARIANCES TO THE DEVELOPMENT STANDARDS

A) Variances shall be granted by the Development Review Board only in accordance with the criteria for granting variances found in 44 CFR, Section 60.6, of the National Flood Insurance Program regulations and Section 3.2.

B) A variance for development within the River Corridors may be allowed if, based on a review by Vermont Agency of Natural Resources, it is determined that the proposed development will not obstruct the establishment and maintenance of fluvial geomorphic equilibrium for the watercourse.

C) Any variance issued in the Special Flood Hazard Area (including Floodway) shall not increase flood heights, increase susceptibility to flooding or erosion, additional threats to public safety or infrastructure (including emergency services during flood events), or result in extraordinary public expense. All decisions granting a variance shall be accompanied with a letter from the Zoning Administrator informing the applicant in writing that the issuance of a variance to construct a structure below the base flood elevation increases risk to life and property and will result in increased flood insurance premiums up to amounts as high as $25 for $100 of coverage. Such notification shall be maintained with a record of all variance actions.

Section 9.8 APPLICATION AND ADMINISTRATIVE REQUIREMENTS

A) **Application Submission Requirements.** Applications for development in the Flood Hazard Area Overlay District shall include:

1) Where applicable, a site plan that depicts the proposed development, all water bodies, Special Flood Hazard Areas, Floodways, River Corridors, the shortest horizontal distance from the proposed development to the top of bank of any stream, any existing and proposed drainage, any proposed fill, and pre and post development grades, the elevation of the proposed lowest floor (as referenced to the same vertical datum as the elevation on the current Flood Insurance Rate Maps), and any other information required by the DRB to ensure compliance with Section 9.5 and any other applicable sections of these regulations.

2) A Vermont Agency of Natural Resources Project Review Sheet for the proposal. The Project Review Sheet shall identify all State and Federal agencies from which permit approval is required for the proposal, and shall be filed as a required attachment to the municipal zoning permit

application. The identified permits, or letters indicating that such permits are not required, shall be submitted to the Zoning Administrator and shall be attached to the zoning permit before work can begin.

B) **Referrals.**

1) Upon receipt of a complete application for a substantial improvement or new construction, the Zoning Administrator shall submit a copy of the application to the Vermont Agency of Natural Resources for comment in accordance with 24 VSA §4424(D). A zoning application shall not be considered complete, and may only be issued by the Zoning Administrator, following receipt of comments from the Agency, or 30 days has elapsed since the application was submitted, whichever is sooner.

2) If the applicant is seeking a permit for the alteration or relocation of a watercourse, copies of the application shall also be submitted to the adjacent communities, the Stream Alteration Engineer at the Vermont Agency of Natural Resources, and the Army Corps of Engineers. Copies of such notice shall be provided to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation. A permit may be issued only following receipt of comments from the Vermont Agency of Natural Resources, or the expiration of 30 days from the date the application was mailed to the Vermont Agency of Natural Resources, whichever is sooner. The DRB should consider comments from the NFIP Coordinator at the Vermont Agency of Natural Resources.

C) **Decisions**

1) Decisions of the DRB and Zoning Administrator shall be issued in compliance with Section 2.6 and Section 3.1.

D) **Records**

1) The Zoning Administrator shall maintain a record of all development located within the Flood Hazard Area Overlay District:

a) All permits issued for development in the Special Flood Hazard Area and River Corridor;
b) An Elevation Certificate with the as-built elevation (consistent with the datum of the elevation on the current Flood Insurance Rate Maps for the community) of the lowest floor, including basement, of all new, substantially improved, or flood proofed buildings (not including accessory buildings) in the Special Flood Hazard Area;
c) All flood proofing and other certifications required under this regulation; and,
d) All decisions of the DRB (including variances and violations) and all supporting findings of fact, conclusions and conditions.

Section 9.9 CERTIFICATE OF COMPLIANCE

A) All development subject to review under this article shall also be subject to the requirements in Section 2.10.

Section 9.10 VIOLATION OF FLOOD HAZARD AREA REGULATIONS

A) This bylaw shall be enforced in accordance with 24 V.S.A. §§ 1974a, 4451, and 4452 and Section 2.11 of this bylaw. All notices of violation shall be provided to the State NFIP Coordinator.

B) No new flood insurance shall be provided for any property which the Federal Insurance Administrator finds has been declared to be in violation of local flood hazard area regulations. If any appeals have been resolved, but the violation remains, the AO shall submit a declaration to the Administrator of the

National Flood Insurance Program requesting a denial of flood insurance to the property pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended. New and renewal flood insurance shall be denied to a structure upon a finding by the Federal Insurance Administrator of a valid declaration of a violation.

Section 9.11 DEFINITIONS

A) Definitions in this section apply only to the Flood Hazard Regulations in this article.

Accessory Structure: A structure which is detached from the principal structure and is 1) clearly incidental and subordinate to the principal use of or structure on a lot, 2) located on the same lot as the principal structure or use, and 3) clearly and customarily related to the principal structure or use. For residential uses these include, but may not be limited to, garages, garden and tool sheds, playhouses.

Area of Special Flood Hazard: Special flood hazard area.

Base Flood: The flood having a 1 percent chance of being equaled or exceeded in any given year. Also, known as the “100-year flood”.

Base Flood Elevation (BFE): The height of the base flood, usually in feet, in relation to the National Geodetic Vertical Datum of 1929, the North American Vertical Datum of 1988, or other datum referenced in the Flood Insurance Study report, or average depth of the base flood, usually in feet, above the ground surface.

Basement: Any area of the building having its floor elevation below ground level on all sides. A “walk-out” basement whose floor is at ground level on at least one side of the house, usually with a door on that side is not considered a "basement" for the purpose of the flood hazard regulations.

Buffer: Means an undisturbed area consisting of trees, shrubs, ground cover plants, duff layer, and generally uneven ground surface that extends a specified distance horizontally across the surface of the land from the mean water level of an adjacent lake or from the top of the bank of an adjacent river or stream.

Channel: Means an area that contains continuously or periodic flowing water that is confined by banks and a streambed.

Channel Width (or bankfull width): Is the width of a stream channel when flowing at a bankfull discharge. The bankfull discharge is the flow of water that first overtops the natural banks. This flow occurs, on average, about once every 1 to 2 years.

Common Plan of Development: Where a structure will be refurbished over a period of time. Such work might be planned unit by unit.

Critical Facilities: Include police stations, fire and rescue facilities, hospitals, shelters, schools, nursing homes, water supply and waste treatment facilities, and other structures the community identifies as essential to the health and welfare of the population and that are especially important following a disaster. For example, the type and location of a business may raise its status to a Critical Facility, such as a grocery or gas station that survive a flood and now are the only points for food and gas.

Development: Any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Fill: Any placed material that changes the natural grade, increases the elevation, or diminishes the flood storage capacity at the site.

Flood: (a) A general and temporary condition of partial or complete inundation of normally dry land areas from: the overflow of inland or tidal waters; the unusual and rapid accumulation or runoff of surface waters from any source; and mudslides which are proximately caused by flooding and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current. (b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding.

Flood Insurance Rate Map (FIRM)): An official map of a community on which the Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community.

Flood Insurance Study: An examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations or an examination, evaluation and determination of mudslide (i.e., mudflow) and /or flood related erosion hazards.

Floodplain or Flood-Prone Area: Any land area susceptible to being inundated by water from any source (see definition of “flood”).

Floodproofing: Any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point.

Floodway, Regulatory in the Town of Berkshire: The regulatory floodway in of the Town of Berkshire is the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point.

Fluvial Erosion: Erosion caused by streams and rivers. Fluvial erosion can be catastrophic when a flood event causes a rapid adjustment of the stream channel size and/or location.

Functionally Dependent Use: A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water.

Historic Structures: Any structure that is: (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register; (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (i) By an approved state program as determined by the Secretary of the Interior or (ii) Directly by the Secretary of the Interior in states without approved programs.

Letter of Map Amendment (LOMA): A letter issued by the Federal Emergency Management Agency officially removing a structure or lot from the flood hazard zone based on information provided by a certified engineer or surveyor. This is used where structures or lots are located above the base flood elevation and have been inadvertently included in the mapped special flood hazard area.

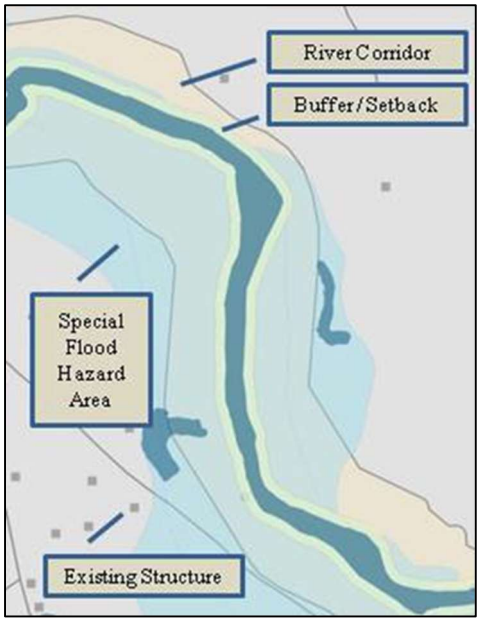
Lowest Floor: means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or enclosure, usable solely for parking of vehicles, building access, or storage in a area other than a basement area is not considered a building's lowest floor provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of 44 CFR 60.3.

Manufactured Home: A structure that is transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” specifically does not include a “recreational vehicle”. Manufactured homes must meet the Federal Manufactured Home Construction and Safety Standards Act (42 USC Section 5401 [1976], commonly known as the HUD code.

New Construction: for the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of the floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

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. Structures that were in violation of the flood hazard regulations at the time of their creation, and remain so, remain violations and are not nonconforming structures.

Figure 9.1 – Types of Flood Hazard Areas



Nonconforming Use: 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 by the Zoning Administrator.

Nonconformity: Means a nonconforming use, structure, lot, or parcel.

Non-Residential: Includes, but is not limited to: small business concerns, churches, schools, nursing homes, farm buildings (including grain bins and silos), pool houses, clubhouses, recreational buildings, government buildings, mercantile structures, agricultural and industrial structures, and warehouses.

Nonsubstantial Improvement: Any repairs, reconstruction, or improvement of a structure (other than customary maintenance), the cost of which is less than fifty (50) percent of the market value of the existing structure.

Recreational Vehicle: A vehicle which is: (a) Built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) Designed to be self-propelled or permanently towable by a light duty truck; and (d) Designed primarily not for use as a permanent dwelling but as a temporary living quarters for recreational, camping, travel, or seasonal use (See Camper).

River Corridor: Means the land area adjacent to a river that is required to accommodate the dimensions, slope, planform, and buffer of the naturally stable channel and that is necessary for the natural maintenance or natural restoration of a dynamic equilibrium condition, as that term is defined in 10 V.S.A.

§1422, and for minimization of fluvial erosion hazards, as delineated by the Agency in accordance with the ANR River Corridor Protection Guide.

Special Flood Hazard Area: The land in the floodplain within a community subject to a 1 percent chance or greater chance of flooding in any given year. The area may be designated as Zones A, AO, AH, A1-30, AE, or A99 on the FIRM maps.

Start of Construction: Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footing, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, regardless whether that alteration affects the external dimensions of the building.

Structure: A walled and roofed building, as well as a manufactured home, and any related built systems, including a gas or liquid storage tank,

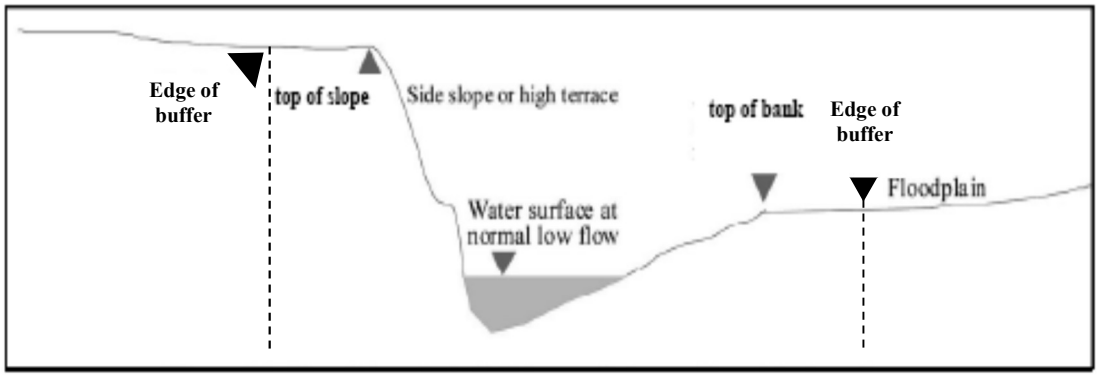
Substantial Damage (In reference to development in the Flood Hazard Area Overlay District): damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged conditions would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement: Any repair, reconstruction, or improvement of a structure, the cost of which, over three years or over a period of a common plan of development, cumulatively equals or exceeds 50 percent of the market value of the structure either before the improvement or repair is started or, if the structure has been damaged and is being restored, before the damage occurred. The definition excludes any project for improvement of the structure to comply with existing state or local health, sanitary, or safety code specifications or any alteration of a structure listed on the National Register of Historic Places or a state inventory of historic sites.

Top of Bank: Means that vertical point along a stream bank where an abrupt change in slope is evident. For streams in wider valleys it is the point where the stream is generally able to overflow the banks and enter the floodplain. For steep and narrow valleys, it will generally be the same as the top of slope.

Violation: The failure of a structure or other development to be fully compliant with these regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR 60.3 is presumed to be in violation until such time as that documentation is provided.

Figure 9.2
Finding Top of Slope and Top of Bank for Measuring Buffer Setbacks



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ARTICLE 10. DEFINITIONS

Section 10.1 INTERPRETATIONS

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

Section 10.2 DEFINITIONS

Accessory On-Farm Business: An Accessory On-Farm Business as defined in 24 V.S.A. §4412 is an activity that is accessory to a farm, operated by the farm owner, one or more persons residing on the farm parcel, or the lessee of a portion of the farm and comprises one or both of the following:

Non-Event Accessory Business Activities: the storage, preparation, processing, and sale of qualifying products, provided that more than 50 percent (but less than 100%) of the total annual sales are from qualifying products that are principally produced on the farm at which the business is located. This may include but is not limited to farm stores, farm stands and prepared food sales of principally produced products.

Event Accessory Business Activities: Educational, recreational, or social events that feature agricultural practices or qualifying products, or both. Such events may include tours of the farm, farm stays, tastings and meals featuring qualifying products, and classes or exhibits in the preparation, processing, or harvesting of qualifying products.

Accessory Use: A use that is customarily incidental and subordinate to a permitted principal use located on the same lot.

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

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

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

Agriculture or Farming: The cultivation of land or other uses of land for production of food, fiber, horticultural, silvicultural, orchard, maple syrup, Christmas trees, forest products, or forest crops; the raising, boarding, training of equines, and the raising of livestock; or any combination of the foregoing activities. Farming also includes the storage, preparation, retail sale, and transportation of agricultural or forest commodities accessory to the cultivation or use of such land.

Alterations: Structural change, change of location, or addition to a building or structure, excluding normal maintenance and repair. Alterations shall include any construction that changes the number of dwelling

units, or increases the size of a building or structure in terms of height, length, width, footprint, or gross floor area. (Also see Improvement, Substantial Improvement.)

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

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

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

Building Height: Building height is measured vertically from the highest point on top of the structure, to the average (of the highest and lowest) finished grade at the foundation or base (See Section 4.2).

Campground: A parcel of land upon which three or more campsites/lots are located for occupancy by a camper, travel trailer, recreational vehicle (RV), or similar motor home which is mounted on wheels, a truck or camper body (not including mobile homes), and tents, as temporary living quarters for recreation, education or vacation purposes.

Child Care Facility: Any use operated as a business or service on a regular or continuous basis, whether for compensation or not, whose primary function is protection, care, and supervision of children under 16 years of age outside their homes for periods of fewer than 24 hours a day by a person other than a child's own parent, guardian, or relative, as defined by rules adopted by the Department for Children and Families, but not including a kindergarten approved by the State Board of Education.

Child Care Home: A state registered or licensed child care use serving no more than six (6) full-time children and four (4) part-time children (as defined below) shall be considered a child care home and shall be treated as a single household home. Care of a child on a part-time basis shall mean care of a school age child for not more than four (4) hours a day. These limits shall not include children who reside in the residence of the caregiver; except that these part-time school age children may be cared for on a full-time basis during school closing days, snow days and vacation days which occur during the school year; and during summer vacation, up to twelve (12) children may be cared for provided at least six (6) of these children are school aged and a second staff member is present and on duty when the number of children in attendance exceeds six (6).

Conditional Use: A use that may be allowed in a zoning district subject to approval and conditions imposed by the Development Review Board per Section 3.2.

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

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

Driveway: An access serving a maximum of two (2) uses, dwelling units, or parcels.

Dwelling, Accessory: A single apartment unit within, attached or separate to a single-household dwelling where the accessory apartment is subordinate and minor in significance to the principal structure and meets the requirements of Section 6.3. (See Section 6.3 for details.)

Dwelling, Multi-Household: A residential building on a single lot containing three or more dwelling units.

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

Dwelling, Single-Household: Any building designed for or used as the living quarters for one household

Dwelling, Two Household: A building on a single lot containing two dwelling units.

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

Earth Resource Extraction: Any land alteration or excavation which involves the moving or extraction of sand, gravel, topsoil, loam, sod, landfill, or similar substance for commercial purposes, except when incidental to or in connection with the construction of a building. Mining is considered earth resource extraction. Common agricultural tillage, ground care, gardening, and excavation in cemeteries are not included in this definition and shall be exempt from these regulations.

Farm: A parcel or parcels owned, leased, or managed by a person, devoted primarily to farming, and subject to the RAPs. For leased lands to be part of a farm, the lessee must exercise control over the lands to the extent they would be considered as part of the lessee's own farm. Indicators of such control include whether the lessee makes day-to-day decisions concerning the cultivation or other farming-related use of the leased lands and whether the lessee manages the land for farming during the lease period.

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

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

Gas Station: Any building, land area or other premises or portion thereof used or intended to be used for the retail dispensing or sales of vehicular fuels and including as an accessory use the sale or installation of lubricants, tires, batteries, and similar accessories.

Home Occupation: An occupation carried on in a dwelling unit which is customarily incidental and secondary to the use of that building for dwelling purposes, and which does not substantially alter the character thereof. See Section 6.2.

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

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

1) A person owning title to property, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by a bylaw, who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.
2) The municipality that has a plan or a bylaw at issue in an appeal brought under Chapter 117 of the Vermont Municipal and Regional Planning and Development Act or any municipality that adjoins that municipality.
3) A person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under Chapter 117 of the Vermont Municipal and Regional Planning and Development Act, who can demonstrate a physical or environmental impact on the

person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of the municipality.

4) Any twenty (20) persons who may be any combination of voters, residents or real property owners within a municipality who, by signed petition to the appropriate municipal panel of a municipality, the plan or a bylaw of which is at issue in any appeal brought under this title, allege that any relief requested by a person under this title, if granted, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality. this petition to the appropriate municipal panel must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal.
5) Any department and administrative subdivision of this state owning property or any interest in property within a municipality listed in item two above, and the Agency of Commerce and Community Development of this state.

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

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

Laundry & Dry-Cleaning Facilities**:** Provision of dry cleaning and laundry services such as a laundromat.

Light Industry/Manufacturing: : The processing, warehousing, or fabrication of certain materials and products where no process involved produces noise, vibration, odor, air pollution, fire hazard or noxious emission that disturbs or endanger neighboring properties. Included are manufacture of apparel, printed materials, electrical components, or home appliances and similar industries.

Lodging Establishment. A building or group of associated buildings containing bedrooms and other facilities for occupancy and use by travelers or transients on a short-term basis (generally less than one month average), and having a management entity operating the building(s). Included in this definition are inns, hotels, motels, tourist courts, cabins, motor lodges, and sports camps.

Lodging, Residential: A commercial establishment designed to room and board persons on a nightly, weekly or seasonal basis. Central dining and food preparation facilities may be provided sufficient to serve registered guests. Examples include rooming and boarding houses and bed and breakfasts that do not meet home occupancy requirements.

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

Mixed Use: More than one principal use may be permitted within a single principal structure or on a single lot. Examples include a gas station that includes retail sale of convenience store items or includes a takeout restaurant or when a building includes several units occupied by different tenants providing unique professional services.

Mobile Home: A structure transportable in one or more sections which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to utilities. It does not include recreational vehicles or travel trailers (see also definition in 10 V.S.A. 6201).

Mobile Home Park: A parcel of land, under single or common ownership or control, which is used (or is to be used) to accommodate three (3) or more mobile homes.

Nonconforming Structure: A structure or part of a structure that does not conform to the present Regulations but was in conformance with all applicable laws, ordinances, and regulations prior to the

enactment of the present regulations, including a structure improperly authorized by the Zoning Administrator. (24 V.S.A. section 4304(14)).

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

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

Parking Space: A defined space at least eighteen (18) feet long, and nine (9) feet wide, accessible to the road with not more than one backing/turning movement, and without requiring other cars to be moved. Parking spaces shall have sufficient gravel or pavement surface to permit year-round use.

Permitted Use: Uses which are listed as permitted uses in the various districts set forth in this Regulation (See Table 4.1).

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

Planning Commission: The Planning Commission of the Town of Berkshire

Plat: A site development plan map including all of the information required and prepared for filing, under the proper procedural steps, with the Town Clerk. See Section 7.5.

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

Principally Produced Product: Products where more than 50% (either by weight or volume) of raw agricultural products that are stored, prepared, or sold at the farm are also grown or produced on the farm.

Principal Structure: A structure, or a group of structures, in or on which is conducted the principal use(s) of the lot.

Principal Use: A use directly involved with the permitted primary purpose of ownership of a particular lot.

Professional, Personal and Business Services: Financial institutions, consulting firms, real estate or insurance agencies, doctors, lawyers, architects, accountants, travel agencies, and establishments providing similar services. Also includes an establishment providing services of a personal nature, such as beauty shops, barber shops, and photographic studios Does not include manufacturing, repairing, processing, or fabrication of any article, substance, or commodity.

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

Qualifying product: A product that is wholly 1) an agricultural, horticultural, viticultural, or dairy commodity, or maple syrup; 2) livestock or cultured fish or a product thereof; 3) a product of poultry, bees, an orchard, or fiber crops; 4) a commodity otherwise grown or raised on a farm; or 5) a product manufactured on one or more farms from commodities wholly grown or raised on one or more farms.

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

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

Residential Care Home: A facility operated under state licensing or registration, serving not more than eight persons who have a disability as defined in 9 V.S.A. § 4501. This use shall be considered by right to constitute a permitted single-family residential use of property, except that no such home shall be so considered if it is located within 1,000 feet of another existing or permitted such home.

Restaurant: Premises where food and drink are prepared and served for retail sale. This definition includes, but is not limited to, cafes, taverns, bars and food trucks.

Retail Sales: Establishments engaged in selling goods or merchandise to the general public and customary auxiliary uses and services incidental to the sale of such goods. Retail sales may include but are not limited to: department stores, art galleries, grocery stores, drug stores, stationary stores, and antique shops.

Road: A vehicular way which affords the principal means of access to abutting properties, and which serves three (3) or more non-agricultural parcels, which is constructed within the boundaries of an officially deeded or dedicated private right-of-way, or an officially deeded or dedicated and accepted public right-of-way.

Salvage Yard: Any place of outdoor storage or deposit for storing, keeping, processing, buying, or selling junk or as a scrap metal processing facility. "Salvage yard" also means any outdoor area used for operation of an automobile graveyard. It does not mean a garage where wrecked or disabled motor vehicles are stored for less than 90 days for inspection or repairs.

Saw Mill: A facility where logs or partially processed cants are sawn, split, shaved, stripped, chipped, or otherwise processed to produce wood products, not including the processing of timber for use on the same lot by the owner or resident of that lot.

Senior Multi-household Housing: A development of one or more dwelling units in detached or multi-unit structures on the same lot under common ownership that is dedicated as a housing for persons 55 years of age or older, and/or disabled persons, and includes legal covenants or restrictions designed to ensure the occupancy of such structures by persons 55 years of age or older and disabled persons.

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

Significant Natural Features: Areas with rare, threatened and endangered species, deer yards, bear habitat, and unique and fragile areas identified in the Berkshire Town Plan (Ayers Hill, Berkshire Copper Mine, Berkshire Kettle Hole).

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

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

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

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

Town: The Town of Berkshire, Vermont

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