

TOWN OF DERBY, VERMONT

ZONING BYLAW

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Town of Derby Zoning Bylaw
Table of Contents

Article I: Enactment and Intent	chapter one
Section	page
101 Enactment.....	1
102 Intent.....	1
103 Compliance with Bylaws.....	1
104 District Objectives and Land Use Control.....	1
105 Application of District Regulations.....	1
106 Establishment of the Planning Commission.....	2
107 The Duties and Powers of the Planning Commission.....	2
108 Establishment of the Zoning Board of Adjustment.....	3
109 Appointment; Administrative Officer.....	4
110 Duties and Powers of the Administrative Officer.....	5
Article II: Establishment of Districts and District Regulations	chapter two
Section	page
201 Zoning Map and Districts.....	1
202 Copies of the Zoning Map.....	2
203 District Boundaries.....	2
203.2 boundary modifications.....	2
204 Classification of Lots: Source of Water and Sewer Service.....	3
205 On Site Sewer Systems.....	3
206 District Classifications, Use Tables, Lot and Setback Requirements	
206.1 “IND” Industrial.....	4
206.2 “COM/IND” Commercial/Industrial.....	5
206.3 “COM” Commercial.....	6
206.4 “R-HD” Residential High Density.....	7
206.5 “R-MD” Residential Medium Density.....	8
206.6 “R-1” Residential One Acre.....	9
206.7 “R-2” Residential Two Acre.....	10
206.8 “RR” Rural Residential.....	11
206.9 “SD” Shoreland District.....	12
206.10 “SL” Special Lands.....	13
206A Village Zoning Districts and District Regulations for the Village of Derby Line.....	14
206.1A “VC/DL” Village Commercial Derby Line.....	15
206.2A “VR-1/DL” Village Residential-One Derby Line....	16
206.3A “VR-2/DL” Village Residential-Two Derby Line...	17
206B Village Zoning Districts and District Regulations for the Village of Derby Center.....	18
206.1B “VC/DC” Village Commercial Derby Center.....	19
206.2B “VR/DC” Village Residential Derby Center.....	20
206.3B “VR-MF/DC” Village Residential-Multi-Family DC21	

Section	page
207 Overlay Districts.....	22
207.1 Source Protection Area.....	22
207.2 Tax Increment Finance District.....	22
208 Uses.....	23
208.1 principal uses.....	23
208.2 accessory uses.....	23
208.3 permitted uses.....	23
208.4 conditional uses.....	23
208.5 changes in use.....	25
209 Planning Commission Site Plan Review and Approval.....	25
209.1 review criteria.....	25
209.3 submission requirements.....	26
210 Site Plan Design Standards.....	27
210.1 landscape and greenspace.....	27
210.2 lighting design.....	28
210.3 pedestrian access.....	28
210.4 building façade and design.....	28
Article III Non-Conforming Uses and Structures	chapter 3
Section	page
301 Non-conforming Uses.....	1
302 Non-conforming Structures.....	2
303 Limitations.....	3
Article IV General Provisions	chapter 4
Section	page
401 Required Regulations.....	1
401.1 existing small lots.....	1
401.2 frontage and access.....	1
401.3 protection of home occupation.....	2
401.4 equal treatment of housing.....	2
402 Special Regulations.....	2
402.1 auto service stations.....	2
402.2 fences and walls.....	3
402.3 commercial activities conducted from residences.....	3
402.3(A) home occupations.....	4
402.3(B) residential business or service.....	4
402.3(C) cottage industry.....	5
402.4 junkyards.....	6
402.5 wind turbines.....	7
402.6 service areas.....	8
402.7 parking, access, loading & circulation.....	8
table 402.7 (1) parking stall and lot design.....	11
table 402.7 (2) parking space counts per use.....	11
402.8 signs.....	13

Section	page
402.9 sand-soil-gravel pits.....	15
402.10 temporary vendors, farm stands, non-profit.....	16
403 Miscellaneous Provisions and Interpretations.....	16
403.1 lots.....	16
403.2 structures.....	17
403.3 yards.....	18
404 Yard Sales.....	20
405 Open Storage.....	20
406 Time Limit to Commence Use or Construction.....	20
407 Essential Services.....	20
Article V Overlay District Regulations	chapter 5
Section	page
501 Source Protection Area.....	1
501.3 special regulations.....	1
501.4 prohibited uses.....	2
502 Tax Increment Finance District.....	3
502.3 prohibited uses.....	3
502.4 public uses.....	3
503 Design Control District.....	4
503.1 creation of design control districts.....	4
503.5 enforcement of district regulations.....	5
Article VI Flood Hazard Area Regulations	chapter 6
Section	page
601 Intent.....	1
602 Application.....	1
603 Conditional Use Permit Required.....	1
604 Base Flood Elevations and Floodway Limits.....	2
605 Conditional Use Procedures.....	2
606 Development Standards.....	3
606.1 floodway areas.....	3
606.2 fringe areas.....	3
607 Duties and Responsibilities of the Administrative Officer.....	4
608 Variances to the Development Standards.....	5
609 Warning of Disclaimer of Liability.....	5
Article VII Subdivision, PRD, PUD and Mobile Home Park Regulations	chapter 7
Section	page
701 Subdivisions-Administrative Permits.....	1
702 Plat Approval Procedures.....	1
702.3 Planning Commission review criteria.....	1
703 Right of Way Design Standards and Association Agreements..	2
704 Planned Residential Developments.....	2
704.1 review procedures.....	3

Section	page
704.2 density bonus.....	3
705 Planned Unit Developments.....	3
705.1 review procedures.....	4
705.3 density bonus.....	4
705.5 PUD design standards.....	4
706 Supplemental Rules and Regulations for PRD and PUD.....	5
707 Mobile Home Parks.....	5
707.1 mobile home park design standards.....	5
707.2 placement of mobile homes in parks.....	6
708 Compliant Non-conforming Mobile Home Parks.....	6
 Article VIII Limitations and Variances	 chapter 8
Section	page
801 Limitations.....	1
801.1 uses allowed in any district.....	1
801.3 referral to state departments.....	1
801.4 residential care home exemption.....	2
801.6 regulation of child care.....	2
802 Appeal-Variances.....	3
802.1 variance criteria (grounds for granting).....	3
802.2 variance criteria for renewable energy structures.....	4
802.4 submission requirements and abutter notification.....	4
 Article IX Administration and Enforcement	 chapter 9
Section	page
901 Administrative Officer.....	1
902 Zoning Permits.....	1
902.1 permit required.....	1
902.2 applications.....	1
902.5 application fees.....	1
902.6 appeal period.....	1
903 Certificates of Occupancy.....	2
903.1 COs required.....	2
903.7 appeals.....	2
904 Exempt Agricultural and Silvicultural Structures and Uses.....	3
905 Penalties.....	3
906 Public Notice.....	3
 Article X Amendments, Interpretation and Effective Date	 chapter 10
Section	page
1001 Amendments.....	1
1002 Interpretation.....	1
1003 Effective Date.....	1
1004 Severability.....	1
1005 Repeal.....	1

Article XI Word and Term Definitions	chapter 11
Section	page
1101 Word Definitions.....	1
1102 Term Definitions.....	1
Zoning Board of Adjustment Variance Findings	appendix I

ARTICLE I: ENACTMENT AND INTENT

Section 101 Enactment

In accordance with the Vermont Planning and Development Act, VSA 24, Chapter 117, Section 4401, hereinafter referred to as the “Act”, there are hereby established zoning regulations for the Town of Derby which are set forth in the text and map that constitutes these regulations. These regulations shall be known and cited as the “Town of Derby Zoning Bylaws”.

Section 102 Intent

It is the intent of these zoning bylaws to provide for orderly community growth and to further the purposes established in the Town of Derby Municipal Development Plan and in Section 4302 of the Act.

Section 103 Compliance with Bylaws

No “land development”, as defined below, shall commence in the Town of Derby until a zoning permit for such land development has been issued. “Land development” is the division of a parcel into two or more parcels, the construction, reconstruction, demolition, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining, excavation or landfill, and any change in the use of any building or other structure, or land or extension of any use of land.

Section 104 District Objectives and Land Use Control

The tables in section 206 set forth the objectives of each of the districts hereby established and the provisions of the bylaws that apply in each district. Any use designated as a “Permitted Use” in a particular district may be commenced in such a district pursuant to Section 208 and 209 of this bylaw. Any use designated as a “Conditional Use” in a particular district may be commenced in such a district pursuant to Section 208 of this bylaw. The order in which permitted and conditional uses are listed in the tables shall not be construed to establish a ranking or priority favoring any one listed use over other listed uses.

Section 105 Application of District Regulations

Any “non-conforming use” or “non-complying structure”, as such terms are defined in Section 4408 of the Act, existing on the effective date of this bylaw, may be continued indefinitely to the extent set forth in Article III of these bylaws. Otherwise, no building or land shall hereafter be used or occupied and no building or part thereof shall be erected, moved or altered unless in conformity with the bylaws herein specified for the district in which it is located.

Section 106 Establishment of the Planning Commission

- 106.1 Members of the Planning Commission shall be appointed and any vacancy filled by the Selectboard. The term of each member shall be for four years, and these terms shall be so staggered so that no more than two members shall be reappointed or replaced during any future calendar year. The Selectboard shall appoint five members as permitted under VSA T.24 Section 4323. All members may be compensated and reimbursed for any necessary and reasonable expenses. All members of the Planning Commission shall be residents of the Town of Derby and may include as many as two members of the Zoning Board of Adjustment.
- 106.2 The Planning Commission shall elect a chairperson and a secretary, and at its organizational meeting, shall adopt by majority vote of those members present and voting such other rules as it deems necessary and appropriate for the performance of its functions. The Planning Commission shall keep a record of its resolutions and transactions, which shall be maintained as a public record of the Town of Derby.
- 106.3 The Planning Commission shall meet no less than one time during any calendar month and as many times during a calendar month as is deemed necessary by a majority of its members for the execution of its duties.
- 106.4 Any member of the Planning Commission may be removed at any time by a unanimous vote of the Selectboard; any appointment to fill a vacancy shall be for the unexpired term as required by VSA T.24 Section 4323.

Section 107 The Duties and Powers of the Planning Commission

- 107.1 Prepare a plan and amendments thereof for consideration by the Selectboard and to review any amendments thereof initiated by others as set forth under *subchapter 5* VSA T.24.
- 107.2 Prepare and present to the Selectboard proposed bylaws and make recommendations to the Selectboard on proposed amendments to such bylaws concerning: zoning regulations, subdivision regulations, the official map, greenspace master plan, shoreland bylaws and flood hazard area bylaws.
- 107.3 Administer bylaws adopted under Section 107.2.
- 107.4 Undertake capacity studies and make recommendations on matters of land development, urban renewal, transportation, economic and social development, urban beautification and design improvements, historic and scenic preservation, the conservation of energy and the development of renewable energy resources, and wetland preservation.

- 107.5 Prepare and present to the Selectboard recommended building, plumbing, fire, electrical, housing, and related code and enforcement procedures as those needs arise as determined by the Planning Commission, and the construction specifications for streets and related public improvements.
- 107.6 Prepare and present a recommended capital budget and program for a period of five years, as set forth in VSA T.24 Section 4426, for action by the Selectboard as set forth in VSA T.24 Section 4404a.
- 107.7 Hold public meetings.
- 107.8 Conduct warned public hearings for the purposes of site plan review of any land use, development, or subdivision of land proposal except where such a proposal falls under the exemption for one and two family dwellings, and require the applicant subject to such a site plan review to submit any and all data and materials as the Planning Commission deems necessary for an effective review.
- 107.9 Require from other departments and agencies of the Town of Derby such available information as relates to the work of the Planning Commission.
- 107.10 In the performance of its functions, enter upon land to make examinations and surveys.
- 107.11 Participate in a regional planning program.
- 107.12 Interview applicants for the position of Zoning Administrator and appoint such an officer with the approval of the Selectboard.
- 107.13 Undertake comprehensive planning, including related preliminary planning and engineering studies.
- 107.14 Seek such funding as may be available from local, state, federal, and private sources as may be deemed necessary for fulfilling obligations imposed by this Section.
- 107.15 Perform such other acts or functions as the Planning Commission may deem necessary or appropriate to fulfill the duties and obligations imposed by this Section.

Section 108 Establishment of the Zoning Board of Adjustment

- 108.1 Members of the Zoning Board of Adjustment shall be appointed and any vacancy filled by the Selectboard. The term of each member shall be for four years, and these terms shall be so staggered so that no more than two members shall be reappointed or replaced during any future calendar year. The Selectboard shall appoint five members as permitted under VSA T.24 Section 4461. All members

may be compensated and reimbursed for any necessary and reasonable expenses. All members of the Zoning Board of Adjustment shall be residents of the Town of Derby and may include as many as two members of the Planning Commission.

- 108.2 The Zoning Board of Adjustment shall elect a chairperson and a secretary, and at its organizational meeting, shall adopt by majority vote of those members present and voting such other rules as it deems necessary and appropriate for the performance of its functions. The Zoning Board of Adjustment shall keep a record of its resolutions and transactions, which shall be maintained as a public record of the Town of Derby.
- 108.3 Meetings of the Zoning Board of Adjustment shall be held at the call of the chairman and at such times as the board may determine as permitted under VSA T.24 Section 4462. For the conduct of any hearing and the taking of any action, a quorum shall not be less than a majority of the members of the board, and any action thereof shall be taken by the concurrence of a majority of the board.
- 108.4 Any member may be removed at any time by a unanimous vote of the Selectboard; any appointment to fill a vacancy shall be for the unexpired term as required by VSA T.24 Section 4461.
- 108.5 Rules of procedure applicable to the Board of Adjustment, the nature of appeals to the board from actions of the Administrative Officer (the Zoning Administrator), notice requirements, public notice, conditions for variance relief, and all other matters governing the action of said board shall be as provided in *subchapter 8* of the Act.

Section 109 Appointment; Administrative Officer, the Zoning Administrator

- 109.1 The Administrative Officer shall be appointed by the Planning Commission, with the advice and consent of the Selectboard as provided under Section 107.12 of this Article, for a term of three years. Appointments to fill a vacancy shall be for the period of the current unexpired term.
- 109.2 Employment terms, compensation, reimbursement of reasonable expenses, and hours of operation shall be set by the Selectboard consistent with state laws concerning municipal employees.
- 109.3 The Administrative Officer may be removed upon the recommendation of the Planning Commission by a simple majority of the Selectboard or at any other time by a unanimous vote of the Selectboard.

Section 110 Duties and Powers of the Administrative Officer

- 110.1 The Administrative Officer shall literally enforce the land use and development regulations as adopted by the Town of Derby. Any discretion as may be construed in the administration of these regulations is only as explicitly granted under the bylaw language.
- 110.2 The Administrative Officer shall provide to interested persons such forms and information necessary for the proper filing and processing of zoning permit applications.
- 110.3 Prior to the issuance of any zoning permit the Administrative Officer shall first satisfy himself that the subject of the application is in conformance with any and all land use regulations in effect in the Town of Derby. The Administrative Officer may request from the applicant any information deemed necessary for this purpose. No permit shall be issued unless an application fee, plot or site plan and/or any approvals by the Planning Commission or Zoning Board of Adjustment required by the applicable bylaws have been properly obtained and are submitted in connection with the application.
- 110.4 Prior to the issuance of any Certificate of Occupancy the Administrative Officer shall first be satisfied that the proposed use of the structure or the land conforms to the requirements of the zoning permit and any applicable Town of Derby bylaws. If the Administrative Officer determines that the use or occupancy is not in conformance with the bylaws, the Administrative Officer shall refuse to issue a Certificate of Occupancy, stating the cause for the denial in writing to the applicant.
- 110.5 Prior to the issuance of a notice of violation the Administrative Officer shall conduct a good faith investigation of the alleged violation and be satisfied that such a violation has in fact occurred. Notification shall be by return receipt postage and copies of the violation complaint and a report of the investigation shall be made available to the Planning Commission, the Zoning Board of Adjustment, and the Selectboard. The Administrative Officer shall pursue further enforcement action, if required, in a manner as provided for under Town of Derby bylaws, ordinances, and state statute.
- 110.6 The Administrative Officer shall maintain such records, files, and perform any administrative functions necessary for the smooth function of the zoning office, the Planning Commission, and the Zoning Board of Adjustment.
- 110.7 The Administrative Officer shall submit a proposed budget for the zoning office on an annual basis to the Selectboard.
- 110.8 The Administrative Officer may undertake such surveys, research, investigation, and offer reports, recommendations, and opinions, as are within the professional

competence of the Administrative Officer, at the direction of the Planning Commission, Zoning Board of Adjustment, and the Selectboard.

ARTICLE II: ESTABLISHMENT OF DISTRICTS AND DISTRICT REGULATIONS

Section 201 Zoning Map and Districts

The zoning map officially entitled “Town of Derby Zoning Map” is hereby adopted as part of this Bylaw. The Town of Derby Zoning Map shows the division of the Town into the following districts:

“IND”	Industrial
“COM/IND”	Commercial/Industrial
“COM”	Commercial
“R-HD”	Residential High Density
“R-MD”	Residential Medium Density
“R-1”	Residential One Acre
“R-2”	Residential Two Acre
“RR”	Rural Residential
“SD”	Shoreland District
“SL”	Special Lands

The Town of Derby Zoning Map shows the division of the Village of Derby Line into the following districts:

“VC/DL”	Village Commercial Derby Line
“VR-1/DL”	Village Residential-One Derby Line
“VR-2/DL”	Village Residential-Two Derby Line

The Town of Derby Zoning Map shows the division of the Village of Derby Center into the following districts:

“VC/DC”	Village Commercial Derby Center
“VR/DC”	Village Residential Derby Center
“VR-MF/DC”	Village Residential Multi-Family Derby Center

In addition to underlying zoning districts the Town of Derby Zoning Map shows the division of the Town of Derby, the Village of Derby Line and the Village of Derby Center into the following overlay districts:

“SPA”	Special Protection Area
“TIF”	Tax Increment Finance District

Section 202 Copies of the Zoning Map

Regardless of the existence of other copies of the Zoning Map, which from time to time may be made or published, the official Zoning Map shall be located in the office of the Town Clerk and shall be the final authority as to the current zoning status of the land and water areas, buildings, and other structures in the Town.

Section 203 District Boundaries

203.1 District boundaries shown within the lines of roads, streams, and transportation rights of way shall be deemed to follow the center lines. The abandonment of roads shall not affect the location of district boundaries. When the Administrative Officer cannot definitely determine the location of a district boundary by such center lines, by the scale or dimensions stated on the Zoning Map, or by the fact that it clearly coincides with a property line, the Administrative Officer shall refuse action and the Planning Commission shall interpret the location of the district boundary with reference to the scale of the Zoning Map and the purposes set forth in all relevant provisions of this Bylaw.

203.2 District boundary modifications shall require the approval of the Planning Commission before submission for consideration by the Selectboard. Such approval shall only be granted after a warned public hearing as required by Section 4407 of the Act. In consideration of the approval of such recommendation the Planning Commission shall satisfy itself that the proposed modification:

- 1) Does not have a negative impact on the character of the neighborhood;
- 2) The area considered is contiguous to an area of the same zoning classification for which the modification is proposed;
- 3) Shall not create non-conformities with the Zoning Bylaw;
- 4) Shall be in accordance with the adopted Town Plan.

In consideration of approval and recommendation the Planning Commission may also consider:

- 1) Such modification reduces non-conformities with the Zoning Bylaw;
- 2) Such modification shall further and enhance economic development goals as defined by the Town Plan;
- 3) Such modification will rationalize land use patterns in keeping with good planning practice;
- 4) Such modification unifies the land use zones that a parcel of unified ownership falls into;
- 5) Any other factors that the Planning Commission deems appropriate for proper consideration of such proposed modification.

The Planning Commission may require from the applicant any and all information, data, documents and maps that it deems necessary for the proper consideration of the proposed modification. The applicant shall provide evidence that all abutting landowners have been notified of the proposed boundary modification and the date, time and place of the required public hearing no less than seven days before such a hearing takes place.

Section 204 Classification of Lots: Source of Water and Sewer Service

204.1 The tables set forth in Section 206 specifying the permitted and conditional uses for certain districts refer to three separate classes of lots denominated Class “1”, “2” or “3”. Whether a lot is classified as Class “1”, “2” or “3” depend on the provision made with respect to each lot for water supply and sewage disposal. The classification is as follows:

<u>Lot Classification</u>	<u>Provision for Water and Sewage Disposal</u>
Class 1	Off lot water and sewage disposal
Class 2	On lot water and sewage disposal
Class 3	On lot water, off lot sewage disposal

204.2 For any use, the Administrative Officer shall first determine, by reference to the applicable table, the lot classification in which the lot in question falls and then determine whether the lot satisfies the minimum lot size provision for such lot as set forth in such table.

Section 205 On Site Sewer Systems

On site waste water and sewage disposal systems shall receive a Water Supply Division Water Supply and Wastewater Discharge Permit or equivalent documentation of conformity with state regulations. A copy of this documentation shall be submitted to demonstrate compliance with Act 249 regulations and shall be accepted as proof of compliance with this Bylaw except in those zoning districts where on site sewage disposal regulations specifically apply.

Section 206.1
 “IND” Industrial

Objective:

Land classified as “IND” is land designated for the location of manufacturing enterprises. Good highway accessibility and water and sewer services are major considerations. Planning Commission, under site plan review, may require off-site disposal of sewage. Provision for municipal water and sewer services are required for heavy manufacturing uses. A variety of manufacturing and other high intensity uses are permitted.

Table 206.1

<u>Permitted Uses</u>	<u>Conditional Uses</u>					
Accessory Use or Structure	Bulk Storage of Explosives					
Contractor’s Yard	Fences/Walls over 6 feet					
Essential Services-Building	Heavy Manufacturing					
Home Occupation	Hot Mix Plant					
Light Manufacturing	Junk/Scrap Yard					
Manufacturing	Redi-Mix (Concrete) Plant					
Petroleum/Propane Bulk Storage	Research and Testing Lab					
Warehouse/Trucking Terminal	Recycling Transfer Station					
Subdivision of Land	Slaughter House					
<u>Lot Area and Dimensions</u>	<u>Minimum Setback in Feet**</u>					
Minimum lot size						
<u>Class</u>	<u>area sq ft</u>	<u>width ft</u>	<u>length ft</u>	<u>front</u>	<u>side</u>	<u>rear</u>
1&3	20,000	100	100	25	10	10
2	40,000	100	100	25	10	10
	abutting a residential district			25	30	30

** front setback may be reduced upon Planning Commission approval of landscape and dedicated greenstrip to 15 feet

Section 206.2
 “COM/IND” Commercial/Industrial

Objective:

Land classified as commercial/industrial is land designated for the location of complementary manufacturing and commercial enterprises. Good highway accessibility and potential access to municipal water and sewer services are major considerations. Planning Commission under site plan review may require off-site disposal of sewage. This district will provide a choice in types of appropriate commercial and industrial development with a good potential for employment growth.

Table 206.2

Uses:

Permitted Uses

Accessory Use or Structure
 Bank
 Business Complex
 Contractor’s Yard
 Essential Services-Building
 Home Occupation
 Hospital
 Hotel/Motel
 Mobile Home Sales
 Motor Vehicle Sales and Repair
 Office
 Restaurant
 Retail Store
 Travel Trailer/Motor Home Sales
 Warehouse/Trucking Terminal
 Wholesale Business
 Subdivision of Land

Conditional Uses

Auto Service Station
 Auto Service Station/Mini Mart
 Fences and Walls over 6 feet
 Manufacturing
 Printing/Publishing
 Taxi Service Facilities
 Veterinary Hospital

Lot Area and Dimensions

Minimum Setback Distances (feet)

Minimum lot measurements

Measured from building to lot line

<u>class</u>	<u>lot area in</u>		<u>length in feet</u>		
	<u>sq. feet</u>	<u>lot width &</u>	<u>front</u>	<u>sides</u>	<u>rear</u>
1 & 3	20,000	100	25	10	10
2	40,000	150	25	10	10
		abutting a residential district	25	30	30

Section 206.3
 “COM” Commercial

Objective:

The Commercial district shall provide locations for major shopping facilities, offices, banking facilities, major government operations and other satellite commercial activities. The area shall provide safe road access, parking, municipal services, adequate lighting, security, good design and other required items for convenience and safety. The Planning Commission under site plan review may require off-site disposal of sewage.

Table 206.3

Uses:

Permitted Uses

Accessory Use or Structure
 Adult Respite Care Facility
 Apartment Building
 Bank
 Business Complex
 Club, Membership
 Day Care Home
 Essential Service-Building
 Family Care Facility
 Home Occupation
 Hospital
 Hotel/Motel
 Motor Vehicle Sales & Repair
 Office
 Personal Service
 Residential Care Home
 Restaurant
 Retail Store

Conditional Uses

Animal Grooming/Boarding
 Auto Service Station
 Auto Service Station/Mini Mart
 Fences and Walls (over six feet)
 Funeral Home
 Light Manufacturing
 Mobile Home Sales
 Nightclub/Bar
 Printing/Publishing
 Private School
 Public Facility
 Recreation Facility, Indoor
 Recreation Facility, Outdoor
 Residential Business or Service
 Retail Store/Office/Apartment
 Complex
 Taxi Service Facilities
 Travel Trailer/Motor Home Sales
 Veterinary Hospital

Lot Area and Dimensions

Minimum lot measurements

class	lot area in lot width &	
	sq. feet	length in feet
1 & 3	20,000	100
2	40,000	150
	abutting a residential district	

Minimum Setbacks in Feet

Measured from building to lot line

	front	side	rear
	25	10	10
	25	10	10
	25	30	30

Section 206.4
 “R-HD” Residential High Density

Objective:

Land classified as residential high density is land designated for the most intense residential uses including semi-detached one family dwellings and apartment houses. All uses with the exception of detached one and two family dwellings and their associated accessory uses and structures are required to be located on class one lots and dwelling unit densities shall not exceed twenty per acre.

Table 206.4

Uses:

Permitted Uses

Accessory Use or Structure
 Apartment House
 Dwelling, One Family
 Dwelling, One Family Semi-Detached
 Dwelling, Two Family
 Home Occupation
 Residential Care Home
 Subdivision of Land

Conditional Uses

Apartment Building
 Church
 Essential Service-Building
 Family Care Home
 Fences and Walls (over 6 feet)
 Residential Business or Service
 Retail Store/Office/Apartment
 Complex

Area and Dimensions

class	<u>Minimum lot size</u> area in width &		<u>Minimum setback in feet</u>		
	<u>sq. feet</u>	<u>length in feet</u>	<u>front</u>	<u>side</u>	<u>rear</u>
1	10,000	100	30	20*	25
2&3	20,000	150	30	20	25
		accessory structures	30	10*	10

* Planning Commission may waive side setback requirements for site plan approval of one family semi-detached dwelling units.

Section 206.5
 “R-MD” Residential Medium Density

Objective:

Land classified as residential medium density is land designated for moderately intense residential uses within the Town associated with proximity to village areas and commercial growth centers. All uses with the exception of detached one and two family dwellings and associated accessory uses are required to be located on class one lots and dwelling unit densities shall not exceed ten per acre.

Table 206.5

Uses:

Permitted Uses

Accessory Use or Structure
 Dwelling, One Family
 Dwelling, Two Family
 Home Occupation
 Residential Care Home
 Subdivision of Land

Conditional Uses

Apartment House
 Church
 Essential Service-Building
 Family Care Home
 Family Child Care Facility
 Fences and Walls (over 6 feet)
 Mobile Home Park
 Mobile Home Sales Lot*
 Office
 Private School
 Residential Business or Service
 Restaurant
 Retail Store
 Retail Store/Office/Apartment
 Complex

*must be located on the property of or adjacent to a mobile home park

Area and Dimensions

Minimum lot size all classes

	width & length	
<u>area in sq. ft.</u>	<u>in feet</u>	
20,000	150	
	accessory structures	

Minimum setback in feet

<u>front</u>	<u>side</u>	<u>rear</u>
30	20	25
30	10	10

Section 206.6
 “R-1” Residential One Acre

Objective:

Land classified as residential one acre is land designated for predominantly residential uses in rural settings which are served by an all season road system. Since public water and sewer services usually will not be available, the lots should be of sufficient size and soil quality to provide for on site provision of water and sewage disposal.

Table 206.6

Uses:

Permitted Uses

Accessory Use or Structure
 Agriculture
 Dwelling, One Family
 Dwelling, Two Family
 Forestry
 Home Occupation
 Residential Care Home
 Subdivision of Land

Conditional Uses

Apartment House
 Clinic
 Cottage Industry
 Essential Service-Building
 Fences and Walls (over 6 feet)
 Hotel/Motel
 Light Manufacturing
 Lodging House
 Mobile Home Park
 Mobile Home Sales Lot*
 Office
 Private School
 Public Facility
 Recreation, Indoor
 Recreation, Outdoor
 Residential Business or Service
 Restaurant
 Retail Store
 Veterinary Hospital

*must be located on the property of or adjacent to a mobile home park

Area and Dimensions

Minimum lot size all classes

	width & length
<u>area in acres</u>	<u>in feet</u>
1 acre	150
	accessory structures

Minimum setback in feet

<u>front</u>	<u>side</u>	<u>rear</u>
30	25	25
30	10	10

Section 206.7
 “R-2” Residential Two Acre

Objective:

Land classified as residential two acre is land designated for predominantly residential, seasonal dwelling, agricultural and forestry uses in areas of low current density and town service and road provision but have a high potential for future residential development. Since public water and sewer services are not available, the lots should be of sufficient size and soil quality to provide for on site provision of water and sewage disposal.

Table 206.7

Uses:

Permitted Uses

Accessory Use or Structure
 Agriculture
 Dwelling, One Family
 Dwelling, Two Family
 Forestry
 Home Occupation
 Residential Business or Service
 Residential Care Home
 Veterinary Hospital
 Subdivision of Land
 Telecommunication Tower,
 co-location

Conditional Uses

Church
 Club, Membership
 Cottage Industry
 Essential Service-Building
 Fences and Walls (over 6 feet)
 Hotel/Motel
 Lodging House
 Mobile Home Park
 Private School
 Public Facility
 Recreation, Indoor
 Recreation, Outdoor
 Residential Treatment Facility
 Restaurant
 Travel Trailer Camp
 Telecommunication Tower, new
 construction

Area and Dimensions

Minimum lot size all classes

<u>width & length</u>	
<u>area in acres</u>	<u>in feet</u>
2 acres	200

Minimum setback in feet

<u>all structures</u>		
<u>front</u>	<u>side</u>	<u>rear</u>
50	25	25

Section 206.8
 “RR” Rural Residential

Objective:

Land classified as rural residential is land designated for predominately agricultural, forestry and the least intense residential and seasonal uses. Since public water and sewer services are not available, lots should be of sufficient size and soil quality to provide for on site provision of water and sewage disposal. The district shall provide for major areas of agricultural and forestry uses.

Table 206.8

Uses:

Permitted Uses

Accessory Use or Structure
 Agriculture
 Dwelling, One Family
 Dwelling, Two Family
 Forestry
 Home Occupation
 Residential Business or Service
 Residential Care Home
 Veterinary Hospital
 Subdivision of Land
 Telecommunication Tower,
 co-location

Conditional Uses

Church
 Club, Membership
 Cottage Industry
 Essential Service-Building
 Fences and Walls (over 6 feet)
 Mobile Home Park
 Private School
 Public Facility
 Recreation, Outdoor
 Travel Trailer Camp
 Telecommunication Tower, new
 construction

Area and Dimensions

Minimum lot size all classes
 width & length

<u>area in acres</u>	<u>in feet</u>
5 acres	200

Minimum setback in feet
all structures

<u>front</u>	<u>side</u>	<u>rear</u>
50	25	25

Section 206.9
 “SD” Shoreland District

Definition:

As defined by VSA T.10 Section 1422, lands included in the shoreland district are all those within 500 feet and may include lands up to 1000 feet of the mean high water mark of any body of water exceeding 20 acres in area.

Objective:

Land classified as the shoreland district is land so designated to provide for the protection of public waters, control of water pollution, preservation of shore cover and natural beauty, and for the maintenance of safe and healthful conditions which will provide for multiple uses of waters in a manner that provides for the best interests of the citizens of the state. As such, the location and setbacks of septic tanks and leach fields are regulated in addition to any state regulations that may apply.

Special Provisions:

No septic system shall be installed or constructed in such a manner that results in the pollution of bodies of water or groundwater. Septic tanks and leach fields shall not be located within 100 feet of the mean high watermark of a body of water or a source of water serving a single dwelling, and shall not be located within 150 feet of a source of water serving two or more dwellings.

Table 206.9

Uses:

Permitted Uses

Accessory Use or Structure
 Boathouse
 Dwelling, One Family
 Dwelling, Two Family
 Home Occupation
 Residential Care Home
 Subdivision of Land

Conditional Uses

Essential Services-Buildings
 Fences and Walls (over 6 feet)
 Marina
 Public Facility
 Recreation, Indoor
 Recreation, Outdoor
 Residential Business or Service
 Shoreline fill or excavation

Area and Dimensions

Minimum lot size

Class	area in length & width	
	sq. ft.	in feet
1&3	10,000	100
2	15,000	100

Minimum setback in feet

Class	Minimum setback in feet		
	front	side	rear
1&3	25	25	25
2	25	25	25
	25	10	10

accessory structures

Section 206.10
 “SL” Special Lands

Objective:

Lands classified as special lands are lands designated for the least intensity of use and development as it is generally mountainous, extensive wetland, has poor access or has shallow soils unsuited for on-site disposal of sewage.

Table 206.10

Uses:

Permitted Uses

Accessory Use or Structure
 Agriculture
 Dwelling, One Family
 Dwelling, Two Family
 Forestry
 Home Occupation
 Residential Care Home
 Telecommunication Tower,
 co-location
 Subdivision of Land

Conditional Uses

Cottage Industry
 Essential Service-Building
 Recreation, Outdoor
 Residential Business or Service
 Travel Trailer Camp
 Telecommunication Tower, new
 construction

Area and Dimensions

Minimum lot size all classes
width & length

<u>area in acres</u>	<u>in feet</u>
10 acres	200

Minimum setback in feet
all structures

<u>front</u>	<u>side</u>	<u>rear</u>
50	25	25

SECTION 206 SUBSECTION A
Village Zoning Districts and District Regulations for the Village of Derby Line

Objective of the subsection:

In recognition of the Village of Derby Line's unique qualities as a place of increased village urban density, a center of village scale commercial activity, and assemblage of historic architecture and streetscape the following zoning districts and regulations are established to further the goals of historic preservation, appropriate development, and economic redevelopment of the Village of Derby Line.

Limitations of the subsection:

In those areas of the Village of Derby Line where standard Town of Derby district classifications have been applied the regulations as specified in Section 206 shall be enforced in a manner consistent with that applied to those districts outside of the village limits. No exemption from standard requirements for permitting, site plan review, conditional use or other Zoning Board of Adjustment proceedings shall be implied by the provisions of this subsection.

Section 206.1A
“VC/DL” VILLAGE COMMERCIAL DERBY LINE

Objective:

The purpose of this district is the preservation of village scale commercial activities, to encourage the location of dense forms of housing in close proximity to services and employment, and to provide a center of village community life.

Special Provisions:

Because of the unique nature of the development of this zone minimum yard dimensions shall not be applied. The zone is divided in the vertical plane into street level and above street level uses. Any future subdivision of land or new construction shall conform to the minimums established in Table 206.2 A.

Table 206.1A

Uses Street Level:

Permitted Uses*

Bank
Home Occupation
Neighborhood Personal Service
Residential Care Home
Restaurant
Retail Store
Subdivision of Land

Conditional Uses

Any permitted use exceeding 5000 square feet
Auto Service Station/Mini Mart
Church
Essential Service-Building
Neighborhood Retail Store/Office Complex

* All permitted uses shall be 5000 square feet or less in area

Uses Above Street Level:

Permitted Uses

Apartment Building
Apartment House
Home Occupation
Neighborhood Professional Office
Residential Care Home

Conditional Uses

Neighborhood Office/Apartment Complex

Section 206.2A
 “VR-1/DL” VILLAGE RESIDENTIAL-ONE DERBY LINE

Objective:

The purpose of this district is to preserve one and two family uses on class one lots, and to preserve the historic residential village streetscape and density.

Table 206.2A

Uses:

Permitted Uses

Accessory Use or Structure Dwelling, One & Two Family
 Home Occupation
 Residential Care Home
 Subdivision of Land

Conditional Uses

Apartment House
 Church
 Community Cultural Center
 Essential Service-Building
 Fences/Walls (over six feet)
 Residential Business or Service
 Village Inn

Lot Area and Dimensions

Minimum lot measurements

<u>class</u>	<u>lot area in</u>		<u>lot width</u>
	<u>sq. feet</u>	<u>in feet</u>	
1 & 3	12,500	100	
2	20,000	100	

Minimum Setback Distances (feet)

Measured from building to lot line

<u>class</u>	<u>Measured from building to lot line</u>			
	<u>front</u>	<u>sides</u>	<u>rear</u>	
1 & 3	30	20	25	
2	30	20	25	
<u>Minimum setbacks for residential accessory structures</u>		30	10	10

Section 206.3A
“VR-2/DL” VILLAGE RESIDENTIAL-TWO DERBY LINE

Objective:

The purpose of this district is to address the problems associated with historically pre-existing small residential village lots with the goal of preserving the village streetscape while protecting the rights of property owners to engage in residential uses.

Special Provisions:

Minimum setbacks from all property lines to all structures shall be ten feet and the maximum footprint coverage of lots in this zone by all structures shall not exceed 33.3% of the total lot area. On site disposal of sewage is prohibited. No new lots shall be created that do not meet the minimums required under VR-1/DL zoning classification.

Table 206.3A

Uses:

Permitted Uses

Accessory Apartment
Dwelling, One & Two Family
Home Occupation
Residential Care Home
Subdivision of Land

Conditional Uses

Apartment House
Church
Essential Service-Building
Fences/Walls (over six feet)
Residential Business or Service

SECTION 206 SUBSECTION B
Village Zoning Districts and District Regulations for the Village of Derby Center

Objective of the subsection:

In recognition of the Village of Derby Center's unique qualities as a place of increased village urban density and assemblage of historic architecture and streetscape the following zoning districts and regulations are established to further the goals of historic preservation, appropriate development, and economic redevelopment of the Village of Derby Center.

Limitations of the subsection:

In those areas of the Village of Derby Center where standard Town of Derby district classifications have been applied the regulations as specified in Section 206 shall be enforced in a manner consistent with that applied to those districts outside of the village limits. No exemption from standard requirements for permitting, site plan review, conditional use or other Zoning Board of Adjustment proceedings shall be implied by the provisions of this subsection.

Section 206.1B
 “VC/DC” VILLAGE COMMERCIAL DERBY CENTER

Objective:

The purpose of this district is the preservation of village scale commercial activities, restrict larger scale commercial and industrial activities, and to provide a center of village community life.

Table 206.1B

<u>Permitted Uses*</u>	<u>Conditional Uses</u>
Bank	Accessory Commercial Use or Structure
Dwelling, One & Two Family Home Occupation	Any Permitted Use Exceeding 10,000 square feet
Neighborhood Personal Service	Apartment House
Residential Accessory Structure	Auto Service Station/Mini Mart
Residential Business or Service	Church
Residential Care Facility	Essential Service-Building
Residential Care Home	Family Care Facility
Restaurant	Hotel/Motel
Retail Store	Motor Vehicle Sales
Subdivision of Land	Office
	Printing/Publishing
	Retail Store/Office Complex

* All permitted uses shall be 10,000 square feet or less in area

<u>Lot Area and Dimensions</u>			<u>Minimum Setback in Feet</u>		
<u>Class</u>	<u>Minimum lot size length & width ft</u>		<u>front</u>	<u>side</u>	<u>rear</u>
	<u>area sq ft</u>	<u>width ft</u>			
1&3	15,000	100	30	20	20
2	20,000	100	30	20	20

Section 206.2B
 “VR/DC” VILLAGE RESIDENTIAL/ DERBY CENTER

Objective:

The purpose of this district is to preserve one and two family uses on class one lots, and to preserve the historic residential village streetscape and density.

Table 206.2B

Uses:

Permitted Uses

Dwelling, One & Two Family
 Home Occupation
 Residential Accessory Use or
 Structure
 Residential Care Home
 Subdivision of Land

Conditional Uses

Apartment House
 Church
 Essential Service-Building
 Residential Business or Service
 Village Inn

Lot Area and Dimensions

Minimum lot measurements

<u>class</u>	<u>lot area in sq. feet</u>	<u>length & width feet</u>
1 & 3	12,500	100
2	20,000	100

Minimum Setback Distances (feet)

Measured from building to lot line

	<u>front</u>	<u>sides</u>	<u>rear</u>
	30	20	25
	30	20	25
<u>Minimum setbacks for residential accessory structures</u>	30	10	10

Section 206.3B
 “VR-MF/DC” VILLAGE RESIDENTIAL-MULTI-FAMILY DERBY CENTER

Objective:

The purpose of this district is to provide areas designated for multi-family residential uses in locations that can support increased densities.

Special Provisions:

All site plans for multi-family housing shall include a parking plan that meets requirements listed in table 402.7(2), 500 square feet of common open space per housing unit and a landscaping plan that meets requirements under Section 210. All multi-family dwellings in this zone shall be on class one or three lots.

Table 206.3B

Uses:

Permitted Uses

Apartment House
 Dwelling, One & Two Family
 Home Occupation
 Residential Accessory Use or
 Structure
 Subdivision of Land

Conditional Uses

Apartment Building
 Church
 Dwelling, One Family semi-detached
 Essential Service-Building
 Residential Business or Service
 Residential Care Home

Lot Area and Dimensions

Minimum lot measurements

<u>Minimum lot measurements</u>	<u>Length & width</u>
Lot area in sq ft	
12,500	100
Accessory structure setbacks	

Minimum Setbacks in Feet

<u>Measured from building to lot line</u>		
<u>front</u>	<u>side</u>	<u>rear</u>
30	20	20
30	10	10

Section 207 Overlay Districts

Overlay districts as designated in Article V of this Bylaw are supplemental to the land use districts established By Section 201. Where overlay district provisions differ from the underlying zoning district the more restrictive apply.

Section 207.1 Source Protection Area

Objective:

To promote the health, safety and welfare of the community by protecting important water resources of the Town of Derby from any use of land or buildings which may reduce the quality of such water resources.

Permitted and Conditional Uses:

- 1) Any use listed as a Permitted or Conditional Use in the underlying district that is not prohibited by the Source Protection Area regulations in Article V Section 502.4 shall be considered a permitted or conditional use in the overlay district.
- 2) Permitted and conditional uses for the Source Protection Area district shall be subject to regulation under Section 501.3 and 501.4 and shall be in compliance with its provisions.

Area and Dimensions:

Minimum lot size for any use on class 2 lots (on site sewage disposal) shall be one acre or the minimum lot size for the underlying zoning district whichever is greater. This provision shall be applied to class 2 lots only.

Section 207.2 Tax Increment Finance District

Objective:

To promote sustainable industrial and commercial development, the Tax Increment Finance District (TIF District) is created for the purposes of infrastructure investment within the district through property tax receipts earmarked for such investment. As such development within the district shall be limited to that which enhances the industrial and commercial taxbase for the Town of Derby.

Permitted and Conditional Uses:

Any use listed as a permitted or conditional use in the underlying district that is not prohibited by TIF District regulations in Article V Section 502 shall be considered a permitted or conditional use in this overlay district.

Section 208 Uses

- 208.1 Principal uses are classified as residential, commercial, quasi-public or public uses as defined by the following criteria:
- A. Principal residential uses are permanent dwelling structures designed for the housing of individuals or families on a long term basis of not less than one calendar month.
 - B. Principal commercial uses are structures or activities operated by business entities as a place of or the primary activity of a profit making enterprise. With the exception of those uses regulated under Article VI Section 402, examples of commercial uses include but are not limited to the for profit exchange of goods and services and manufacturing of goods for sale in other locations.
 - C. Principal quasi-public uses are structures or activities operated by non-government organizations as a place of or the primary activity of a not for profit enterprise.
 - D. Principal public uses are structures or activities operated by local, state or federal agencies.
- 208.2 Accessory uses are classified as residential, commercial, quasi-public or public accessory uses and are those uses clearly secondary and subordinate to the primary use of a lot or structure.
- 208.3 Permitted uses are those designated in Section 206 and its tables as “permitted uses” are those that may be commenced, enlarged or altered, in such district provided that the applicable provisions of this Zoning Bylaw are met. In the case of one or two family structures or uses, unless a variance or other special action by the Zoning Board of Adjustment, the Planning Commission or design control bodies that may have been created under this Bylaw must first be obtained, the necessary zoning permit shall be issued by the Administrative Officer pursuant to Section 902 and 209 of this Bylaw. All other permitted use applications shall first obtain site plan approval from the Planning Commission under the provisions of Section 209.
- 208.4 Conditional uses are those designated in Section 206 and its tables as “conditional uses” are those that may be commenced, enlarged or altered, in such district provided that a conditional use permit has been approved by the Zoning Board of Adjustment after public notice and hearing. The Zoning Board of Adjustment may impose conditions as provided for in the Bylaw to assure that the proposed conditional use shall not adversely affect:

- A. The capacity of existing or planned community facilities;
- B. The character of the area involved;
- C. Traffic on roads and highways in the vicinity;
- D. Bylaws then in effect;
- E. The utilization of renewable energy resources; or
- F. The general public health, safety and welfare.

In determining whether a proposed conditional use will adversely affect the character of the area involved, the Zoning Board of Adjustment shall be required to give consideration to any factual evidence presented by any person who would be classified as an “interested person” by Section 4464 (b) of the Act, with respect to such proposed use. In considering the character of the area, the Zoning Board of Adjustment does not review the suitability of the conditional use within the district. The Bylaws have made that determination. In making application for a conditional use permit applicants shall submit upon application:

- A. A plan for the proposed development of the site showing the locations of all buildings, parking areas, traffic access and circulation drives, open spaces, landscaping, and any other pertinent information that the board may deem necessary to determine if the proposed use meets the requirement of the Bylaw. Such a plan may be hand drawn by the applicant to the satisfaction of the Zoning Board of Adjustment, but shall show all required features on a scale and level of accuracy that is deemed reasonable by the Zoning Board of Adjustment for purposes of deliberation;
- B. An application form deemed complete and accurate by the Administrative Officer;
- C. Fees required for the application and public hearing;
- D. A narrative describing the purposes of the application, the nature of the conditional use, a list of the names and addresses of all abutters and any other information deemed relevant by the Zoning Board of Adjustment and the Administrative Officer.

No less than seven days before a public hearing for a conditional use application, the applicant shall submit evidence that a good faith effort has been made to notify all abutters of the proposed site of the conditional use of the date, time, place and purpose of the public hearing. Such evidence shall take the form of sworn certificates of service, signed statements by the abutters or United States Postal Service return receipt cards. The Zoning Board of Adjustment may accept returned certified mail envelopes as evidence that reasonable effort to contact an abutter has been made.

In permitting a conditional use the Zoning Board of Adjustment may impose, in addition to the requirements and standards specified by this

Bylaw, other reasonable conditions found necessary to protect the best interests of the surrounding property, the neighborhood, or the town as a whole. These conditions may include the following:

- A. Increasing the required lot size or yard dimensions by up to twenty-five percent in order to protect adjacent properties;
- B. Limiting the coverage or height of buildings because of reduction of light and air to adjacent property;
- C. Controlling the location and number of vehicular access points to the property;
- D. Requiring suitable landscaping where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.

A conditional use permit authorizes only the use identified on the permit. If a change in use is proposed application to the Zoning Board of Adjustment or the Planning Commission is required for the change in use. Any enlargement or alteration of a conditional use requires a public hearing before the Zoning Board of Adjustment for an amendment to the conditional use permit.

208.5 Changes in use from one permitted use to another or from a conditional use to a permitted use are subject to site plan review by the Planning Commission as provided in Section 209 of this Bylaw, except in the following circumstances where the Administrative Officer may issue an administrative permit:

- A. A single family dwelling use is changed to a two family dwelling use or a two family dwelling use is changed to a single family dwelling use and the Administrative Officer determines that the change will not adversely affect the character of the neighborhood and that the minimum parking requirements are met;
- B. Changes in commercial or quasi-public tenancy where the Administrative Officer determines that the nature and intensity of the use will remain constant.

Changes in use from a permitted use to a conditional use or from one conditional use to another require review and permit approval by the Zoning Board of Adjustment as provided in Section 208.4 of this Bylaw.

208.6 A conditional use permit shall not be considered a substitute for or a waiver of a Planning Commission site plan review and approval. The Zoning Board of Adjustment may require site plan approval as a special condition of any conditional use permit.

Section 209 Planning Commission Site Plan Review and Approval

No zoning permits shall be issued by the Administrative Officer, with the exception of exempted one and two family dwellings and uses and agricultural uses and structures as provided under VSA and this Bylaw, until the Planning Commission grants site plan approval following public notice and public hearing.

209.1 The Planning Commission shall conform to the requirements of VSA T.24 4407 (5) of the Act when acting upon any application requiring site plan review. In considering its action the Planning Commission shall consider and impose appropriate conditions and safeguards with respect to:

- A. Adequacy of traffic access;
- B. Circulation and parking;
- C. Landscaping, screening and any adopted greenspace plan;
- D. The utilization of renewable energy resources.

The Planning Commission may consider and impose appropriate conditions and safeguards with respect to:

- A. The character of the neighborhood including historic architectural context and the intensity of the proposed use;
- B. The implementation and furtherance of the Town Plan;
- C. The capacity of existing or planned community facilities and possible impact on the implementation of any adopted capital budget program;
- D. Possible impacts on watersheds, drainage, potable water supplies and environmentally sensitive areas within and adjacent to the proposed development;
- E. Any other factor relating directly to the development proposal.

209.2 The Planning Commission, in considering the disposition of a submitted site plan proposal, may:

- A. Approve the proposal as submitted and direct the Administrative Officer to issue the required permit;
- B. Place special conditions on the applicant that must be met to the satisfaction of the Administrative Officer before the required permit is issued;
- C. Require from the applicant such design changes, additional information and or environmental study as to warrant a recess of the current hearing to be reconvened at the next Planning Commission meeting date.

The Planning Commission shall act to approve or disapprove any such site plan within sixty days after the date upon which it receives the proposed plan and failure to so act within such period shall be deemed approval.

209.3 Submission of Site Development Plan Map and Supporting Data. The applicant shall submit at least two sets of site plan maps and supporting data to the Planning Commission which shall include the following information presented in drawn forms and accompanied by written text to the satisfaction of the Planning Commission:

- A. An application form deemed complete and accurate by the Administrative Officer;
- B. Fees required for the application and public hearing;
- C. A site plan of the property showing existing features including contours if required by the Planning Commission, structures and their setbacks from property lines, existing lighting, large trees, streets, utility easements, rights of way, land use, deed restrictions, proposed structures including elevation drawings and their setbacks to the property lines, proposed lighting plan, proposed land use areas, proposed driveways and traffic circulation, proposed parking and loading spaces, proposed pedestrian walks, and proposed landscaping and greenstrip plans including site grading, landscape design and screening.
- D. A narrative of the relevant characteristics of the proposal which shall include if applicable: Hours of operation; estimated customer and employee counts; details of the proposed use or structure; a list of the names and addresses of all abutting property owners; estimates of delivery and service traffic; and any other information requested by the Planning Commission and the Administrative Officer for the proper deliberation of the application.

No less than seven days before a public hearing for a site plan review public hearing, the applicant shall submit evidence that a good faith effort has been made to notify all abutters of the site of the proposed project of the date, time, place and purpose of the public hearing. Such evidence shall take the form of sworn certificates of service, signed statements by the abutters or United States Postal Service return receipt cards. The Planning Commission may accept returned certified mail envelopes as evidence that a reasonable effort to contact an abutter has been made.

Section 210 Site Plan Design Standards

The purpose and intent of site plan design standards is to ensure continuity between properties requiring site plan review in regard to greenspace, landscaping, lighting and architectural context appropriate for the Town of Derby. The goals are to provide pedestrian friendly access, lighting that enhances site design while ensuring safety, mitigate the effects of summer sun and winter winds through appropriate walkway and parking lot shade and screening, provide greenspace for runoff control and storage for parking lot and walkway snow removal and to enhance the livability of more intensely developed properties. The Planning

Commission has discretionary powers in the implementation of the following subsections and may allow a deferral or phased execution of special conditions imposed under this Section to assure integration of its requirements with adjacent properties, to further Town Plan goals, or to ensure the public health, safety and welfare; in no case shall such a delay exceed three years from the effective date of a granted zoning permit. The Planning Commission may modify the requirements of this Section in those circumstances where literal enforcement may be contrary to the furtherance of the Town Plan or good planning practice. Submitted site plans or those portions thereof that meet all the criteria of the following subsections shall be deemed approvable by the Planning Commission.

210.1 Landscape and Greenspace Requirements. Specific landscaping and screening requirements shall be determined by the Planning Commission during site plan review or by the Zoning Board of Adjustment during conditional use review where screening may be required. The Zoning Board of Adjustment may apply minimum screening requirements and require more detailed review by the Planning Commission by requiring site plan review as a special condition of a conditional use permit. The following are minimum landscaping requirements:

A. For every twenty-five linear feet of street frontage commercial landscape plans shall include a minimum of one deciduous tree of a minimum trunk diameter of two and one half to three inches or one coniferous tree of five to six feet in height, four deciduous shrubs two to three gallon pots and two evergreen shrubs two to three gallon pots. The appropriate choice of deciduous or coniferous tree is at the discretion of the Planning Commission.

B. For every twenty-five linear feet of street frontage multi-family landscape plans shall include a minimum of two deciduous trees of a minimum trunk diameter of two and a half to three inches of trunk diameter or two coniferous trees of five to six feet in height, eight deciduous shrubs two to three gallon pots and four evergreen shrubs two to three gallon pots. The appropriate choice of deciduous or coniferous trees is at the discretion of the Planning Commission.

C. For commercial projects in excess of 40,000 square feet, for every twenty five linear feet of street frontage landscape plans shall include a minimum of two deciduous trees of two and a half to three inches of trunk diameter or two coniferous trees of five to six feet in height, eight deciduous shrubs two to three gallon pots and four evergreen shrubs two to three gallon pots. The appropriate choice of deciduous or coniferous trees is at the discretion of the Planning Commission.

D. Greenstrips for commercial and multi-family site plans shall be a minimum of ten feet in width, curbing is highly recommended; however additional landscaping of a scale that would prevent the passage of vehicles through such required greenspace may be substituted at the discretion of the Planning Commission.

E. Where any non-residential land use in a residential district or where a non-residential land use abuts a residential district, a landscaped greenstrip at least fifteen feet in width shall be maintained as a landscaped area. The Planning Commission may require additional landscape screening.

F. Landscape areas for planned unit developments shall be determined by the Planning Commission.

- 210.2 Lighting Design Requirements. Site plans submitted for review shall include exterior lighting design and specifications. Lighting designs shall strike a balance between the interests of on site security and safety and off site glare, neighborhood character and traffic safety. Site lighting shall be unobtrusive and shielded to prevent glare and direct lighting downward. Lighting sources are recommended to be metal halide lamps or shall be lamps of similar color and intensity. Heights for pole mounted lighting shall be scaled appropriately to building height and in no case shall exceed fifty feet in height.
- 210.3 Pedestrian Walkway and Access Design. Site plans submitted for review shall make appropriate provision for pedestrian access from all public rights of way to and between all public buildings and spaces within the proposed project. Such pedestrian access shall be so designed as to maximize the safety of pedestrians from motor vehicle traffic within the site. Wherever possible, as determined by the Planning Commission, pedestrian walkways shall be integrated with the public walkways and pedestrian walkways associated with adjacent properties. Such pedestrian walkways shall not be less than three feet in width and meet Agency of Transportation design standards. The Planning Commission may require walkways be landscaped to provide shade, screening and site enhancement.
- 210.4 Building Façade and Design. Site plans submitted for review shall include building elevations. In those districts where a design control review board has jurisdiction over building design, the applicant shall provide evidence that such approvals as may be required have been obtained. Whenever possible, as determined by the Planning Commission, façade design shall be consistent with the architectural context of:
- A. The historical architecture of the Town of Derby,
 - B. The historical architecture of northern New England generally and northern Vermont specifically, or
 - C. The immediate neighborhood where a specific architectural continuity can be cited.
- 210.5 The Planning Commission may prescribe, from time to time, rules and regulations to supplement the standards and conditions set forth in this Zoning Bylaw for site plan design requirements, provided the rules and

regulations are not inconsistent with the Zoning Bylaw. The Planning Commission shall hold a public hearing after public notice as required by Section 4447 of the Act prior to the establishment of any supplemental rules and regulations.

ARTICLE III: NON-CONFORMING USES AND STRUCTURES

Section 301 Non-conforming Uses

Non-conforming uses are uses of land or structures which are not compliant with the Bylaw regulations for the zoning district in which the land or structure are located in. The non-conformity is that part or characteristic of the non-conforming use that is not in conformance with the current zoning Bylaw. Compliant non-conforming uses are those conducted in conformity with applicable laws, ordinances, or regulations then in effect when the use commenced. Applicants seeking zoning permits under the provisions of this section are responsible for demonstrating the complying nature of the non-conformity in question. Under no circumstances shall the Zoning Administrator, the Planning Commission, or the Zoning Board of Adjustment approve or permit the enlargement, alteration or extension of a non-compliant non-conforming use. Any compliant non-conforming use may continue indefinitely, but:

- 301.1 Shall not be moved, enlarged or extended.
- 301.2 A non-conforming use shall not be changed to another non-conforming use unless such use is of the same or less non-conforming nature.
- 301.3 A non-conforming compliant use discontinued for a period of six months or more or has been changed to or replaced by a conforming use, the non-conforming use shall not be restored. Intent to resume a non-conforming use shall not confer the right to do so.
- 301.4 All persons seeking to change or restore a non-conforming use of land or structures shall apply to the Administrative Officer for a Certificate of Occupancy. The Administrative Officer may refuse to issue such a Certificate of Occupancy and refer such application to the Zoning Board of Adjustment for adjudication as a conditional use.
- 301.5 Persons seeking to continue or change a non-conforming use shall first establish that the non-conformity is a compliant non-conformity.
- 301.6 Compliant non-conforming uses damaged or destroyed by fire, explosion, accident, natural disaster, public enemy, or other accidental means outside the control of the owner may be resumed within substantially the same footprint only after public hearing, review and approval by the Zoning Board of Adjustment. Application for the resumption of such use must be submitted to the Administrative Officer within six months of such event and it shall be the responsibility of the applicant to establish the date of such event. In deliberation of such resumption of a compliant non-conforming use, the Zoning Board of Adjustment shall consider the

criteria utilized in reviewing conditional uses and may attach conditions to any approval.

301.7 Inhabited compliant non-conforming multi-family dwellings may increase the number of dwelling units only after public hearing and approval by the Zoning Board of Adjustment. In deliberation of whether to allow such an increase, the Zoning Board of Adjustment shall consider the same criteria utilized in reviewing conditional uses and may attach conditions to any approval. In addition such application shall meet the following additional criteria:

- A. The increase in units shall not modify the external dimensions of the structure;
- B. The increase in units shall not increase the livable square footage of the structure;
- C. The increase in units shall not increase the total number of bedrooms within the structure.

Section 302 Non-conforming Structures

Non-conforming structures are structures not in conformity with the current Zoning Bylaw in regard to the structure's bulk, dimensions, height, area, yards density or off street parking or load requirements. The non-conformity is that part or characteristic of the non-conforming structure that is not in conformity with the current Zoning Bylaw. Compliant non-conforming structures are those erected in conformity with applicable laws, ordinances, or regulations then in effect. Applicants seeking zoning permits under the provisions of this Section are responsible for demonstrating the compliant nature of the non-conformity in question. Under no circumstances shall the Administrative Officer, the Planning Commission, or the Zoning Board of Adjustment approve or permit the enlargement, alteration or extension of a non-compliant non-conforming structure. Any compliant non-conforming structure may exist indefinitely, but:

302.1 Shall not be moved, enlarged, altered or extended in any manner that would make the non-conforming structure more non-conforming except as provided in Section 302.5.

302.2 A non-conforming structure may be enlarged, altered or extended whereby the enlargement, alteration, or extension would be in compliance with the setbacks and other dimensional requirements of this Bylaw. In the event that such a proposal concerns one and two family dwellings, the Administrative Officer, upon determination that such alteration to an existing non-conforming dwelling meets the criteria listed in this subsection, may issue required permits administratively.

- 302.3 A compliant non-conforming structure damaged or destroyed by fire, explosion, accident, natural disaster or by public enemy, may be restored or reconstructed to its original state prior to such damage or destruction only after a public hearing, review, and approval by the Zoning Board of Adjustment. Permit application for the restoration or reconstruction of a compliant non-conforming structure must be submitted to the Administrative Officer within six months of the damage or destruction, the applicant is responsible for establishing the date of the damage or destruction.
- 302.4 A compliant non-conforming structure may be maintained or repaired. However, such action shall not increase the degree of non-conformity. Maintenance and repair does not include replacement or reconstruction of a non-conforming structure.
- 302.5 Compliant non-conforming inhabited one and two family dwellings and accessory structures may be enlarged, altered, extended, reconstructed, or replaced after a public hearing, review, and conditional use approval of the Zoning Board of Adjustment provided that such enlargement, alteration, extension, reconstruction or replacement:
- A. Does not increase the extent of the existing compliant non-conformity regarding setbacks or other Bylaw requirements;
 - B. Does not create any other non-compliance with Bylaw requirements;
 - C. The height of an existing compliant non-conforming dwelling may be extended provided that such an extension does not increase the footprint of the non-conformity and does not exceed the overall height of the structure.

Section 303 Limitations

Nothing contained in these regulations shall require any change in plans or construction of a compliant non-conforming structure or use permitted before the adoption or amendment of this Bylaw.

ARTICLE IV: GENERAL PROVISIONS

Section 401 Required Regulations

In accordance with Section 4406 of the Act, the following shall apply:

401.1 Existing small lots. Any lot in individual and separate and non-affiliated ownership from surrounding properties in existence on the effective date of any zoning regulation, including an interim zoning regulation, may be developed for the purposes permitted in the district in which it is located, even though not conforming to minimum lot size requirements, if such lot is less than one-eighth acre in area with minimum width or depth dimension of forty feet.

A. If such lot subsequently comes under common ownership with one or more contiguous lots, the lot shall be deemed merged with the contiguous lot for purposes of this Section. However, such a lot shall not be deemed merged and may be separately conveyed, if:

- 1) the lots are conveyed in their preexisting, compliant non-conforming configuration; and
- 2) on the effective date of any zoning regulations, each lot had been developed with a water supply and wastewater disposal system; and
- 3) at the time of the transfer, each water supply and wastewater system is functioning in an acceptable manner; and
- 4) the deeds of conveyance create appropriate easements on both lots for the replacement of one or more wastewater systems in case a wastewater system fails, which means the system functions in a manner:

a. that allows wastewater to be exposed to the open air, pool on the surface of the ground, discharge directly to surface water, or back up into a building or structure unless the approved design of the system specifically requires the system to function in such a manner;

b. so that a potable water supply is contaminated or rendered not potable;

c. that presents a threat to public health; or

d. that presents a serious threat to the environment.

B. If, subsequent to separate conveyance, as authorized under 401.1 A, a wastewater system fails, the owner shall be required to obtain from the secretary of natural resources a wastewater permit as required under the subdivision regulation or a certification that the wastewater system has been modified or replaced, with the result that it no longer constitutes a failed system.

401.2 Required frontage on, or access to, public roads or public waters. No land development may be permitted on lots which do not either have frontage on a public road or public waters or, with the approval of the Planning

Commission, access to such a road or waters by a permanent easement or right-of-way at least twenty feet in width.

401.3 Protection of home occupation. No regulation may infringe upon the right of any resident to use a minor portion of a dwelling for an occupation which is customary in residential areas and which does not change the character thereof. Any application meeting the requirements of Section 402.3(A) of this Bylaw shall be issued an administrative permit by the Administrative Officer for that purpose.

401.4 Equal treatment of housing.

A. Except as provided in Section 4407(6) of the Act, no zoning regulation shall have the effect of excluding mobile homes, modular housing, or other forms of prefabricated housing from the Town of Derby, except on the same terms and conditions as conventional housing is excluded.

B. No zoning regulation shall have the effect of excluding from the Town of Derby housing to meet the needs of the population as determined in Section 4382(c) of the Act.

C. No provision of this Bylaw shall be construed to prevent the establishment of mobile home parks pursuant to VSA T.10 chapter 153.

D. Except as provided in Section 4407(2) of the Act, no provision of this Bylaw shall have the effect of excluding for review as a conditional use one dwelling unit constructed within or attached to a primary single family residence located in a district in which single family residences are a permitted or conditional use. These accessory units shall satisfy the following requirements:

- 1) occupancy is restricted to not more than two persons, one of whom is related by blood, marriage or civil union to the owner of the single family residence, is disabled as defined in VSA T.18 251(2) or is at least fifty-five years of age;
- 2) floor space shall not exceed thirty percent of the floor space of the existing living area of the single family residence or four hundred square feet, whichever is greater; and
- 3) the primary single family residence is occupied by the owner.

Section 402 Special Regulations

Section 402.1 Auto Service Stations-Auto Service Station/Mini Mart

In all districts where a permitted or conditional use, auto service stations shall comply with the following:

- A. Lot size shall be at least 20,000 square feet or as required by district regulations, whichever is greater;
- B. Lot frontage shall be at least 150 feet, or as required by district regulations, which ever is greater;
- C. Lot depth shall be at least 125 feet, or as required by district regulations, which ever is greater;
- D. Pumps, lubricating and other service devices shall be located at least thirty feet from the front lot line, side lot lines and rear lot lines;
- E. All fuel and oil shall be stored at least thirty-five feet from any property line;
- F. All automobile parts and dismantled vehicles are to be stored within a building, and no service or repair work requiring the removal of parts is to be performed outside the building;
- G. Signs shall conform to state regulations and to Section 402.10 of this Bylaw;
- H. There shall be only two access driveways from the street, the maximum width of each access driveway shall be forty feet.

402.2 Fences and Walls

No zoning permit shall be required to erect, enlarge or alter a fence or wall six feet in height or less with the exception of fences erected within the front setback along public rights of way. A fence or wall in excess of six feet in height proposed in the industrial, commercial or commercial/industrial zones may be approved by the Planning Commission in a site plan review proceeding for the purposes of security or the public health, safety and welfare. Fences or walls in excess of six feet proposed for all zones other than industrial, commercial or commercial/industrial are a conditional use subject to public notice, public hearing and approval by the Zoning Board of Adjustment. However the following shall apply:

- A. Fences and walls six feet in height or less shall not be required to meet side and rear setback requirements for the zoning districts where located, however the fence or wall must be erected in a manner that would allow access to maintain the fence or wall in good condition without trespass on the adjoining property;
- B. This regulation does not apply to fences existing or erected on property lines designed for agricultural use;
- C. Fences of any height erected within a front setback along a public right of way shall be a conditional use and must receive a conditional use permit from the Zoning Board of Adjustment in accordance with the applicable regulations under Section 208.4.
- D. This regulation shall not constitute a waiver of any design review proceeding or design criteria as may be required by a design control overlay district for fences and walls of any height.

Section 402.3 Commercial Activities Conducted from Residences

For the purposes of regulating and restricting the encroachment of large scale commercial uses into predominantly residential neighborhoods, preserving the home occupation rights of home owners as protected under VSA T.24 4406, preserve the residential character of established neighborhoods and mitigate and control impacts of residential commercial uses on neighboring property owners and residents, the following classifications and use criteria are established in this subsection: Home Occupation, Residential Business or Service, and Cottage Industry.

402.3(A) Home Occupations

In all districts where one and two family dwellings are a permitted use, a home occupation shall comply with the following criteria:

1) The business or service shall be incidental to the use of the building as a residence. It shall not affect the character of the principal building as a dwelling or the character of the neighborhood.

2) The home occupation shall be conducted entirely within a minor portion of the livable floor space not to exceed 25% of the livable floor space of the dwelling. Family Care Homes and Private Care Homes shall be explicitly exempt from this criterion. Exterior alteration of the dwelling to indicate its use as a home occupation is prohibited.

3) Open storage of materials of any kind related to the home occupation is prohibited.

4) Nuisances such as excessive noise, smoke, dust, odors, etc, shall not be produced.

5) No traffic or vehicle parking shall be generated greater than would be expected in the neighborhood.

6) The owner of a home occupation business operation shall reside in the dwelling that is the subject of the home occupation permit.

7) No more than one employee who does not reside in the dwelling shall be employed by a home occupation. The owner of the home occupation shall provide on site parking for that employee.

If an application meets these criteria the Administrative Officer shall issue the required permit. In the event that an application does not meet these criteria the Administrative Officer shall refer the application for conditional use review before the Zoning Board of Adjustment, under Sections 402.3(B) and 402.3(C) below, upon payment of fees for a public hearing. A sign to advertise the home occupation may be allowed as provided in Section 402.10 of the Bylaw.

402.3(B) Residential Business or Service

In all districts where a conditional use, a residential business or service shall comply with the following criteria:

1) The residential business or service shall be incidental to the use of the building as a residence. It shall not affect the character of the principal building as a dwelling or the character of the neighborhood.

2) The residential business or service may be conducted from a portion of a dwelling not to exceed 50% of the livable floor space, or from an accessory structure; in no circumstance shall more than 25% of a residential lot be devoted to a residential business or service including; the footprints of the portions of all structures used for the residential business or service, any permitted open storage areas, and any required parking areas. Exterior alteration of the accessory structure or dwelling to indicate its use as a business or service is prohibited. Upon determination of the Zoning Board of Adjustment bed and breakfast operations may be exempt from this criterion.

3) Upon site plan approval by the Planning Commission, open storage of materials or inventory may be allowed if properly screened from view of neighbors and the public roadway.

4) Nuisances such as excessive noise, smoke, dust, odors, etc, shall not be produced.

5) Additional traffic generated by the residential business or service shall not place excessive increased demand on local roads and shall not have a negative impact on the residential character of the neighborhood.

6) The owner of a residential business or service shall reside in the dwelling that is the subject of the residential business or service conditional use permit.

7) No more than three employees who do not reside in the dwelling shall be employed by a residential business or service. The owner of the residential business or service shall provide on site parking for all employees.

8) The owner of a residential business or service shall provide adequate on site parking for clientele as determined by the Zoning Board of Adjustment.

Upon determination that a conditional use application meets these criteria the Zoning Board of Adjustment may refer the application to the Planning Commission for site plan review. The Administrative Officer shall warn a public hearing for that purpose upon payment of fees for an additional public hearing. A sign to advertise the residential business or service may be allowed as provided in Section 402.10 of the Bylaw.

402.3(C) Cottage Industry

The term cottage industry is here used to describe home businesses that involve the manufacture of goods or the provision of services using: chemical processes; high heat; equipment or technique that produces high levels of sound or vibration; or produces emission of dust, smoke or odors. Examples of a cottage industry include but are not limited to black smithing, silk screen printing, firing of ceramics or pottery, welding, and commercial scale woodworking. In all districts where a conditional use, a cottage industry shall comply with the following criteria:

- 1) The cottage industry shall be incidental to the use of the building as a residence. It shall not affect the character of the principal building as a dwelling or the character of the neighborhood.
- 2) The cottage industry may use a minor portion of the dwelling not to exceed 20% of the livable floor space for office purposes, the manufacture of goods or the provision of services is to be conducted entirely within an accessory structure; in no circumstance shall more than 25% of a lot be devoted to a cottage industry including; the footprints of the portions of the dwelling and accessory structures used for the cottage industry, all areas used for open storage, and any required parking areas. Exterior alteration of the dwelling or the accessory structure to indicate its use as a cottage industry is prohibited.
- 3) Upon site plan approval by the Planning Commission, open storage of materials or inventory may be allowed if properly screened from view of neighbors and the public roadway.
- 4) Neighboring properties and residents shall be protected from nuisances such as excessive noise, smoke, dust, heat, vibration, odors etc, by means deemed adequate by the Zoning Board of Adjustment.
- 5) Additional traffic generated by the cottage industry shall not place excessive increased demand on local roads and shall not have a negative impact on the neighborhood.
- 6) The owner of the cottage industry shall reside in the dwelling that is the subject of the cottage industry conditional use permit.
- 7) No more than three employees who do not reside in the dwelling shall be employed by a cottage industry. The owner of the cottage industry shall provide on site parking for all employees.
- 8) The owner of a cottage industry shall provide adequate on site parking for clientele as determined by the Zoning Board of Adjustment.

Upon determination that a conditional use application meets the above criteria the Zoning Board of Adjustment may refer the application to the Planning Commission for site plan review. The Administrative Officer shall warn a public hearing for that purpose upon payment of fees for an additional public hearing. A sign to advertise the cottage industry may be allowed as provided in Section 402.10 of the Bylaw.

Section 402.4 Junkyards

402.4(A) Term Definitions

- 1) Junkyard means any place of outdoor storage or deposit, whether in connection with a business or not, which is maintained, operated or used for storing, keeping, processing, buying or selling junk or junk motor vehicles or a scrap metal processing facility.
- 2) Junk means old or scrap copper, brass, iron, steel, and other old or scrap nonferrous material, including but not limited to rope, rags, batteries, glass, rubber debris, waste, trash, appliances, or any dismantled, discarded, wrecked, scrapped or ruined motor vehicles or parts thereof.

3) Junk motor vehicle means a discarded, dismantled, wrecked, scrapped or ruined motor vehicle or parts thereof; for purposes of enforcing this provision any motor vehicle without current motor vehicle tags or a full set of properly inflated tires is considered a junk motor vehicle.

402.4(B) Requirement for Establishment, Maintenance and Operation of Junkyard

A person shall not operate, establish, allow the establishment of, maintain, or operate a junkyard on any property unless that person:

1) Holds a Certificate of Approval for the location of the junkyard. Application for such a certificate of approval shall be made in writing to the Board of Selectmen. Such application shall include a certificate of compliance issued by the Zoning Board of Adjustment certifying that the proposed junkyard complies with this Zoning Bylaw. The Board of Selectmen shall not issue any Certificate of Approval without first holding a public hearing as required by VSA T.24 Section 2252. Notice of such hearing shall be mailed to the applicant and shall be published not less than seven days prior to such public hearing. This public hearing shall be held not less than two or more than four weeks after receipt of the application. When considering an application for a Certificate of Approval the Board of Selectmen shall consider any and all applicable requirements set forth in VSA T.24 Subchapter 10.

2) Holds a license to operate a junkyard business. Application for a license to establish, maintain or operate a junkyard shall be made in writing to the State Transportation Board or its duly delegated representative in accordance with VSA T.24 Subchapter 10 Section 2261.

402.4(C) Penalties and Injunctions

In addition to the penalties provided for in Section 905 of this Bylaw and the penalty provisions of VSA T.24 Subchapter 10 Section 2282, the Board of Selectmen may seek an injunction against the establishment, operation or maintenance of a junkyard which is or will be in violation of this Bylaw or Vermont state statute.

Section 402.5 Wind Turbines and Electrical Generation

402.5(A) On Grid Systems

Upon notification of the Public Service Board's consideration of an application for a Certificate of Public Good under VSA T.30 Section 248 for the erection of an electrical generation wind turbine the Town of Derby Planning Commission shall undertake an examination of the proposal and submit a recommendation to the Board of Selectmen on the issue of intervention as an interested party. Such report shall include, but not necessarily be limited to, consideration of the affect of such proposals on the Town Plan, the orderly development of the Town of Derby, any

existing, proposed or future viewshed preservation overlay districts and the protection of irreplaceable or environmentally sensitive natural areas.

402.5(B) Off Grid Systems

Wind turbines for off-grid applications are a conditional accessory use and shall be subject to a conditional use proceeding before the Zoning Board of Adjustment and meet conditional use criteria as established in Section 208.4 of this Bylaw. In addition such proposals shall meet these minimum requirements:

- 1) Applicants shall submit such tower plans and specifications as are required for the Zoning Board of Adjustment to determine that such towers meet sound engineering design for safe operation;
- 2) Towers shall be setback a minimum of one foot from all property lines for every foot of vertical height;
- 3) Guy cables and any other supplementary supporting structures shall meet the minimum setback requirements for accessory structures in the zoning district in which the tower is located;
- 4) Noise levels produced by wind turbines and associated blades under normal operating conditions shall not exceed 50 dbl as measured at all property lines.

Where such off-grid wind turbine applications are accessory to a commercial or industrial use the Zoning Board of Adjustment may refer the application for site plan review before the Planning Commission as provided under Section 208.6 of this Bylaw.

402.6 Service Areas

In any district all areas designated, used or intended to be used as service areas for any building or land use, other than one and two family dwelling units, shall be screened from view with either a wall, a solid fence or a fence and evergreens to a height of at least six feet above grade level, on all sides where the adjacent land is in residential use.

402.7 Parking, Access, Loading & Circulation Requirements

402.7A Parking & Circulation

These parking and circulation requirements are recommendations only and are subject to review and change by the Planning Commission during site plan review and/or Zoning Board of Adjustment during conditional use or appeal hearings. The principle intent in regulating the design of parking areas is to ensure safe and effective traffic flow and the integrity of access to a public roadway. They shall be used by the Zoning Administrator to determine compliance in conjunction with permits issued under Section 209 decisions that site plan review is not required, and Section 903, Certificates of Occupancy. Parking and circulation shall be provided in accordance with the following provisions:

1) Upon submission of a parking plan approved by the Planning Commission, the Trustees of the Villages of Derby Line and Derby Center may allocate public parking spaces to applicants to satisfy the requirements of this Section. Under no circumstance shall the numbers of public parking spaces allocated to applicants exceed the number of spaces specified in the approved parking plan. Applicants who require such allocation to meet the requirements of this Section shall submit documentation of such allocation in submitted materials. Upon approval of the Zoning Board of Adjustment private off street parking may be utilized to fulfill parking requirements when located within 300 feet of the proposed use. The applicant must demonstrate to the Zoning Board of Adjustment that any such arrangement with a private property owner does not reduce spaces for other current uses below the minimums called for in this Section and that such arrangement shall run with the use permit for as long as is required to meet minimum parking requirements as directed by this Section or Finding of Fact conditions that may be imposed by the Zoning Board of Adjustment. It is the intent of this Bylaw that on site parking is provided where ever possible.

2) Required off street parking areas shall be so designed, maintained, and regulated as to provide safe and effective circulation and to ensure that no circulation incidental to parking shall be on any public street, walk, or alley, and so that any vehicle may be parked or moved without moving another vehicle.

3) All off street parking areas for three or more vehicles shall be maintained to ensure dust free operations. All signage, pavement markings, striping, or other means of regulating parking and circulation shall be maintained to ensure visibility.

4) No change in use, tenancy, or occupancy of a parcel of land or building, including construction of a new building or an addition to a building, which requires additional parking or loading spaces, shall be allowed until such additional parking or loading is approved and executed.

5) Calculation of the number of spaces shall be in accordance with the following:

- a. If the number of off street parking places results in a fraction, each fraction of one-half or more shall constitute a full parking space.
- b. In churches and other places of public assembly in which patrons or spectators occupy benches, pews, or other similar seating facilities, each 24 inches of such seating shall be counted as one seat for the purpose of this provision.
- c. Except in business complexes or malls or where joint parking arrangements have been approved, if a structure contains two or more uses, each use shall be calculated separately in determining the total off street parking spaces required.

6) Handicap parking and access shall be provided consistent with state and federal regulations.

7) Joint parking between different types of land uses on a single site may be allowed by approval from the Planning Commission if the following conditions are met:

a. Because of the hours of operation of the respective uses, their sizes and modes of operation, there will be available to each during its primary hours of operation an amount of parking sufficient to meet the needs of such use.

b. The joint use of the parking facilities shall be protected by a recorded instrument to be furnished to the Zoning Administrator prior to the issuance of a Certificate of Occupancy.

402.7B Parking, Access, Loading and Circulation General Design Requirements

These parking and circulation design requirements are recommendations only and are subject to review and change by The Planning Commission during site plan review or the Zoning Board of Adjustment during conditional use or appeal hearings. They shall be used by the Zoning Administrator to determine compliance in conjunction with permits issued under Section 209 decisions that site plan review is not required, and Section 903, Certificates of Occupancy. Parking and circulation areas shall be designed in conformance with the following provisions and tables:

1) Parking stalls shall have a minimum dimension of nine feet by eighteen feet. Stall and aisle dimensions for specific parking lot layouts shall conform to minimum design requirements detailed in Table 402.7 (1).

2) Business establishments containing drive-up facilities, including restaurants and financial institutions, and auto service stations/mini-marts, shall provide a stacking area for vehicles on the site. All such spaces shall be entirely on the site and shall be in addition to parking spaces required for the principle use. The vehicle stacking area shall not extend beyond the street right of way line and shall be delineated by pavement markings in such a manner that vehicles waiting in line will not interfere with or obstruct the primary driving, parking, or pedestrian facilities on the site.

3) The number of off street parking spaces for a specific use shall be provided as required and detailed in Table 402.7 (2).

4) Off street loading for bulk pick-ups and deliveries shall be scaled to the size of delivery vehicles expected to be used and accessible to such vehicles when all off street parking places are occupied may be required for all commercial and industrial uses as determined by the Planning Commission or the Zoning Board of

Adjustment. Guideline dimensions for such spaces are twelve feet in width, fifty-five feet in length, and of sufficient height for safe building clearance. The Planning Commission or the Zoning Board of Adjustment may require such loading areas have direct access to the street, public alley or private driveway upon determination that such access is required for the safe use of off street parking or loading area. Required off street loading spaces shall not be included in space counts for off street parking requirements.

5) Access shall be designed and maintained in accordance with appropriate professional standards to preserve the integrity of traffic flow, safety of the public roadway, and safe and effective on site circulation. Access shall meet at least the following minimum design requirements:

- a. Driveways shall be located at least fifty feet from a street line intersection for all uses, with the exception of access to arterial roadways where the Planning Commission may require greater separation distances to insure the public safety.
- b. All driveways and parking areas, with the exception of those serving one and two family dwellings, shall be located a minimum of ten feet from any property line.
- c. All driveways and parking areas serving one and two family dwellings shall be located a minimum of five feet from any property line.
- d. The Planning Commission or the Zoning Board of Adjustment may waive the setback requirements provided above for joint driveways, serving more than one parcel, upon determination that such driveway provides safer, more effective access to and traffic flow on the public roadway.

Table 402.7(1)
Parking Stall and Lot Design Criteria

Angle	Curb Length	Stall Length	Aisle*
45	12.7'	18'	13.5'
60	10.6'	18'	18.5'
76	9.5'	19'	23'**
90	9'	18'	24'***
parallel	20'	8'	22'

* all dead end parking rows shall provide a turnaround a minimum of thirteen feet in length

** one way aisles only

*** aisles which access one row of 90 degree angle parking stalls may be 22 feet wide

Table 402.7(2)
Parking Space Counts per Use

Use	Stalls Required	Comments
Accessory Apartment	1	
Accessory Structure	Per PC, ZBA or ZA requirement	Associated with non-residential use
Accessory Use	Per PC, ZBA or ZA requirement	Associated with non-residential use
Agriculture	0	Not regulated
Auto Service Station	1 per employee & 2 per service bay	Drive-up requirements may apply, see sec. 402.7B 2)
Bank	1 per employee, 2 per teller & loan officer	Drive-up requirements may apply, see sec. 402.7B 2)
Bulk Storage Facility	1 per employee on major shift	Loading dock requirements may apply, see sec. 402.7B
Business Complex	4.5 per 1000 sq ft gross floor area	Loading dock requirements may apply see sec. 402.7B
Car Wash	2 per service bay	
Church	1 per 4 seats	See 402.7A 5) b.
Clinic	1 per employee on major shift & 4 per examination room	
Club, Membership	1 per employee on major shift & additional spaces per PC or ZBA	Additional requirements may be special conditioned in findings
Contractor's Yard	1 per employee on major shift	
Day Care Home/Day Care Facility DCH/DCF	1 per employee on major shift & additional spaces per PC or ZBA finding	DCH is a residential business, DCF is a commercial use, see sec. 402.8
Dwelling, One and Two Family	2 per dwelling unit	
Dwelling, Multi-Family	1.5 per dwelling unit & additional spaces per PC or ZBA finding	
Essential Service	0	
Essential Service-Building	1 per employee on major shift & additional spaces per PC or ZBA finding	
Gravel Pit	0	Circulation requirements may apply see sec. 402.7B
Hot Mix Plant	1 per employee on major shift	Circulation requirements may apply see sec. 402.7B
Hospital	1 per employee on major shift & additional spaces per PC or ZBA finding	
Junk Yard	1 per employee on major shift	Circulation requirements may apply see sec. 402.7B

Light Manufacturing	1 per employee on major shift & 1 per 300 sq. ft. gross office space	Loading dock and circulation requirements may apply, see sec. 402.7B
Hotel/Motel	1 per employee on major shift & 1 per guest room	Spaces required for full service dining are in addition to guest room requirement
Lodging House	1 per employee on major shift & 1 per guest room	
Manufacturing, Heavy/Medium	1 per employee on major shift & additional spaces per PC or ZBA finding	Loading dock and circulation requirements may apply, see sec. 402.7B
Marina	1 per employee on major shift & 1 per berth	
Medical Office	1 per employee on major shift & 4 per examination room	
Motor Vehicle Repair Facility	1 per employee on major shift & 1 per service bay & 1 per 300 sq. ft. of gross office space	Circulation requirements may apply, see sec. 402.7B
Motor Vehicle Sales & Repair	1 per employee on major shift & 1 per service bay & 1 per 300 sq. ft. of gross office space	Parking stalls used for open storage of vehicle inventory shall not be used to meet the requirements of this sec.
Neighborhood Store	1 per 250 sq. ft. gross floor area	
Neighborhood Personal Service	1 per 250 sq. ft. gross floor area	
Park	Per PC or ZBA finding	
Office	1 per 250 sq. ft. gross floor area	
Personal Service	1 per 250 sq. ft. gross floor area	
Printing/Publishing	1 per employee & 1 per 300 sq. ft. of gross office space	Printing operations of large scale may be considered an industrial use, circulation and loading dock requirements may apply see sec. 402.7B
Private School	1 per employee on major shift & 1 per 3 pupils	Circulation requirements may apply see sec. 402.7B
Public Assembly (use)	1 per 4 seats	See sec. 402.7A 5) b.
Public Facility	1 per employee on major shift & additional spaces per PC or ZBA findings	
Recreation, Indoor	1 per employee on major shift & 1 per 4 seats & additional per PC or ZBA finding	See sec. 402.7A 5) b.
Recreation, Outdoor	As per PC or ZBA finding	See sec. 402.7A 5) b.
Retail Store	1 per 250 sq. ft. gross floor area	Circulation & loading dock requirements may apply see sec. 402.7B
Recycling Transfer Station	1 per employee on major shift & 2 additional	Circulation & loading dock requirements may apply see sec. 402.7B
Research/Testing Laboratory	1 per employee on major shift & 1 per 300 sq. ft. gross office space	Loading dock requirements may apply see sec. 402.7B
Residential Care Home/	1 per employee on major shift & 1	

Residential Care Facility	additional per 3 client beds	
Restaurant	1 per 3 seats	See sec. 402.7A 5) b., 402.7B 2), & 402.7B 4) these requirements may apply
Residential Business or Service	As per PC or ZBA finding	See sec. 402.8
Slaughter House	1 per employee on major shift & 1 per 300 sq. ft. gross office space	Circulation & loading dock requirements may apply see sec. 402.7B
Veterinary Hospital	1 per employee on major shift & 1 per 250 sq. ft. of gross floor area	
Warehouse/Trucking Terminal	1 per employee on major shift	Circulation & loading dock requirements may apply see sec. 402.7B
Any use not specified	As per ZA, PC or ZBA finding	

402.8 Signs

Signs as defined in Article XI shall comply with the following requirements except as exempted in Section 1102.

A. Signs are exempt from the setback requirements of each district. Signs shall be located so as not to be a visual obstruction to vehicle or pedestrian traffic.

B. All signs must be constructed of durable materials and shall be maintained in good repair at all times.

C. For purposes of this provision sign area is calculated per display area. In cases where a permitted two sided freestanding sign is to be limited to x number of square feet, x is for each display area (i.e. x=100 square feet per side for two sided road sign, 100 square feet per side is allowed).

D. In all districts where applicable, a sign not exceeding eight square feet is permitted which announces the name, address, profession, home occupation, residential business or service, or cottage industry of the occupant of the premises on which said sign is located, such sign is considered included in the permit issued for a home occupation, residential business or service, or cottage industry, but shall only be considered compliant when such permit has been issued.

E. A bulletin board not exceeding twenty four square feet is permitted in connection with any church, school or similar public structure.

F. A temporary real estate sign, not exceeding twelve square feet is permitted on the property being sold, leased or developed and shall not require a permit; however such sign shall be removed promptly when it has fulfilled its function.

G. A business sign shall be permitted with the issuance of an administrative permit upon submission of a complete application, design plan and required fees, in connection with any legal business or industry, in accordance with the following requirements:

1) Two signs are permitted for any legally establish business, one free standing, and the other attached to the building, except as provided below.

- 2) A business located on a corner lot shall be allowed one free standing sign and one sign attached to the building on each side of the building that faces a street or highway.
- 3) The primary purpose of the sign shall be for identification purposes and not for advertising and may state only the owner, trade names, trademarks, products sold, and/or the business or activity conducted on the premises on which the sign is located. Legal businesses permitted to sell motor vehicle fuels may post current unit prices on signs that meet the requirements of this provision.
- 4) Signs shall not extend above the roof or parapet of the building. The height of a free standing sign shall not exceed 25 feet without approval of a Planning Commission site plan review.
- 5) Illuminated signs shall be shielded in such a way as to produce no glare, undue distraction, confusion or hazard to the surrounding area or to vehicular traffic. Illumination shall be properly focused upon or from within the sign itself.
- 6) Signs which are animated, flashing, or with intermittent illumination are prohibited.
- 7) Signs shall not project over the public right of way or property lines except in commercial or industrial districts. In these districts signs may project over sidewalks to within one foot of the curb providing the signs are at least ten feet above the sidewalk.
- 8) Sign size shall be in proportion to the land use, lot and building size. Maximum square footage of any freestanding sign approved under an administrative permit shall be 100 square feet, with the building sign not to exceed 10% of the total area of the building façade. Signs that exceed these limits must be approved by the Planning Commission in a site plan review proceeding.
- 9) In the event that a business occupies two or more contiguous retail units or store fronts, that business shall be allowed one sign on the building up to 10% of the total area of the façade occupied by that business.
- 10) Sign size for mall and business complexes shall be computed as follows:
 - a. malls and business complexes up to four businesses-150 square foot freestanding sign, one building sign per business up to 25 square feet;
 - b. malls and business complexes five or more businesses-150 square foot freestanding sign with an additional 14 square feet per business to a maximum of 250 square feet of total area, one building sign per business up to 25 square feet;
 - c. For complexes with nine or more businesses an additional directory sign may be erected with Planning Commission approval no less than 50 feet from the entrance to the complex.
- 11) Temporary, moveable signs, banners, balloons or other portable advertising devices designed to advertise products for sale are subject

to administrative permitting, such permit shall not be issued for a time period to exceed seven consecutive days.

12) Signs that are built into or are an integral part of the edifice of a building are permitted and are not considered as a sign attached to the building.

13) Signs located in design overlay districts must conform to any applicable design control regulations.

Section 402.9 Sand – Soil – Gravel Pits

In accordance with Section 4407(8) of the Act, in any district the removal of soil, sand or gravel for sale, except when incidental to the construction of a building on the same premises, shall be permitted only upon approval of a plan for the rehabilitation of the site by the Zoning Board of Adjustment after a legally warned public hearing. In any district, the following provisions shall apply:

A. Extraction of soil, sand, and gravel shall not occur on lots of less than five acres;

B. The removal of all material shall be conducted with due regard the contours in the vicinity. The digging or creating of pits or steep slopes shall not be permitted, unless provision is made to refill such pit;

C. The excavation operation site shall be graded smooth and left in neat condition. Cut slopes and spoil banks shall not be allowed to remain. The operation site shall be fertilized, mulched and reseeded so as to establish a firm cover of grass or other vegetation sufficient to prevent erosion;

D. All surface drainage affected by extraction operations shall be controlled by the owner to prevent erosion debris and other loose materials from filling any drainage course, street or private property;

E. No excavation or blasting shall take place within two hundred feet of any street or property line. No blasting shall occur before 6 am or after 6 pm. No excavation shall occur before 6 am or after 8 pm;

F. No power activated sorting machinery or equipment shall be located within one hundred feet of any street or other property line, and all such machinery shall be equipped with satisfactory dust elimination devices;

G. The Zoning Board of Adjustment may attach any additional conditions as it may find necessary for the safety and general welfare of the public.

402.10 Temporary Vendors, Farm Stands, Non-profit Fund Raising

A. A temporary or itinerant vendor shall obtain a zoning permit prior to engaging in the selling or bartering of goods, wares, merchandise or services.

B. A temporary or itinerant vendor shall be subject to Derby Zoning Bylaw requirements in regard to setbacks, signs, performance standards and may be subject to the parking and traffic access provisions of site plan approval at the discretion of the Administrative Officer.

C. The provisions of this Section shall not apply to a person who sells or offers for sale goods, wares, merchandise produced or grown or made on his own land and sold on site. This exemption shall not apply to a person who conducts such sales from a permanent structure designed as a place of business for such sales.

D. Any religious, charitable, educational or service organization desiring to conduct such sales or service shall be exempt from the payment of any fee for such zoning permit.

E. Any religious, charitable, educational or service for a period not to exceed three consecutive days shall be exempt from obtaining a zoning permit.

Section 403 Miscellaneous Provisions and Interpretations

Section 403.1 Lots

A. Located in two zoning districts

Where a district boundary line divides a lot of record at the time such line is adopted, the regulations for the less restricted part of such a lot shall extend not more than thirty feet into the more restricted part, provided the lot has frontage on a street in the less restricted district.

B. Principal Use

No more than one principal use shall be permitted on a lot without Planning Commission site plan review and approval. In consideration of multiple use proposals the Planning Commission shall require that on-site parking and lot size requirements have been met for all proposed uses.

C. Reduction of Required Area

No lot shall be so reduced in area that the area, yards, lot width, frontage, coverage or other requirements of these regulations shall be smaller than herein prescribed for each district. The provisions of this section shall not apply when part of a lot is taken for public purposes.

D. Width

The lot width shall be determined by deriving the average of the front lot line as defined as that lot line abutting either a public right of way, a deeded right of way, or the property line crossed by a deeded right of way;

and the property line directly to the rear of the front line. In the event that no rear property line exists, the number used to calculate the average is zero.

E. Length

The lot length shall be determined by deriving the average of the side property lines as defined as those property lines that connect the rear and front property lines. In the event that no rear property line exists, the side property lines are those property lines not defined as the front line by Subsection D. above.

Section 403.2 Structures

A. Apartment Houses and Apartment Buildings

In addition to required setback yard areas and parking areas, apartment houses and buildings shall provide a minimum of 500 square feet of open common space per dwelling unit.

B. Burned and Destroyed Buildings

No owner or occupant of land in any district shall permit fire or other ruins to be left, but within six months shall remove or refill the same to clear ground level or shall repair, rebuild or replace the structure.

C. Docks and Boathouses – Marinas

The required setbacks established for shoreland districts shall not apply to docks, boathouses or marinas. Such structures shall comply with state permit requirements.

D. Handicap Accessibility

The setback requirements required by district tables do not apply to pre-existing structures to which handicap accessibility is required.

E. Height

The height of any building shall be measured from the average finish grade along the building façade. The following regulations shall apply to structure heights:

- 1) Building heights in residential and village districts shall not exceed thirty-five feet.
- 2) Building heights in commercial, commercial/industrial, and industrial districts shall not exceed seventy-five feet. Buildings in excess of thirty-five feet shall be setback from all property lines at least one foot for every foot of vertical height.
- 3) Chimneys, spires, silos and other agricultural structures, towers, stage houses, lightning rods, or other like superstructure not used for human occupancy may extend above the height limit specified, however all

supplemental support structures such as guy cables must meet district setback requirements.

F. Marinas

A marina which accommodates boats with toilet facilities shall also make provision for shore based facilities for pumping and disposal of sanitary wastes from the boats.

G. Mobile Homes

Mobile homes shall be placed on a level compacted surface or on permanent foundation. In any case the area between the bottom edge of the mobile home and the ground shall be filled in by foundation, skirting or comparable material.

H. Obstruction of Vision

On a corner lot, regardless of district, within the triangular area formed by the intersection of two street property lines and a third line joining them at points twenty-five feet from the line intersection, there shall be no obstruction to vision between the height of three feet and ten feet above the grade of each street.

I. Small Structures Exempted from Permitting

Structures that meet all of the following criteria are exempt from permit requirements:

- 1) Structure shall not be permanently anchored to the ground or have a permanent foundation;
- 2) The structure shall not exceed thirty-two square feet in area;
- 3) The structure shall not exceed five feet in height.

J. Swimming Pools

In ground swimming pools shall be enclosed by a suitable fence or wall at least four feet in height and are subject to permitting. Above ground pools requiring rigid framing and any associated decking are subject to permit requirements. Inflatable above ground pools are exempt from permitting.

K. Temporary

Temporary permits may be issued by the Administrative Officer for a period not to exceed one year, for nonconforming uses incidental to construction projects provided such permits are conditioned upon the removal of such structures by the expiration date of the permit. Such permits may be renewed upon application for an additional period not to exceed one year.

Section 403.3 Yards

A. Accessory Structures

Accessory structures and uses must comply with required setbacks.

B. Required Area

Space required under these provisions to satisfy area, yard or other open space requirements in relation to one building shall not be counted as part of required open space for any other buildings.

C. Front Yard Setback

Required front yard setbacks shall be measured as follows in order of preferred method:

- 1) From the edge of the public right of way;
- 2) From the lot line of record where a deeded right of way borders a lot or parcel;
- 3) From the lot line designated as the front line in the deed of record.

D. Lots Located on Any Public Street Frontage

Any yard adjoining a street shall be considered a front yard for purposes of administering these provisions except in the following circumstances:

- 1) Yards abutting the I-91 right of way, which shall be considered either side or rear yards as defined by this Bylaw;
- 2) Where the Zoning Board of Adjustment, in consideration of a variance request, finds,
 - a. the lot has public road frontage on more than two property lines,
 - b. one of the public roads is clearly secondary to the others,
 - c. such circumstances create a hardship for the applicant as defined by Section 802 of this Bylaw,
 - d. no other street frontage lot line has been granted side lot line designation.

In the event that such a variance has been granted by the Zoning Board of Adjustment, the designation of the property line in question as a side property line shall be entered into the Town Land Records and within any permit issued as a result.

E. Greenstrip Requirements

All commercial uses shall maintain a ten foot wide greenstrip along all public road frontages which shall not be used for any purpose other than landscaping, permitted access drives and permitted road signs.

Section 404 Yard Sales

Yard sales, which term shall also include garage sales, tag sales or flea markets, are those sales to the general public of new and used items of personal property conducted upon a lot as an accessory use for not more than fourteen days

in one calendar year. Sales carried on for more than fourteen days in any one calendar year shall be considered a residential business as defined under Section 402.3. Such sales are exempt from permitting within the fourteen day time limit.

Section 405 Open Storage

In the case of open storage of materials, inventory for sale or motor vehicles the following shall apply:

- A. In all districts, the open storage of material or vehicles of any kind in association with a permitted or conditional use may be allowed if adequate screening under the provisions of Section 210.1 is provided;
- B. Motor vehicle repair facilities, motor vehicle sales/repair facilities and small engine sales/service facilities shall not store dismantled vehicles, equipment or parts thereof outside the facility. All dismantled vehicles, equipment or parts thereof shall be stored within a building and all repair work shall be performed within the building.

Section 406 Time Limit to Commence Use or Construction

Any use or construction authorized by a zoning permit shall be commenced not later than two years from the date all required permits are obtained unless a specific phased construction schedule has been imposed as a special condition by the Planning Commission.

Permits may be renewed by the Administrative Officer upon submission of application and fees for construction that required site plan review for periods not to exceed one year provided that no changes to site plan are proposed.

Section 407 Essential Services

Essential services, as a use distinct from essential service buildings, shall be permitted in all districts and shall not require zoning permits.

ARTICLE V: OVERLAY DISTRICT REGULATIONS

Section 501 Source Protection Area

To promote the health, safety and welfare of the community by protecting important water resources of the Town of Derby, the Source Protection Area (SPA) is created to protect the public water supplies within the delineated overlay district. To that end the following overlay district regulations shall apply.

501.1 Scope of Authority

The SPA District is an overlay district and shall be superimposed on the underlying districts established by this Zoning Bylaw. All regulations of the Town of Derby Zoning Bylaw applicable to such underlying districts shall remain in effect, except where the SPA District imposes additional regulations, such regulations shall prevail.

501.2 District Delineation

- A. The SPA district herein established to include all lands within the Town of Derby Source Protection Area.
- B. The official zoning map delineates the boundaries of the SPA District. The official zoning map is on file with the Town Clerk of the Town of Derby.
- C. Where there is a dispute as to where a boundary lies, the location of the boundary shall be determined by the Town of Derby Planning Commission as provided for in Section 203.1.

501.3 Special Regulations

- A. In areas within the SPA District which are not served by municipal sewage systems, the minimum allowable lot size shall be one acre.
- B. Floor drains may only be allowed if they drain into a holding tank or into a municipal sewer or as permitted. On site discharge containing hazardous materials from floor drains shall be prohibited.
- C. No more than twenty percent (20%) of any lot or tract within the SPA district shall be covered with pavement, roofing or other material impervious to water.
- D. All runoff from impervious surfaces within the SPA District shall to the extent possible be recharged on the site by being diverted toward areas covered with vegetation for surface infiltration. Drywells shall be used only where other methods are infeasible, and shall be preceded by oil, grease and sediment traps to facilitate removal of contamination. All drainage ways, drywells and sediment traps shall be permanently maintained in full working order by the owner.

- E. For any use retaining less than thirty percent (30%) of the total lot area in its natural vegetative state, the application shall be accompanied by evidence demonstrating that such removal of vegetative cover shall not result in decreased recharge of the groundwater deposit, or increased sedimentation of surface waters. The application shall indicate any restoration and erosion control measures proposed for the site.
- F. The use of sodium chloride for ice control shall be minimized, consistent with public highway safety requirements.
- G. Commercial fertilizers, pesticides, herbicides or other leachable materials shall be applied in accordance with standards promulgated by the Vermont Department of Agriculture or its successor agencies, and shall not be used in amounts which result in groundwater contamination levels exceeding Vermont Drinking Water standards.
- H. Aboveground storage tanks for oil, gasoline or other petroleum products shall be placed in a building on a diked, impermeable surface to prevent spills or leaks from reaching groundwater. Floor drains shall be plugged to prevent discharges of leaks.
- I. Indoor storage of salt, deicing materials, pesticides and herbicides must be stored in an enclosed structure with a concrete pad floor.

501.4 Prohibited Uses

Prohibited uses include but are not limited to:

- A. Any use not permitted in the underlying zoning district.
- B. Commercial and industrial uses, not agricultural, which manufacture, use, process, store or dispose of hazardous materials as a principle activity, including but not limited to metal plating, chemical manufacturing, wood preservation, trucking or bus terminals, food processing, photographic processing, motor vehicle servicing or fuel sales, furniture or wood stripping, dry cleaning and auto body repair.
- C. Chemical, medical and bacteriological laboratories or manufacturing facilities.
- D. Car washes, except when serviced by public water and sewer.
- E. Solid waste landfills, dumps, junk and salvage yards.
- F. Wastewater treatment facilities.
- G. Commercial and industrial uses, not agricultural, which involve the on site disposal of processed wastes from operations.
- H. Disposal of liquid, leachable or hazardous materials, except for residential subsurface waste disposal systems, normal agricultural operations and business or industrial uses which involve only on site disposal of wastes from personal hygiene and food preparation for patrons and employees.
- I. Underground storage and/or transmission of petroleum products.
- J. Outdoor storage of salt, deicing materials, pesticides or herbicides.
- K. Disposal of snow which has been brought in from outside the district.

- L. The use of septic system cleaners which contain toxic chemicals, including but not limited to methylene chloride and 1-1-1 trichlorethane.
- M. The rendering of more than twenty percent (20%) of a lot into impermeable area.

Section 502 Tax Increment Finance District

To promote sustainable industrial and commercial development through property tax reinvestment into capital infrastructure the Tax Increment Finance (TIF) District is created as authorized under VSA T.24 Subchapter 5 Section 1892. In order to enhance property tax base and therefore revenues for infrastructure investment and development the following regulations shall apply in the TIF District:

502.1 Scope of Authority

The TIF District is an overlay district and shall be superimposed on the underlying districts established by this Zoning Bylaw. All regulations of the Town of Derby Zoning Bylaw applicable to such underlying districts shall remain in effect, except where the TIF District imposes additional regulations, such regulations shall remain in effect.

502.2 District Delineation

- A. The TIF District herein established to include all lands within the Town of Derby Tax Increment Finance District.
- B. The official zoning map delineates the boundaries of the TIF District. The official zoning map is on file with the Town Clerk of the Town of Derby.
- C. Where there is a dispute as to where a boundary lies, the location of the boundary shall be determined by the Town of Derby Planning Commission as provided for in Section 203.1.

502.3 Prohibited Uses

- A. Any use not permitted or conditional in the underlying zone.
- B. One and Two family dwellings, apartment houses and mobile home parks.
- C. All quasi-public uses with property tax exempt status.

502.4 Public Uses

Public uses are permitted in the TIF District only where such uses:

- A. Are exempt from local zoning by state or federal law.
- B. Provide services directly within the district.
- C. Are required for the public health, safety and welfare.
- D. Where such uses are subject to property tax or subject to intergovernmental agreements where such tax losses are remunerated to the satisfaction of the Selectboard.

Section 503 Design Control District

The Villages of Derby Line and Derby Center may elect to activate historic design control districts within their respective village limits. Upon activation of such design control districts the Administrative Officer shall not issue a zoning permit for any construction or use within a design control district unless and until the proper design approvals have been obtained by the applicant. In those applications within a design control district that require Zoning Board of Adjustment and/or Planning Commission review and approval, no final approvals shall be issued unless and until the proper design approvals have been obtained by the applicant. The Administrative Officer shall cause any approved design control regulations to be appended to the end of this Article.

503.1 Creation of Design Control Districts

- A. The village seeking the creation of a design control district shall submit a report to the Town of Derby Planning Commission detailing the proposed district's design problems, the proposed design criteria and regulations that proposed construction and renovation shall comply to, a map delineating the proposed district boundaries, and a formal request for the creation of a design control district signed by a majority of the respective Board of Trustees.
- B. The Town of Derby Planning Commission shall submit the request along with its recommendations, submitted proposed boundary map both original and any map amended by the Planning Commission, proposed district design criteria and regulations to the Selectboard of the Town of Derby for review and approval.

503.2 Appointment of Design Control Commissioners

The respective Board of Village Trustees shall interview and nominate candidates for membership on design control commissions for approval by the Selectboard to serve terms consistent with Town ordinances and state law.

503.3 Scope of Authority

A design control district is an overlay district and shall be superimposed on the underlying districts established by this Zoning Bylaw. All regulations of the Town of Derby Zoning Bylaw applicable to such underlying districts shall remain in effect, except where design control district regulations impose additional regulations, such regulations shall prevail.

503.4 District Delineation

- A. Design control district boundaries shall be established in accordance with Section 503.1.
- B. The official zoning map shall delineate the boundaries of design control districts. The official zoning map is on file with the Town Clerk of the Town of Derby.
- C. Where there is a dispute as to where a boundary lies, the location of the boundary shall be determined by the Town of Derby Planning Commission as provided for in Section 203.1.

503.5 Enforcement

Design approval shall be a zoning permit special condition. Unapproved deviation from such design approval shall be a zoning violation and render any issued zoning permit null and void. Enforcement action shall be pursued by the Administrative Officer as provided under Sections 110 and 905 of this Bylaw and Sections 4444 and 4445 of the Act.

ARTICLE VI: FLOOD HAZARD AREA REGULATIONS

Section 601 Intent

The intent of these regulations is to protect the public health, safety, and welfare; protect the property and property rights of downstream individuals and communities; to stabilize natural watercourses and seasonal flood areas; and protect environmentally sensitive areas.

Section 602 Application

These regulations shall apply for development in all areas in the Town of Derby identified as areas of special flood hazard on the National Flood Insurance Program maps which are hereby adopted by reference and declared to be part of these regulations.

Section 603 Conditional Use Permit Required

- 603.1 All development including fill, excavation, grading, erection or placement of structures, substantial improvement of existing structures and storage of equipment and materials prescribed by the Town of Derby Zoning Bylaw are permitted within an area of special flood hazard only upon the granting of a conditional use permit by the Zoning Board of Adjustment
- 603.2 Prior to issuance of a permit for the construction of new buildings, the substantial improvement of existing buildings, or for development in the floodway, a copy of the application shall be submitted to the Vermont Department of Environmental Conservation in accordance with VSA T.24 4409. A permit may be issued only following receipt of comments from the Department of Environmental Conservation or the expiration of thirty days from the date the application mailed to the Department of Environmental Conservation was postmarked. It is the responsibility of the applicant to establish the posting date of the submitted application.
- 603.3 Adjacent communities and the Vermont Department of Environmental Conservation shall be notified at least fifteen days prior to the issuance of any permit for the alteration or relocation of any watercourse and copies of such notification shall be submitted to the Administrator of the Federal Insurance Administration.
- 603.4 Proposed development shall be reviewed to assure that all necessary permits have been received from those governmental agencies from which approval is required by Federal or State law.

603.5 The requirements of this Section are in addition to requirements established for conditional use applications and proceedings as established under Section 208.4.

Section 604 Base Flood Elevations and Floodway Limits

604.1 Where available (i.e. zones A1-A30, AE, and AH) the base flood elevations and 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.

604.2 In areas where base flood elevations and floodway limits have not been provided by the National Flood Insurance Program (i.e. zone A) base flood elevation and floodway information available from State or Federal agencies or other sources shall be obtained and reasonably utilized by the Zoning Board of Adjustment to administer the provisions of these regulations.

Section 605 Conditional Use Review Procedures

605.1 Upon reviewing an application for a conditional use permit under these regulations, the Zoning Board of Adjustment shall, prior to rendering a decision thereon obtains from the applicant:

- A. The elevation (in relation to mean sea level) of the lowest floor, including basement, of new buildings or buildings to be substantially improved;
- B. Where flood proofing is proposed, the elevation (in relation to mean sea level) to which the building will be flood proofed;
- C. Plans drawn to scale showing the existing and proposed land contours, buildings, structures, streams, roads and other pertinent physical features;
- D. Base flood elevation data for subdivisions and other proposed development which contain at least fifty lots or five acres (whichever is smaller);
- E. Application materials deemed adequate by the Administrative Officer to meet the provisions of Section 208.4 for the consideration of conditional use applications;
- F. Such other information deemed necessary by the Zoning Board of Adjustment for determination of the suitability of the site for the proposed development.

The Zoning Board of Adjustment shall obtain from the Vermont Department of Environmental Conservation or other State or Federal agencies any available base flood elevation data.

605.2 In reviewing each application the Zoning Board of Adjustment shall consider:

- A. The evaluation of the Vermont Department of Environmental Conservation;
- B. The availability of alternate locations not subject to flooding for the proposed use;
- C. The susceptibility of the proposed improvement to flood damages;
- D. The safety of access to the property in times of flood of ordinary emergency vehicles;
- E. The potential for damage to property caused by erosion;
- F. The danger that materials may be swept onto other lands and cause damage to others;
- G. Such other factors as are relevant to the intent and purposes of this Bylaw.

605.3 The Zoning Board of Adjustment may grant a conditional use permit provided:

- A. All necessary permits are obtained from those government agencies from which approval is required by Federal and State law;
- B. The development standards of Section 606 are met or exceeded.

Section 606 Development Standards

606.1 Floodway Areas:

- A. Development within the floodway is prohibited unless a registered professional engineer certifies that the proposed development will not result in an increase in flood levels during the occurrence of a base flood;
- B. Junkyards and storage areas or facilities for floatable materials, chemicals, explosives, flammable liquids or other hazardous or toxic materials, are prohibited within the floodway.

606.2 Fringe Areas:

- A. All development shall be designed:
 - 1. To minimize flood damage to the proposed development and to public facilities and utilities, and;
 - 2. To provide adequate drainage to reduce exposure to flood hazards;
- B. Structures shall be:
 - 1. Designed (or modified) and adequately anchored to prevent floatation, collapse, or lateral movement of the structure during the occurrence of a base flood;
 - 2. Be constructed of materials resistant to flood damage;

damage,

3. Be constructed by methods and practices that minimize flood and;
 4. Be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed or located so as to prevent water from entering or accumulating within components during conditions of flooding.
- C. The flood carrying capacity within any altered or relocated portion of a watercourse shall be maintained.
- D. New and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into systems and discharges from the systems into flood waters.
- E. On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- F. New and replacement manufactured homes shall be elevated on properly compacted fill such that the top of the fill (the pad) under the entire manufactured home is at least one foot above base flood elevation.
- G. The lowest floor, including basement, of all new buildings shall be at least one foot above base flood elevation.
- H. Existing buildings to be substantially improved for residential purposes shall be modified or elevated to meet the requirements of 606.2 (G).
- I. Existing Buildings to be substantially improved for nonresidential purposes shall either:
1. Meet the requirements of 606.2(G), or;
 2. Be designed to be watertight below the base flood elevation with walls substantially impermeable 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 flood proofed 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 accord with accepted standards of practice for meeting the provisions of this subsection.
- J. All new construction and substantial improvements with fully enclosed area below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on the exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria:
1. 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;
 2. The bottom of all openings shall be no higher than one foot above grade;

3. Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
- K. Areas to be used for junkyards or for storage of floatable, hazardous or toxic materials shall be filled and graded to at least one foot above the base flood elevation.

Section 607 Duties and Responsibilities of the Administrative Officer

- 607.1 The Administrative Officer shall maintain a record of all permits issued for development in areas of special flood hazard.
- 607.2 The Administrative Officer shall maintain records of the elevation (in relation to mean sea level) of the lowest floor including basement and the height of flood proofing of all new or substantially improved buildings.
- 607.3 The Administrative Officer shall maintain records of all engineering and flood proofing certifications and all required State and Federal approvals and permits as required under these provisions.
- 607.4 The Administrative Officer shall maintain a record of all variance actions, including any Findings of Fact or other quasi-judicial rulings as a log distinct from Zoning Board of Adjustment minutes and findings.

Section 608 Variances to the Development Standards

Variances to the development standards shall be granted by the Zoning Board of Adjustment under the provisions of VSA T.24 4468 and applications shall meet submission requirements established under Section 802 of the Zoning Bylaw. In addition variances to flood hazard design standards must meet criteria established by VSA T.24 4412(h), 44 CFR, Section 60.6 of the National Flood Insurance Program regulations and Section 608.1 of this Bylaw.

- 608.1 Variances shall be granted by the Zoning Board of Adjustment only when all of the following criteria have been satisfied:
 - A. All requirements established under Section 802 of this Bylaw have been met;
 - B. The following criteria established under VSA T.24 4412(h) have been met:
 - 1) The Zoning Board of Adjustment finds the repair, relocation, or enlargement of the compliant non-conforming structure is required for the continued economically feasible operation of a nonresidential enterprise;
 - 2) The Zoning Board of Adjustment finds that the repair, relocation, or enlargement of the compliant non-conforming structure

will not increase flood levels in the regulated floodway, threaten the health, safety, and welfare of the public or other property owners;

3) The permit so granted states that the repaired, relocated, or enlarged compliant non-conforming structure is located in a regulated flood hazard area, is non-conforming to the Bylaw pertaining thereto, and will be maintained at the risk of the owner;

4) A copy of such permit granted by the Zoning Board of Adjustment shall be affixed to the copy of the deed of the concerned property on file in the Town Clerk's Office.

C. That it has been found that the structure or other development is protected by methods that minimize flood damages during the occurrence of a base flood and create no additional threats to public safety.

Section 609 Warning of Disclaimer of Liability

These regulations do not imply that land outside the areas of special flood hazard or land uses permitted within such districts will be free from flooding or flood damages. These regulations shall not create liability on the part of the Town of Derby or any official or employee thereof for any flood damages that result from reliance on this Bylaw or any administrative decision lawfully made there under.

ARTICLE VII: SUBDIVISION, PRD, PUD AND MOBILE HOME PARK REGULATIONS

No subdivision of land, changes to the boundaries of parcels or the unification of separate parcels under unified ownership shall be permitted without a zoning permit for that purpose. Proposals for projects classified under VSA Title 24 4407 as planned residential developments or planned unit developments or proposals for new or expansions to existing mobile home parks shall be reviewed and permitted under the provisions of this Article.

Section 701 Subdivisions-Administrative Permits

All applications shall be submitted for plat approval by the Planning Commission as provided in this Article except where the Administrative Officer has determined that the application meets one of the following criteria:

A. Lot unification where the unified parcel conforms to all Bylaw provisions.

B. Boundary shifts, line redraws, and backlot transfers that 1) reduce non-conformities concerning minimum lot sizes, widths and setback requirements and 2) create no new non-conformities.

Upon determination that an application meets the above criteria, the Administrative Officer may issue the required plat approval provided that the applicant has submitted a complete application, fee and certified survey of the parcel or parcels in question.

Section 702 Plat Approval Procedures

702.1 Applications for subdivision plat approval shall be warned for a public hearing for conceptual approval before the Planning Commission by the Administrative Officer upon receipt of a complete application on forms provided by the Administrative Officer, fees for the processing of the application and public hearing, and seven copies of a preliminary survey of the proposed subdivision.

702.2 The Planning Commission, upon conceptual review may:

A. Approve the plat as submitted and direct the Administrative Officer to issue the required subdivision permit.

B. Place special conditions on the applicant that must be met to the satisfaction of the Administrative Officer before the required permit is issued.

C. Require from the applicant such design changes, additional information and or environmental study as to warrant subsequent conceptual review or final plat approval.

702.3 Before conceptual or final approval of any proposed plat the Planning Commission shall first be satisfied that:

A. All proposed lots meet the minimum requirements for area and dimension of the zoning district.

B. That all proposed lots have access to a public roadway or are served by a right of way of a satisfactory nature so that no land locked lots are created.

C. That the approval of the plat proposal shall not create any non-conformity with the Zoning Bylaw.

In the evaluation of conceptual or final approval of any proposed plat the Planning Commission may also consider:

A. The possible impact of greater use intensity on the environment, agricultural or silvicultural uses.

B. The character of the neighborhood.

C. Adequacy of road access and traffic circulation within the proposed subdivision.

D. The capacity of existing or planned community infrastructure or facilities.

E. Any other issue or factor that the Planning Commission deems relevant to the proper consideration of the application.

703 Right of Way Design Standards and Association Agreements

703.1 Rights of way serving three or fewer lots shall be a minimum of thirty feet wide, in the event that a fourth lot is to be added to an existing thirty foot right of way, the applicant shall submit evidence that deed instruments have been executed to bring the required width in compliance with the standard for rights of way serving four or more lots.

703.2 Rights of way serving four or more lots shall be a minimum of fifty feet wide and shall terminate in a cul-de-sac of sufficient diameter or other design for the safe turn around of emergency vehicles.

703.3 Road designs for rights of way serving four or more lots created under this Article shall meet design standards for town roads as specified and approved by the Town of Derby Road Commissioner.

703.4 Where plat applications call for the creation of homeowner associations or covenants for the maintenance of private roads or rights of way, the Planning Commission may require that copies of all deeds executed subsequent to the plat approval specifying such agreements be submitted to the Administrative Officer as a condition for the subdivision permit. Further the Planning Commission may require that such agreements include; the maintenance of roads and turn arounds in sufficiently good condition for the safe access of emergency vehicles, snow clearance, maintenance of sight distances for safe access from the proposed subdivision to the public road and any other provision deemed necessary for the public safety.

Section 704 Planned Residential Developments

The purpose of planned residential developments (PRD) is to enable and encourage flexibility of design and development in such a manner as to promote the most appropriate use of land, economic provision of streets and utilities, and preserve the natural and scenic qualities of open lands by encouraging cluster residential development.

- 704.1 Procedure for submission and review of PRD proposals shall be that of any other subdivision proposal moving through Planning Commission public hearings for conceptual and final approval. The applicant shall submit a scaled site plan showing the location, height and spacing of buildings, open spaces and their landscaping, streets, driveways and off-street parking spaces and all other physical features, accompanied by a statement setting forth the nature of all proposed modifications, changes or supplementations of existing zoning regulations.
- 704.2 The permitted number of dwelling units may include a density increase of up to twenty-five percent above what would be allowed under the Bylaw for the zoning district, or fifty percent in the case of an affordable housing development as defined by the Vermont Department of Housing, provided that the Planning Commission determines that site conditions can support such an increase in density, and that the character of the neighborhood and planned or existing community facilities will not be adversely affected by the density increase. No applicant under the PRD provisions of this Bylaw shall be required to apply for or accept a density increase.
- 704.3 The dwelling units permitted may, at the discretion of the Planning Commission, be of varied types including one-family, two-family, multi-family semi-detached or multi-family construction.
- 704.4 If the application of this procedure results in lands available for park, recreation, open space, community septic tanks and leach fields or other municipal purposes, the Planning Commission as a condition of approval may establish such conditions on the ownership, use and maintenance of such lands as is deemed necessary to assure the preservation of such lands for their intended purposes.
- 704.5 Any modification of the Zoning Bylaw approved under this Section shall be specifically set forth in terms of standards and criteria for the design, bulk and spacing of buildings and the sizes of lots and open spaces which shall be required, and these shall be noted or appended to the plat.

Section 705 Planned Unit Developments

The purpose of planned unit developments (PUD)s is to enable and encourage flexibility in design and development that combines complementary uses which will result in; a choice in the types of environments and living units available to the public and quality in land uses so that development will be a permanent and long term asset to the town, create open space and recreation areas where dwelling units are part of the development, encourage a pattern of development which preserves trees, outstanding natural topography and prevents soil erosion, and causes an efficient use of land resulting in smaller networks of utilities and streets. The ultimate goal of permitting PUD development is to avoid strip type commercial development and to provide a more desirable environment than would be possible through the strict application of other sections of these regulations. These regulations for PUDs shall not be construed as an exemption of permitted or conditional use requirements for the zoning district that the proposed PUD is located in.

- 705.1 Procedure for submission and review of PUD proposals shall be that of any other subdivision proposal moving through Planning Commission public hearings for conceptual and final approval. The applicant shall submit a scaled site plan showing the locations, heights and spacing of all existing and planned buildings and structures, parking areas, contours and all other physical features, roads, site work and landscaping, and all utilities shall also be shown and described. In addition the site plans shall show adjacent building outlines and other outstanding features within 200 feet. The Planning Commission may require the submission of typical elevations and floor plans of all buildings.
- 705.2 The Planning Commission may allow greater densities or intensity of residential uses within some section or sections of the development than others. The Planning Commission may require that this greater density be off set by lesser densities in other sections of the PUD.
- 705.3 In a PUD dwelling units may be multi-family, the permitted number of dwelling units may include a density increase of fifty percent above what would be allowed under the Bylaw for the zoning district in the case of an affordable housing development provided that the Planning Commission determines that site conditions can support such an increase in density, and that the character of the neighborhood and planned or existing community facilities will not be adversely affected by the density increase. In a PUD in a residential district, commercial, educational, and public facilities may be allowed which are designed to serve the PUD and the area around the PUD.
- 705.4 Lot size, width, front yard and side yard setback requirements may be altered; however, these alterations shall be evaluated by the Planning Commission on their individual merit.

705.5 A PUD shall comply with the following standards:

- A. The minimum lot area for a PUD shall be five acres or the minimum lot area for the zoning district, whichever is greater.
- B. Off lot water and sewer may be required if over six residential units are proposed.
- C. At least twenty-five percent of the PUD should be in open space and or common usage, the Planning Commission as a condition of approval may establish such conditions on the ownership, use and maintenance of such areas as is deemed necessary to assure the preservation of such areas for their intended uses. This may be waived by the Planning Commission for commercial and industrial PUDs provided adequate screening and landscaping are proposed.
- D. Any and all of the conditions required for conditional uses as set forth in section 208 of the Bylaw may be required by the Planning Commission for a PUD.

Section 706 Supplemental Rules and Regulations for PRD and PUD

The Planning Commission may prescribe, from time to time, rules and regulations to supplement the standards and conditions set forth in this Zoning Bylaw for PRDs and PUDs, provided the rules and regulations are not inconsistent with the Town Plan. The Planning Commission shall hold a public hearing after public notice as required by Section 4447 of the Act prior to the establishment of any supplemental rules and regulations for PRDs and PUDs.

Section 707 Mobile Home Parks

All new and proposed expansions of mobile home parks shall be submitted for site plan approval by the Planning Commission. Submitted materials shall include a measured site plan including all proposed mobile home lots, access driveways, mobile home pads, lot parking areas, utility provision, common spaces and any other characteristic deemed necessary for the review and approval of the proposal.

707.1 Mobile Home Park Design Standards

The following regulations shall apply to mobile home parks:

- A. A mobile home park shall have an area of not less than five acres.
- B. Mobile home parks shall provide for individual mobile home spaces, access driveways, parking and recreational open spaces.
- C. Each mobile home space shall be a minimum of sixty feet wide, at least 8,000 square feet in area, and shall front on an access driveway.
- D. All access driveways within a mobile home park shall have a right of way of at least fifty feet in width and have a paved surface at least twenty-

five feet in width. Gravel paving shall be at least twelve inches of compacted depth.

E. Two paved parking spaces at least ten feet wide and twenty-two feet long shall be provided for each mobile home lot. Gravel paving shall be at least twelve inches of compacted depth.

F. Mobile home parks shall provide at least twenty-five percent of the total land area for recreation and other open space purposes.

G. A level compacted surface shall be provided for each mobile home.

H. Each mobile home space shall have a hook up for water supply which is adequate, safe and potable. The water supply source must be approved by the State Department of Health and meet all state and local regulations.

I. Each mobile home space shall have a hook-up for sewage disposal. The method of sewage disposal must be compliant with State Department of Health and local regulations; however it shall not be located on the home space unless that space is at least one acre in size.

J. A strip of land at least twenty-five feet in width shall be maintained as a landscaped area abutting the mobile home park on all property lines except where the park boundary is adjacent to residential uses where the landscaped area must be at least fifty feet in width.

K. Provision for the disposal of house hold garbage and rubbish shall be made.

L. An electrical source supplying at least 100 amps, 220 volts shall be provided for each mobile home space. The installation shall comply with all state laws and regulations. Such electrical outlets shall be weatherproof.

707.2 Placement of Mobile Home Units in Approved Parks. The purpose of these regulations is to protect the public health, safety and welfare by limiting mobile home park densities and assuring access by emergency services by mandating the safe spacing of mobile home units. Mobile home placements shall conform to the following provisions:

A. Mobile home units located in mobile home parks shall be placed only in spaces approved by the Planning Commission.

B. Mobile home units, associated accessory structures and additions shall be placed a minimum of twenty feet from access drives.

C. Mobile home units, associated accessory structures and additions shall be placed a minimum of fifteen feet from the approved space line, no unit shall be placed closer than thirty feet to any other unit.

D. Mobile home units, associated accessory structures and additions shall not exceed 33.3% footprint coverage of an approved mobile home space.

708 Compliant Non-conforming Mobile Home Parks

The current locations of mobile home units, associated accessory structures and additions in compliant non-conforming mobile home parks or compliant non-conforming placements of those units or structures may continue

indefinitely in their original footprints. Those units, associated structures and additions may be replaced in their original or smaller footprints within six months of removal or destruction. Placements greater than the original footprints may be permitted only in conformity to the following regulations:

- 708.1 The placement must be on a conforming mobile home space as defined under Section 707.1 (C) and shall conform to design criteria established under Section 707.1 (E), (G), (H), (I), (K) and (L), it is the responsibility of the park management to file both an original and an amended mobile home park site plan documenting the conforming nature of the revised space and that the creation of that space does not increase the non-conformity of adjacent spaces.
- 708.2 The unit, accessory structure or addition shall be permitted only in conformity with Section 707.2 and its subsections.
- 708.3 The Administrative Officer may issue a zoning permit under this Section only upon determination that the proposed placement conforms to subsections 707.1 and 707.2 above. Applications for the replacement of compliant non-conforming mobile home units, accessory structures or additions under Section 708 will be considered by the Zoning Board of Adjustment under the criteria established by Section 301.

ARTICLE VIII: LIMITATIONS AND VARIANCES

801.1 In accordance with T.24 Section 4409 of the Act, the following uses are permitted in any zoning district unless the Bylaw makes specific provision for the location of such uses. These uses shall conform to applicable provisions of this Bylaw regulating size, bulk, height, yards, courts, setbacks, density of buildings and structures, landscaping, screening requirements, off-street parking and loading facilities:

- A. Public utility power generating plants and transmission lines;
- B. State or community owned and operated institutions and facilities;
- C. Public and private schools and other educational institutions certified by the Vermont Department of Education;
- D. Churches as defined in Section 1102 of this Bylaw;
- E. Public and private hospitals;
- F. Regional solid waste management facilities certified under VSA T.10 Chapter 159;
- G. Hazardous waste management facilities for which a notice of intent to construct has been received under VSA T.10 Section 6606a.

801.2 If any Bylaw or amendment thereof, is enacted with respect to any land , use or development subject to regulation under state statutes, the more restrictive applicable regulation shall apply.

801.3 Referral to State Departments

No zoning permit for the development of land of the following types or located within the following designated areas may be issued by the Administrative Officer prior to the expiration of a period of thirty days following the submission of a report to the state agency or its successor agency designated in each case, describing the proposed use, the location requested and an evaluation of the effect of such proposed use on the Town Plan and the regional plan, if any:

- A. Forests, parks and recreation department. Any use in or within 1000 feet of any state owned or leased property. This provision does not apply within any incorporated village;
- B. Department of environmental conservation. Any of the following uses or activities affecting ground or surface water resources;
 - 1) Any area designated as a flood plain or wetland;
 - 2) The damming of streams so as to form an impounded area of five acres or more for reservoir or recreational purposes;
 - 3) The drilling of wells deeper than 50 feet or with a potential yield greater than 25,000 gallons per day, except this shall not apply to a well drilled by the owner of a farm or residence for his own use, or the use of the farm;

C. Fish and wildlife department. Game lands and stream bank areas owned or leased by the state;

D. Vermont agency of transportation. Airports;

E. Forests, parks and recreation department. The following recreational areas;

1) Ski areas with lifts or other equipment other than tows, with a total capacity of more than 500 persons per hour;

2) Camps with accommodations for more than 50 persons;

3) Marinas with accommodations for 20 or more boats with lengths in excess of 20 feet;

4) Public beaches, or lands within 1000 feet thereof;

5) Natural areas as defined in VSA T.10 Section 2010;

F. Highway department. Any use within 500 feet of the intersection of any entrance or exit ramp providing access to any limited access highway.

801.4 A state licensed or registered residential care home or group home, serving not more than six persons who are developmentally disabled or physically handicapped, 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 locates within 1,000 feet of another such home.

801.5 Unless a zoning regulation specifically provides to the contrary, limitations on permissible heights of structures shall not apply to antenna structures, to windmills with blades less than 20 feet in diameter or to rooftop solar collectors less than 10 feet high which are mounted on complying structures.

801.6 Regulation of Child Care

A state registered or licensed family child care home serving six or fewer children shall be considered by right to constitute a permitted single-family residential use of property. A state registered or licensed family care home serving no more than six full-time children and four part-time children, as defined in subdivision 4902(3)(A) of T.33, shall be considered to constitute a permitted use of property but may require site plan approval based on local zoning requirements. A state registered or licensed family child care facility serving more than six full-time and four part-time children may, at the discretion of the Town of Derby, be subject to all applicable municipal Zoning Bylaw provisions. In conformance with VSA T.24 Section 4409(f) the following provisions shall apply to child care operations:

A. A family child care home shall be regulated as a home occupation, upon submission of complete application materials and documentation of state registration or licensing the Administrative

Officer shall issue the required permit for a home occupation. Such operation shall conform to the requirements for a home occupation as provided for under Section 402.3(A) of this Bylaw with the exception of footprint limitations and shall be limited to six or fewer children not related by blood to the caregivers;

B. A family care home shall be regulated as a residential business or service and subject to conditional use proceedings before the Zoning Board of Adjustment in those zones where residential business or service is a conditional use or site plan review proceedings before the Planning Commission in those zones where residential business or service is a permitted use. Applicants shall be required to submit documentation of state registration or licensing. Such operation shall conform to the requirements for a residential business or service as provided for under Section 402.3(B) with the exception of footprint limitations and shall be limited to six or fewer full-time and four or fewer part-time children not related by blood to the caregivers;

C. A family child care facility serving seven or more full-time and/or more than four part-time children shall be regulated as a commercial use where operated as a for profit business or as a quasi-public use where operated as a not for profit activity. Such operations shall be subject to full site plan review and/or conditional use proceedings as may be required by the provisions of this Bylaw.

801.7 The Town of Derby may enact a bylaw that imposes forest management practices resulting in a change in a forest management plan for land enrolled in the use value appraisal program pursuant to 32 VSA chapter 124 only to the extent that those changes are silviculturally sound, as determined by the department of forests, parks and recreation, and protect specific natural, conservation, esthetic, or wildlife features in properly designated zoning districts. Such changes also must be compatible with 32 VSA Section 3755.

802 APPEAL-VARIANCES

802.1 In accordance with Section 4468 of the Act, a variance from the provisions of a zoning regulation may be requested for a structure. Such a request may be applied for directly to the Zoning Board of Adjustment or as an appeal of the action of the Administrative Officer. Appeals and variance requests may only be heard by the Zoning Board of Adjustment after legal public notice in an open hearing. On appeal under Sections 4464 or 4471 of the Act the Zoning Board of Adjustment may grant variances and render a decision in favor of the appellant, if all of the following facts are found and the finding is specified in its decision in regard to a structure that is not primarily a renewable energy resource structure:

- A. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions, and provisions of the zoning regulation in the neighborhood or district in which the property is located peculiar to the particular property and that unnecessary hardship is due to such conditions;
- B. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
- C. That the unnecessary hardship has not been created by the appellant, any person who buys land with actual or constructive knowledge of zoning restrictions in effect creates any hardship for himself;
- D. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and
- E. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the Town Plan.

802.2 On an appeal under Sections 4464 or 4471 of the Act wherein a variance from the provisions of a zoning regulation is requested for a structure that is primarily a renewable energy resource structure, the Zoning Board of Adjustment may grant such variances, and render such decision in favor of the appellant if all the following facts are found and the finding is specified in its decision:

- A. It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with regulations;
- B. That the hardship was not created by the appellant;
- C. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and
- D. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and the Town Plan.

802.3 In rendering a decision in favor of an appellant under this Section, The Zoning Board of Adjustment may attach such conditions to such

variances as it may consider necessary and appropriate under the circumstances to implement the purposes of the Act and the Town Plan.

802.4 In determining whether an appeal or variance shall be granted, the Zoning Board of Adjustment shall be required to give consideration to any factual evidence presented by any person who would be classified as an “interested person” by Section 4464 of the Act. Upon filing an appeal or requesting a variance appellants and applicants shall submit:

A. A plan for the proposed development of the site showing the locations of all buildings, parking areas, traffic access and circulation drives, open spaces, landscaping, and any other pertinent information concerning both the site and abutting property that the Board may deem necessary for proper deliberation of the appeal or variance request;

B. An application form deemed complete and accurate by the Administrative Officer;

C. Fees required for the application and public hearing;

D. A narrative describing the purposes of the appeal or variance request, documentation of the applicability of the request or appeal of criteria A-E defined in Section 802.1 or criteria A-D defined in Section 802.2, a list of names and addresses of all abutters and any other information deemed relevant by the Zoning Board of Adjustment.

No less than seven days before a public hearing for an appeal or variance request, the applicant shall submit evidence that a good faith effort has been made to notify all abutters of the site subject to the appeal or variance request of the date, time, place and purpose of the public hearing. Such evidence shall take the form of a sworn certificate of service, signed statements by the abutters or United States Postal Service return receipt cards. The Zoning Board of Adjustment may accept returned certified mail envelopes as evidence that a reasonable effort to contact an abutter has been made.

802.5 The Administrative Officer shall cause Findings of Fact and Minority Opinions issued by the Zoning Board of Adjustment and its constituent members to be appended to this Bylaw. Appellants, applicants and interested persons may cite these documents in submission materials and any oral testimony made before the Zoning Board of Adjustment. Past Findings of Fact shall not be considered binding upon the Zoning Board of Adjustment; however the Zoning Board of Adjustment should consider its past interpretation of the

Bylaw in deliberation and shall include in resulting Findings of Fact any conclusions derived thereof.

ARTICLE IX: ADMINISTRATION AND ENFORCEMENT

Section 901 Administrative Officer

The Administrative Officer shall be appointed to administer the zoning regulations pursuant to Section 4442 of the Act and Section 110 of the Zoning Bylaw. Appeals from any decision or act taken by the Administrative Officer shall be made as provided for in Subchapter 8 of the Act. An acting Administrative Officer may be appointed pursuant to Section 4442(b) of the Act.

Section 902 Zoning Permits

902.1 No land development, as defined in Section 4303(3) of the Act, and Section 103 of this Bylaw, shall be commenced without a permit therefore issued by the Administrative Officer except in conformity with this Bylaw.

902.2 Applications for zoning permits shall be made to the Administrative Officer on forms provided by that officer for that purpose.

902.3 Prior to the issuance of any zoning permit the Administrative Officer shall first establish that the subject of the application is in conformity with these regulations. The Administrative Officer may request from an applicant any information deemed necessary for this purpose. No such permit shall be issued unless an application, fee, plot plan and any approvals by the Planning Commission or the Zoning Board of Adjustment required by this Bylaw have been properly obtained and are submitted in connection with the application. The Administrative Officer shall, within thirty days of submission of the application, fees, data and approvals, either issue or deny a zoning permit. If the zoning permit is approved, all activities authorized by its issuance shall be commenced not later than two years after all required permits are obtained or the zoning permit shall become null and void and reapplication to complete any activities shall be required, except in those applications for planned unit or planned residential development wherein the Planning Commission has waived the time limit and imposed a phased building schedule as a special condition.

902.4 In the issuance of zoning permits, the Administrative Officer shall comply with all the provisions of Section 4443 of the Act.

902.5 Fees for zoning permits shall be prescribed by the Board of Selectmen. Any direct abutter or public notification required by this Bylaw is the responsibility of and shall be paid for by the applicant. The fee for any zoning permit applied for a proposed use or construction that has already commenced shall be double the normal fee.

902.6 No zoning permit issued pursuant to Section 4443 of the Act shall take effect until the time for appeal in Section 4464 of the Act has expired, or in the event that a notice of appeal is properly filed, such permit shall not take effect until final adjudication of said appeal.

Section 903 Certificates of Occupancy

903.1 All persons desiring permission to:

A. Occupy and use a building or structure, with the exception of a single family dwelling, a two family dwelling, residential accessory structures or uses, exempt agricultural structures, or parts thereof following construction, erection, relocation, alteration, repair, extension, removal, demolition, or structural changes wholly or in part;

B. Change the use of an existing building or part thereof;

C. Change the use of land to any other use; or

D. Change the tenancy of a building or part thereof;

shall apply to the Administrative Officer for a Certificate of Occupancy. The Administrative Officer may issue a temporary Certificate of Occupancy for a time period not to exceed one year. Temporary Certificates of Occupancy shall not be renewed. In the event that conditions required for the issuance of a final Certificate of Occupancy have not been satisfied the continued use, tenancy, or occupation that is the subject of the temporary Certificate of Occupancy shall constitute a zoning violation actionable under the provisions of this Bylaw.

903.2 Applications for a Certificate of Occupancy shall be made to the Administrative Officer on forms provided by that officer for that purpose.

903.3 Prior to the issuance of a Certificate of Occupancy, the Administrative Officer shall first establish that the proposed use of the structure or land conforms to the requirements of the zoning permit and the Bylaw.

903.4 A Certificate of Occupancy shall remain valid continuously only for the specific use or occupancy as described by the Certificate of Occupancy upon issuance.

903.5 If the Administrative Officer determines that the use or occupancy is not in conformity with the Bylaw, the Administrative Officer shall refuse to issue a Certificate of Occupancy, stating the reasons in writing to the applicant.

903.6 Every application for a Certificate of Occupancy shall be accompanied by the required fee.

903.7 If the Administrative Officer refuses to issue a Certificate of Occupancy, the applicant may appeal to the Zoning Board of Adjustment.

Section 904 Exempt Agricultural and Silvicultural Structures and Uses

Pursuant to Section 4495 (b) of the Act, agricultural and silvicultural structures and uses connected with agricultural enterprises as defined by VSA Title 10 Section 6001(22) are exempt from zoning permitting and fees. Persons engaging in the erection of structures covered under this exemption shall abide by the setback requirements established by this Bylaw unless those setbacks have been waived by the state Secretary of Agriculture. Persons engaging in the erection of structures covered by this exemption shall notify the Administrative Officer of the intention to do so by the submission of forms provided for this purpose, a site plan or map of the structure and a copy of any state issued waivers of the town setback requirements as required by Section 4495(c) of the Act.

Section 905 Penalties

Any violation of these regulations after the effective date thereof shall be punished as provided by Sections 4444 and 4445 of the Act.

Section 906 Public Notice

In accordance with Title 24, Section 4447 any public notice required for a public hearing shall be given not less than fifteen days prior to the date of the public hearing. The public notice shall be published in a newspaper of general circulation in the Town of Derby and the posting of such notice in one or more places in the Town of Derby. The public notice shall show the date, place and purpose of the hearing and state where written material related to the proposed project may be examined.

ARTICLE X: AMENDMENTS, INTERPRETATION AND EFFECTIVE DATE

Section 1001 Amendments

These regulations may be amended according to the requirements and procedures established in Section 4403 and 4404 of the Act.

Section 1002 Interpretation

In their interpretation and application, the provisions of these regulations shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience, and general welfare.

Section 1003 Effective Date

This regulation shall take effect in accordance with the voting and other procedures contained in Section 4404 of the Act.

Section 1004 Severability

If any provision of this Bylaw or its application to any person or circumstances is invalid, the remainder of the Bylaw or its application of the provision to other persons or circumstances shall not be affected.

Section 1005 Repeal

The existing Bylaw related to zoning regulations together with all changes and amendments thereto are repealed as of the effective date of this Bylaw.

ARTICLE XI: WORD AND TERM DEFINITIONS

With the exception of those words and terms specifically defined below, this Bylaw is in plain language and the definition of words and terms is that described in Webster's Unabridged Dictionary 2004 edition.

Section 1101 Word Definitions

For purposes of these regulations the terms of certain words used herein shall be interpreted as follows:

The word person shall include a firm, association, organization, partnership, trust, company, or corporation as well as an individual.

The present tense shall include the future tense.

The singular number shall include the plural number and the plural number shall include the singular number.

The word shall is mandatory.

The word may is permissive.

The words used or occupied include the words intended, designed, arranged to be used or arranged to be occupied.

The word lot includes the words plot or parcel.

Section 1102 Term Definitions

Abutter: Owner of any property directly adjacent to or directly across the public or private right of way from a parcel or lot.

Accessory Apartment: Accessory apartments are those apartments within or attached to a single family residence such an apartment shall be accessible from the primary dwelling unit and such access shall constitute the main entrance to the accessory apartment, no access to an accessory apartment shall be discernable from the public street. An accessory apartment is a residential accessory use.

Acre: 43,560 square feet.

Adult Respite Care Facility: A facility providing daycare type services on an outpatient basis to adults with physical, mental or psychological diseases, defects or deficits. Adult Respite Care Facility is a principal commercial or quasi-public use.

Agriculture: The production, keeping, or maintenance of plants and animals useful to man, for sale or lease in accordance with State of Vermont Department of Agriculture guidelines and regulations and as defined by applicable VSA provisions.

Animal Grooming/Boarding Facility: An establishment in which domesticated animals are housed, groomed, bred, boarded, trained or sold for commercial purposes.

Antenna Farm: Land used for the erection of devices for the reception and transmission of signals necessary for telecommunications.

Apartment Building: A multi-family dwelling designed to house five or more families in single floor dwelling units with the number of families housed not to exceed the number of dwelling units. Dwelling units in an apartment building may be arranged above or below other dwelling units and share more than two walls with adjacent units. An apartment building is a principal residential use.

Apartment House: A multi-family dwelling designed to house three to four families with the number of families housed not to exceed the number of dwelling units. Dwelling units in an apartment house may be arranged above or below other dwelling units and share more than two walls with adjacent units. An apartment house is a principal residential use.

Area of Shallow Flooding: Means a designated AO or AH zone on a community Flood Insurance Rate Map (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of Special Flood Hazard: The land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zone A, AO, A1-30 or A99.

Auto Service Station: Any area of land and/or structures thereon, that is used or designed to be used for the supply of gasoline or oil or other fuel for the propulsion of motor vehicles and which may include facilities used or designed to be used for washing, spraying, dry cleaning or servicing such motor vehicles. A service station is not a sales, or major repair agency for autos, trucks or trailers. An auto service station is a principal commercial use.

Auto Service Station/Mini Mart: A structure designed for the retail sale of fuels for motor vehicles and the retail sale of consumer goods. An auto service station/mini mart is a principal commercial use.

Bank: An establishment chartered by Federal or State banking authorities designed for the walk-in or drive-up provision of services concerned with the custody, loan, exchange or issue of money, the extension of credit and the transmission of funds. A bank is a principal commercial use.

Bar: An establishment for the principle purpose of offering alcoholic beverages for sale to the public by the drink. Such establishment is subject to state and local licensing. Bar is a principal commercial use.

Base Flood (100 Year): A flood having a one percent chance of being equaled or exceeded in any given year.

Basement: Any area of building, whether finished as usable space or not, having floor subgrade (below ground level) on all sides, definition includes cellar or crawl space.

Bed and Breakfast: A residential business or service that is designed for the commercial housing of guests, not to exceed twelve in number, for a period not to exceed six consecutive nights, with meals provided for guests only, in a home setting, and featuring resident management. Bed and breakfast is a residential business or service and an accessory residential use.

Boathouse: A structure designed for the storage of watercraft.

Building Front Line: For purposes of establishing the front setback of a structure, this line is parallel to the front lot line transecting that point in the building façade which is closest to the front lot line (see figure below). This face includes porches whether enclosed or unenclosed but does not include steps.



Building Front Line

Building Height: Vertical distance measured from the average elevation of the proposed finished grade at the facade of the building to the highest point of the roof for flat and mansard roofs, and from the average elevation of the proposed

finished grade at the facade of the building to an average height between the eaves and ridge for other types of roofs.

Bulk Storage of Explosives: A structure designed for the safe storage of explosives, explosive devices and detonation devices of an incendiary or explosive nature. Bulk storage of explosives is considered a principal commercial use.

Bulk Storage of Flammable Fuels: A facility designed for the safe storage and distribution of flammable or explosive fuel oils, petroleum products or compressed or liquefied gases. Bulk storage of fuels is considered a principal commercial use.

Business Complex: A facility, structure, or lot consisting of two or more businesses. As a business complex, a lot may contain more than one principal building or use. Business complexes are approved by the Planning Commission under Section 209 of this Bylaw.

Car Wash: Any building or premises or portions thereof used for the washing of automobiles for commercial purposes. Car wash under this definition is considered a commercial use and may upon approval of the Planning Commission be either a principal or accessory use.

Change of Use: Any use that is changed to another permitted or conditional use. Change in use proposals shall be reviewed by the Planning Commission under the provisions of Section 208.5 of this Bylaw, except where changes from one family to two family or two family to one family require administrative review and permitting by the Administrative Officer.

Church: A building or group of buildings which are primarily intended for the conducting of religious services and accessory uses associated therewith. For purposes of administering this Bylaw, churches shall include synagogues, temples, tabernacles, religious meeting houses, convents, parish houses and mosques.

Clinic: An office building used by members of the medical profession for the diagnosis and outpatient treatment of human ailments. A clinic is a principal commercial, public or quasi-public use.

Club, Membership: Building or use catering exclusively to club members and their guests for recreational purposes and not operated primarily for profit. Upon site plan approval of the Planning Commission clubs may have dormitory accommodations as an accessory use. A membership club is a principal quasi-public use.

Commercial Uses: As defined in Section 208.1(B) commercial uses are structures or activities operated by business entities as a place of or the primary activity of a profit making enterprise with the exception of those commercial activities regulated under Section 402.

Commercial Accessory Use: A commercial use of property clearly subordinate to and complementary to a primary commercial use.

Community Cultural Center: A facility operated by a public or quasi-public organization for village scale programs promoting the arts. Such facilities shall be of a size appropriate for the immediate neighborhood. A community cultural center is a principal public or quasi-public use.

Compliant Non-Conformity: A structure or part thereof or use which is no longer conforming to the current Zoning Bylaw, but was conforming to all applicable zoning regulations when such structure or part thereof was erected or such use was commenced.

Contractors Yard: A facility designed for the open and closed storage of contractors, builders, well drillers, or other such businesses that require heavy equipment. Contractors Yard is a principal commercial use.

Cottage Industry: As defined under Section 402.3(C), an accessory use of a residential lot or dwelling entailing the operation of a commercial enterprise.

Dry-well: A covered pit with an open jointed lining through which water from roofs, basement floor or areaways may seep or leach into the surrounding soil.

Dwelling, One Family: A detached residential dwelling unit designed for and occupied by one family only. A single family dwelling is a principal residential use.

Dwelling, One Family Semi-detached: A residential dwelling which shares no more than two side walls with adjacent dwelling units and so designed that no dwelling unit is located on floors above another dwelling unit. Classification applies to those dwellings arranged in groups of three or more dwelling units so described. Examples of one family semi-detached dwellings include without limiting the definition: townhouses, row houses, triplexes and quadplexes. A single family semi-detached dwelling is a principal residential use.

Dwelling, Two Family: A residential building designed for or occupied by two families living independently of each other in individual dwelling units. A two family dwelling is a principal residential use.

Dwelling, Multi-Family: A residential building designed for or occupied by three or more families, with the number of families in residence not exceeding the

number of dwelling units provided. Definition includes apartment house and apartment building. A multi-family dwelling is a principal residential use.

Dwelling Unit: One room or rooms connected together constituting a separate, independent housekeeping establishment for owner occupancy, rental, or lease, and physically separated from any other housekeeping establishment.

Essential Services: The erection, construction, alteration, or maintenance by public utilities or municipal or other governmental agencies of underground or overhead gas, electrical, steam or water transmission or distribution systems, including poles, wires, mains, drains, sewers, pipes, conduit cables, fire alarm boxes, police call boxes, traffic signals, hydrants, street signs, and similar equipment and accessories in connection therewith. Essential services are exempt from zoning permit requirements and are a permitted use in all zoning districts.

Essential Services-Buildings: The erection, construction, alteration, or maintenance by public utilities or municipal or other governmental agencies or buildings reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other governmental agencies or for the public health or safety or general welfare. Essential services buildings constructed, occupied or proposed by municipal or other governmental agencies are principal public uses, such buildings constructed, occupied or proposed by public utilities or other private commercial enterprises are a principal commercial use.

Façade: The face or side of a building viewed from a public right of way; the front side of the building. Where a commercial, public or quasi-public building is located on a lot with more than one lot line defined by a public right of way it may have more than one façade.

Family: One or more persons occupying a single dwelling unit, provided that unless all members are legally related to each other no such family shall contain over five persons, but further provided that domestic servants and farm workers employed on the premises may be housed on the premises without being counted as family or families.

Family Child Care Home: As defined by Section 801.6(A), a home occupation caring for six or fewer children not related by blood to the caregivers. A family child care home is an accessory residential use.

Family Care Home: As defined by Section 801.6(B), a residential business or service caring for six or fewer children on a full-time and four or fewer children on a part-time basis not related by blood to the caregivers. A family care home is an accessory residential use.

Family Child Care Facility: As defined by Section 801.6(C), an enterprise operated for profit or not for profit caring for seven or more children on a full-

time and/or four or more part-time basis not related by blood to the caregivers. A family child care facility is a principal commercial or quasi-public use.

Fence: A structure designed to define the boundary of, or limit access to a lot or portion thereof. Fences are regulated under Section 402.2.

Flood Elevation: A determination by the Federal Flood Insurance Administrator of the water surface elevations of the base flood. Please refer to Article VI of the Town of Derby Zoning Bylaw for specific regulations.

Flood Hazard Area: Land in the flood plain in the Town of Derby subject to one percent or greater chance of flooding in any given year. This includes the “A” zones of the flood insurance rate map. Please refer to Article VI of the Town of Derby Zoning Bylaw for specific regulations.

Flood Hazard Boundary Map (FHBM): An official map of a community, issued by the Flood Insurance Administrator, where the boundaries of the flood and mudslide (i.e. mudflow) related erosion areas, having special hazards, have been designated as Zones A, H, and/or E.

Flood Insurance Rate Map FIRM: An official map of the community, on which the Flood Insurance 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.

Flood Proofing: Any combination of structural and nonstructural 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 water course and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the surface elevation more than one foot. Please refer to Article VI for specific regulations applicable to floodway development standards and regulations.

Forestry: The operation of timber tracts, tree farms, forest nurseries, the gathering of forest products, or related forest services.

Gravel Pit: An excavation site for the extraction of gravel, sand, clay, or other similar material. Unless specifically exempted under Section 402.9 or VSA regulations for agricultural activities a gravel pit is a primary commercial use. Please refer to Section 402.9 for applicable regulations.

Groundwater: All water beneath the surface of the ground.

Hazardous Materials: Any material, or combination of materials, which because of quantity, concentration, or physical, chemical or infectious characteristics are determined to have a harmful effect on water quality, human life or other living organisms.

Home Occupation: As defined by Section 402.3(A), an accessory residential use entailing the operation of a commercial enterprise from a minor portion of a dwelling.

Hospital: Includes sanitarium, rest home, nursing home, convalescent home, home for the aged, hospice, and any other place for the inpatient diagnosis, palliative care and treatment of human ailments. A hospital, as determined by the Planning Commission may be a principal commercial, public or quasi-public use.

Hotel/Motel: A building providing lodging for persons with or without meals, and intended for the accommodation of transients. A hotel is considered a principal commercial use.

Hot Mix Plant: A facility designed for the preparation and distribution of asphalt or blacktop. Hot mix plant, as determined by the Planning Commission, is a principal or accessory commercial or public use.

Impervious: Impenetrable by water.

Junkyard: Any place open storage or deposit, whether in connection with a business or not, which is maintained, operated or used for storing, keeping, processing, buying or selling junk or junked motor vehicles or scrap metals. As regulated in Section 402.4, a junkyard in legal and permitted operation is a principal commercial use. The operation or maintenance of a junkyard without proper permitting constitutes a zoning violation, please refer to Section 402.4 for applicable regulations.

Junk Motor Vehicle: Any motor vehicle in open storage that is discarded, dismantled, wrecked, scrapped, or ruined or parts thereof. Any motor vehicle without current motor vehicle tags or a full set of inflated tires may be considered a junk motor vehicle.

Land Development: The division of a parcel into two or more parcels; the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building, or other structure, or of any mining, excavation or landfill, and any change in the use of any building or other structure including demolition, or land or extension of use of land.

Leachable Material: Solids, sludge, fertilizer and pesticides capable of releasing waterborne contaminants to the environment.

Loading Space, Truck: Off-street space used for the temporary location of one licensed motor vehicle, which is at least twelve feet wide, 55 feet long and fourteen feet high, not including access driveway, and having direct access to street or alley.

Lodging House: A building in which rooms are rented with or without meals to three or more, but not exceeding, twenty persons. A boarding house, rooming house, or a furnished rooming house shall be deemed a lodging house. Each lodging house shall have no more than one kitchen facility whether shared or not. Lodging houses are intended to provide permanent living situations distinct from transient housing provided by hotel/motel, village inn, or bed and breakfast accommodations. A lodging house is a multi-family principal residential use.

Lot: Parcel described by either deed provisions for metes and bounds or a lot of record legally filed with the Town Clerk. All applications for proposed changes to lots shall require a subdivision permit and meet the requirements of Article VII of this Bylaw. In no case shall a lot be created by division or combination that does not meet the requirements of this Bylaw nor shall the creation of such lot or lots result in the creation of residual lot or lots that do not meet the requirements of this Bylaw.

Lot Length: Lot length is the average of the side property lines as defined under Section 403.1(E) of this Bylaw.

Lot Width: Lot width is the average of the front and rear property lines as defined under Section 403.1(D) of this Bylaw.

Lot of Record: A lot which is part of a subdivision recorded in the office of the Town Clerk, or a lot or parcel described by metes and bounds, the description of which has been so recorded.

Lowest Floor: The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, useable solely for the parking of vehicles, building access, or storage in an area other than a basement area is not considered a buildings lowest floor; provided that such an enclosure is not built so as to render the structure in violation of applicable design requirements.

Manufacturing is a principal commercial use as defined by the following categories:

Light Manufacturing: Mechanical or chemical transformation of materials or substances that does not entail the handling of molten metals, the use of chemicals or materials that are hazardous in the quantities or concentrations that would be

present at the manufacturing location, does not produce liquid or gaseous waste products requiring special treatment or control processes, or produces solid waste requiring special handling or long term storage at the site of the manufacturing use. Light manufacturing shall not produce dust, smoke, noise, vibration, heat, odors or electrical or magnetic disturbances detectable outside of the manufacturing structure or equipment. The assembly of component parts into finished products is considered light manufacturing where the activity does not entail the use of substances or the production of byproducts excluded from this definition.

Manufacturing: Mechanical or chemical transformation of materials or substances into new products that does not entail the handling of molten metals, does not produce liquid or gaseous waste products that cannot be rendered non-hazardous by on site treatment and control processes, or produces solid waste requiring special handling. Where such manufacturing activity entails the use of chemicals or substances that are hazardous in the quantities or concentrations that would be present at the manufacturing location open storage of these materials is prohibited and plans for the control of these materials must be approved by the Planning Commission. Manufacturing activities shall not produce dust, vibration, heat, odors or electrical or magnetic disturbances detectable beyond the property line and noise levels at the property line shall not exceed 50dbL.

Heavy Manufacturing: Mechanical or chemical transformation of materials or substances into new products that entails the handling of molten metals, the production of liquid or gaseous waste products that cannot be rendered non-hazardous by on site treatment and control processes, production of solid waste requiring special handling and/or long term on site storage, the open storage of chemicals or substances that are hazardous in the quantities or concentrations that would be present at the manufacturing location, produce dust, vibration, heat, odors, electrical or magnetic disturbances, or noise levels in excess of 50dbL detectable beyond the property line.

Marina: A facility for the sale, repair and storage of watercraft. Such facility may have boat slips and docks. A marina is a principal commercial use and shall comply with standards of Section 403.2.

Material: Physical substance of any description.

Mean Sea Level: For purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or more recent datum, to which base flood elevations shown on a community's Flood Insurance Rate Map are referenced.

Mobile Home/Manufactured Home: A structure 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 connected to the required utilities and meet

DOT standards for towed units. For flood plain management purposes, the term “manufactured home” also includes park trailers, travel trailers, and other similar vehicles placed on site for more than 180 consecutive days. For insurance purposes the term “manufactured home” does not include park trailers, travel trailers, and other similar vehicles.

Mobile Home Park: Mobile home park is a plot of ground not less than five acres on which two or more mobile homes occupied for dwelling or sleeping purposes are located. Mobile home parks shall comply with provisions contained within Section 740.

Mobile Home Space: Mobile home space is a plot of ground within a mobile home park designated for the placement of one mobile home. Mobile home spaces shall comply with the provisions of Section 740.

Mobile Home Sales Lot: A facility uses for the display and sale of mobile homes. A mobile home sales lot is a principal commercial use.

Modular Home: A dwelling designed to be assembled on site from component parts and sections. Such a dwelling is regulated identically to site built dwellings.

Motor Vehicle Repair Facility: Enclosed establishments for the repair of new and used motor vehicles, trailers, motor homes and boats. No retail sale of fuels or lubricants, except as incidental to the repair facility shall be allowed. A motor vehicle repair facility is a principal commercial use.

Motor Vehicle Sales and Repair Facility: Establishments for the display, sale and repair of new and used motor vehicles, trailers, motor homes, and boats. No retail sale of fuels or lubricants, except as incidental to the repair facility shall be allowed. A motor vehicle sales and repair facility is a principal commercial use.

Neighborhood Office/Apartment Complex: A multi-purpose building designed to house a combination of offices and apartments and is a principal commercial use.

Neighborhood Personal Service: Business operations which provide personal services to residents of a local area. Neighborhood personal service is a principal commercial use.

Neighborhood Retail Store/Office Complex: A multi-purpose building designed to house a combination of offices and retail spaces and is a principal commercial use.

Non-Compliance: A structure or use in non-conformity with and in violation of the Zoning Bylaw.

Non-Compliant Non-Conformity: That part of a structure or use in violation of the current Zoning Bylaw and not exempt from the current Bylaw under the provisions of Article III.

Non-Conformity: That part of a structure or use, whether in violation of the Bylaw or not, that does not meet current Bylaw provisions, regulations or requirements.

Office: Place where the business of a commercial, industrial, public or quasi-public service or organization is transacted. Office may be a commercial, public or quasi-public principal use.

Off-Lot Water and Sewer: The provision of water from an off lot source and the disposal of sewage to an off lot site. Such lots are classified as class one lots.

On-Lot Sewer: Provision for the disposal of sewage and wastewater on the same lot that a building or use is located. Such lots are classified as class two lots.

On-Lot Water: Provision for water supply from a source located on the same lot that a building or use is located. Such lots are classified as class two when associated with on-lot sewage or as class three when associated with off-lot sewage disposal.

Personal Service: Business enterprises engaged in the provision of services predominately to individual consumers. Personal service may be a principal or accessory commercial use.

Principal Building or Use: Any building, structure or use, actual or intended, that is not subordinate to any other building, structure or use located on the same lot.

Printing/Publishing: Any commercial enterprise involved in the printing or publishing of books, magazines, newspapers, newsletters, business forms, letterhead, envelopes, or other printed matter.

Private School: Any school operated outside of the public school system that meets the state requirements for primary, secondary or higher education.

Public Use: Any structure, building or use of property by a local, county, special district, state or federal agency for the provision of public services, the transaction of public business or the storage and maintenance of equipment or other public property.

Public Water and/or Sewer: Water supply and sewage disposal provided by the Villages for municipal operation.

Quasi-Public Use: Any structure, building or use of property by a not for profit, non-governmental agency, organization or corporation.

Recreation, Indoor: Any structure, building, or use designed for the provision of indoor athletic facilities or other indoor leisure or entertainment activities and any accessory uses or structures that may be required. Indoor recreation may be a principal commercial, public or quasi-public use.

Recreation, Outdoor: Any structure, building, or use designed for the provision of outdoor athletic facilities or other outdoor leisure or entertainment activities and any accessory uses or structures that may be required. Outdoor recreation may be a principal commercial, public or quasi-public use.

Recycling Transfer Station: A facility designed for the collection, sorting, storage and transfer of recyclable materials. Recycling transfer station may be a principal commercial, public or quasi-public use.

Redi-Mix (concrete) Plant: A facility for the preparation, mixing and distribution of cement, concrete and other similar materials. Such a facility is regulated under the definition of heavy industry and is a principal commercial use.

Renovation: Any exterior structural change, rearrangement, change of location, or addition to a structure, building or sign, other than repairs to building equipment and general maintenance. Any interior alteration of a new conditional use, or expansion of usable footprint of a permitted use. Any activity covered by this definition requires site plan review and permitting.

Research/Testing Lab: A facility for research and or testing of materials, products, substances, chemical or biological agents. Such use may be subject to special conditions and may be a principal commercial, public or quasi-public use.

Residential Business or Service: As defined under Section 402.3(B), an accessory residential use entailing the operation of a business enterprise.

Residential Care Home: A state licensed or registered residential care home serving not more than six persons who are developmentally or physically disabled. Such home shall constitute a residential use of land where such home is not located within 1000 feet of another such home.

Residential District: All zoning districts with the exception of industrial, commercial/industrial, commercial and village commercial zones.

Residential Treatment Facility: A facility for the inpatient treatment of individuals who have social, mental, physical or substance abuse disorders. A residential treatment facility may be a principal commercial, public or quasi-public use.

Residential Use: Buildings or structures designed for the permanent housing of households and individuals and accessory uses and structures associated with such buildings or structures. This use is distinct from transient housing such as motels, inns and hostels.

Restaurant: A facility for the preparation, service, and sale of ready to eat foods and beverages to the public. Restaurant is a principal commercial use.

Retail Store: An establishment for the sale or rental of retail goods to the public. This classification applies to all such enterprises not specifically defined under other terms (i.e. motor vehicle sales and service). Retail store is a principal commercial use.

Retail Store/Office/Apartment Complex: A multi-purpose building designed for any combination of multi-family residential and commercial retail or office uses.

Setbacks: The required distance between a building, structure or use and the lot line. Setback is often synonymous with required yard.

Service Area: Area designated and designed for the loading, off-loading (including loading docks), receiving or discharging merchandise and materials; area designated for the placement of trash receptacles.

Sign: An accessory structure designed to inform or attract the attention of members of the public not on the premises which the sign is located; for purposes of regulation the following signage is exempt from permit requirements:

- a. Signs not exceeding one square foot in area bearing only street numbers, post box numbers, names of occupants or premises not having commercial connotations;
- b. Flags and insignia of any government except when displayed in connection with commercial purposes;
- c. Legal notices, identification, informational or directional signs erected as required by governmental bodies;
- d. Integral decorative or architectural fenestration or other design features of buildings except letters, numbers, moving parts or lights;
- e. Signs directing and guiding traffic and parking on private property, but bearing no advertising copy or text.

Sign size and design regulations are contained in Section 402.8.

Slaughter House: A facility designed for receiving, slaughter, processing and distribution of animal meats and byproducts. Slaughter house is a principal commercial use.

Smelter: A facility for the primary processing or manufacture of metal products involving the use and production of molten metals in the manufacturing process.

Such use is regulated under the heavy manufacturing definition and is a principal commercial use.

Source Protection Area: The surface and sub-surface area surrounding a spring or well supplying a public water system through which contaminants are reasonably likely to move toward and reach such water supplies.

Street: A town highway, a state highway, or a way for motor vehicles that is depicted on a site plan approved by the Planning Commission. The word street shall include the entire public right of way.

Street or Road Frontage: Lot lines defined by a public street or road.

Street Line: Right of way line of a street as dedicated by the deed of record. Where the width of the public right of way is not established, the street line shall be considered to be twenty-five feet from the center of the street or road pavement.

Structure: An assembly of materials for occupancy or use that is above grade on any elevation.

Surface Water: All water standing or flowing on the surface of the ground.

Taxi Service Facilities: A facility designed for the storage, dispatch, maintenance or service of vehicles used for taxi-cab, livery or limousine services. Such a facility is a principal commercial use.

Temporary or Itinerant Vendor: A person or persons who sell or barter goods, wares, merchandise or services from a temporary place of business. Farm stands as defined by VSA Title 10 are exempt from the classification and permitting. All other such uses require permitting as provided under Section 402.10.

Travel Trailer Sales Lot: An enterprise for the display, sale and service of travel trailers, motor homes and pick-up coaches. Travel trailer sales lot is a principal commercial use.

Uses, Permitted: Use specifically allowed in a zoning district, such uses may be subject to site plan review and approval before the Planning Commission as provided under Section 209.

Uses, Conditional: Use which may be permitted in a zoning district upon approval of a conditional use permit by the Zoning Board of Adjustment after public notice and hearing as required under Section 208. Such uses may require site plan approval before the Planning Commission as provided under Section 209.

Vendor: A temporary or itinerate vendor is any person, whether business owner, agent, consignee or employee, who engages in the business of selling and delivering food or merchandise from any vehicle, cart, stand or other assemblage of materials which is not permanently attached to a water supply source and sewage system. Such uses are regulated under Section 402.10 and are principal or accessory commercial uses.

Veterinary Hospital: A facility designed for the treatment and care of sick or injured animals. Animals may also be kept, boarded, bred, groomed or trained for commercial gain. Veterinary hospital is a principal commercial use.

Village Inn: An establishment containing rooms for rent consistent with the definition of hotel/motel. The establishment may have a full service dining room open to the general public where alcoholic beverages may be served with meals to guests and patrons. Any additional entertainment services, pool facilities, game rooms or similar forms of entertainment are to be restricted to overnight guests only. Village Inn is a principal commercial use.

Warehouse/Trucking Terminal: A facility designed for the receiving, sorting, storage, transfer, or trucking of goods and the parking of trucks utilized in the business. Warehouse/trucking terminal is a principal commercial use.

Waste Water Treatment Facility: A system for the waste disposal with a design flow and capacity in excess of 5000 gallons per day.

Wetland: Lands that are transitional between terrestrial and aquatic environments where the water table is usually at or near the surface, or the land is covered by shallow water. For purposes of this definition, wetlands must meet at least one of the following criteria:

- a. At least periodically, the land supports predominantly hydrophilic vegetation;
- b. The substrate is predominantly un-drained hydric soil; and
- c. The substrate is non-soil and is saturated with water or covered by shallow water at some time during the growing season each year.

Specific wetlands are identified on the wetlands inventory maps prepared by the United States Department of the Interior, Fish and Wildlife Service.

Wholesale Business: An enterprise or place of business primarily engaged in selling merchandise to retailers, industrial, commercial, institutional or professional businesses or other wholesalers; or acting as agents buying merchandise for, or selling to, such companies. These are businesses which cater to the general public for retail sales purposes and are principal commercial uses.

Appendix i

Zoning Board of Adjustment Findings of Fact for Variance Applications

Town of Derby Zoning Board of Adjustment
Findings of Fact and Conclusion
June 14, 2004

Application # 04-061 for a setback variance on a proposed residential dwelling addition; Thomas and Robin Coulter property owners and applicants and were present for the public hearing and subsequent field visit. Members present were Ed Barber acting as chair, Richard Nelson and Joe Profera. Zoning Administrator JC Brimmer was present and testified at the hearing.

Case Narrative:

Thomas Coulter purchased the lot and placed a modular home on the site in 1994. Siting of the dwelling was based on the general contractor's recommendation driven by the general topography of the lot which features steep slopes and considerable fill of questionable suitability for the placement of building foundations. The lot and dwelling are both compliant and conforming with past, present and proposed Zoning Bylaw requirements. The applicant asserts that due to the slope and fill that the proposed location for the addition is the only feasible site for the construction. The site is in the village residential zone (village residential one Derby Line proposed) which under the current and proposed bylaw requires a side setback of 20 feet. The proposal as submitted is for the construction of a 13.5 foot by 20 foot by 17.5 foot room addition and would require a setback of 12.3 feet at its deepest encroachment on the side setback thus requiring a variance of 7.7 feet.

Acceptability of Application:

The applicant has submitted site plans, complete application, narrative answering the five variance criteria and documentation of abutter notification. Submitted materials are deemed complete and acceptable as specified under Section 802.4.

Zoning Board of Adjustment Findings on the Five Variance Criteria:

Based upon the evidence presented and a site visit, the Zoning Board of Adjustment makes the following Findings of Fact on the five variance criteria as provided under Section 802.1:

- A. The Zoning Board of Adjustment finds that the topographical features and the relative instability of the fill used to make the site suitable for construction do in fact create a qualifying hardship under this criterion;
- B. The Zoning Board of Adjustment finds that due to the qualities of the lot the location specified by the applicant is the only reasonably useable site for the proposed addition. Further the Board finds that the proposed addition is a reasonable use of a residential property;
- C. The Zoning Board of Adjustment finds that the applicant relied on the professional advice of a contractor in the siting of the dwelling, which this was represented as the only feasible, conforming placement of the dwelling and had no actual or constructive knowledge of possible zoning restrictions, therefore the applicant did not create the hardship for himself;

D. The Zoning Board of Adjustment finds that the requested variance would not alter the essential character of the neighborhood or the property, would not impair the appropriate use or development of adjacent property, would not reduce access to renewable energy resources, nor would be a detriment to the public welfare;

E. The Zoning Board of Adjustment finds that the variance as requested does not represent the minimum variance that would afford relief, however the applicant has stipulated to an alternative footprint that would entail pushing the proposed addition back two feet to a back line flush with the back line of existing building; the resulting setback variance of five feet is found to be the minimum variance necessary to afford relief.

Based upon the foregoing, the Town of Derby Zoning Board of Adjustment grants the variance requested under application 04-061 with the amendment as stipulated to by the applicant under finding E and instructs the Zoning Administrator to issue the required zoning permit with the following conditions:

1. The use be conducted and constructed in substantial compliance with the parameters indicated in the applicant's submitted materials, the report of the Zoning Administrator.
2. The applicant shall submit the required application, site plan and fees required for the processing of a permit for the actual construction.
3. The location of the construction shall be in conformity with the approved site plan attached to these findings, detailing the findings and stipulations of finding E.

Note: Finding arrived at by unanimous vote of three to zero, with three total ZBA members in attendance. Any decision made by the minimum quorum of three members must be by unanimous vote.

Town of Derby Zoning Board of Adjustment
Findings of Fact and Conclusions of Law
May 2, 2005

Application # 05-017 for a setback variance on a proposed residential dwelling addition; Bruce and Karen Lippens property owners and applicants and Bruce Lippens present for the public hearing. Members present were Zoning Board of Adjustment Chair Ed Barber, Vice-Chair Joe Profera, Norman Gaboriault and Judy Nommik. Zoning Administrator JC Brimmer was present and testified at the hearing.

Case Narrative:

Bruce and Karen Lippens purchased the property on March 15, 2002 before extensive permit research was required. The original dwelling was constructed in 1953 or '54, the dwelling was updated and expanded by 512 square feet under permit #97-03 issued on January 20, 1997, an accessory structure (447 square foot garage) was constructed under permit #00-174 issued September 11, 2000. The lot and dwelling are both compliant non-conformities with present Zoning Bylaw requirements. The applicant asserts that due to the location of septic system and well that the proposed location for the addition is the only feasible site for the construction. The site is in the shoreland district zone which under the current Bylaw requires a side and rear setback of 25 feet. The proposal as submitted is for the construction of a second floor room addition featuring a master bedroom suite and would require a setback of 10 feet at its deepest encroachment on the side setback thus requiring a variance of 15 feet and a setback of 0 feet on the rear setback thus is requiring a variance of 25 feet, all setback variances are within the first floor footprint of the existing dwelling. No party attending the hearing asserted interested party status in this application.

Acceptability of Application:

The applicant has submitted site plans, complete application, narrative answering the five variance criteria and documentation of abutter notification. Submitted materials are deemed complete and acceptable as specified under Section 802.4.

Zoning Board of Adjustment Findings on the Five Variance Criteria:

Based upon the evidence presented the Zoning Board of Adjustment makes the following Findings of Fact on the five variance criteria as provided under Section 802.1:

- A. The Zoning Board of Adjustment finds that the size of the lot, location of the dwelling, septic system and well do in fact create a qualifying hardship under this criterion;
- B. The Zoning Board of Adjustment finds that due to the qualities of the lot the location specified by the applicant is the only reasonably useable site for the proposed addition. Further the Board finds that the proposed addition, which does not entail the creation of additional bedrooms, is a reasonable use of a residential property;

C. The Zoning Board of Adjustment finds that the applicant had no actual or constructive knowledge of possible zoning restrictions; therefore the applicant did not create the hardship for himself;

D. The Zoning Board of Adjustment finds that the requested variance would not alter the essential character of the neighborhood or the property, would not impair the appropriate use or development of adjacent property, would not reduce access to renewable energy resources, nor would be a detriment to the public welfare;

E. The Zoning Board of Adjustment finds that the variance as requested does represent the minimum variance that would afford relief.

Based upon the foregoing, the Town of Derby Zoning Board of Adjustment grants the variance requested under application 05-017 and instructs the Zoning Administrator to issue the required zoning permit with the following conditions:

2. The use be conducted and constructed in substantial compliance with the parameters indicated in the applicant's submitted materials, the report of the Zoning Administrator.
2. The applicant shall submit the required application, site plan and fees required for the processing of a permit for the actual construction.
3. The location of the construction shall be in conformity with the approved site plan.

Note: Finding by Zoning Board of Adjustment made in a unanimous four vote decision.

