

# TOWN OF KIRBY

## ZONING REGULATIONS

Adopted November 8, 2022

TOWN OF KIRBY

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# **TOWN OF KIRBY ZONING REGULATIONS**

## **ARTICLE I - ENACTMENT and INTENT**

**1.01 Enactment.** In accordance with the Vermont Planning and Development Act, 24 V.S.A. Chapter 117 (the "Act"), the regulations set forth herein are hereby established as the Zoning Regulations for the Town of Kirby, Vermont. These regulations shall be known and cited as the Kirby Zoning Regulations.

**1.02 Intent.** It is the intent of these Zoning Regulations are to provide for orderly community growth by furthering the purposes established in Section 4302 of the Act, and by acknowledging and providing for Kirby's social, economic and environmental needs as they are described in Kirby's Municipal Plan.

## **ARTICLE II - DEFINITIONS**

Definitions contained in Section 4303 of the Act are applicable in the Zoning Regulations. In addition, the terms and words set forth in Appendix A attached hereto and incorporated herein by reference shall have the meaning given them in Appendix A.

## **ARTICLE III - ESTABLISHMENT OF DISTRICTS**

**3.01 Zoning Map and Districts:** The zoning map officially entitled "Kirby Zoning Map" is hereby adopted as part of the Zoning Regulations. The Kirby Zoning Map, located in the Town Clerk's office, reflects the division of the town into the following districts:

- A. **Residential District** designated "R" on the Kirby Zoning Map and defined as all lands other than those in the Commercial/Light Industry, or Highland or Special Flood Hazard Area.
- B. **Commercial/Light Industry District** designated "C/LI" on the Kirby Zoning Map and defined as all lands between the Moose River and U.S. Route 2 and all land lying within 1,500 feet north of U.S. Route 2, but excluding any lands in that area lying within the Special Flood Hazard Area.
- C. **Special Flood Hazard Area** designated "FHA" on the Kirby Zoning Map and defined as all land lying within the Special Flood Hazard Area as determined by the National Flood Insurance Program maps.
- D. Highlands District designed "H" on the Kirby Zoning Map, and defined as all lands lying above 1,800 feet in elevation.

**3.02 Zoning Map:** Regardless of the existence of other printed 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 used as the final authority as to the current zoning statutes of the land areas of the town. The Zoning Map is hereby made part of this regulation, together with all future notations, references, and amendments.

**3.03 District Boundaries:** When the Administrative Officer cannot definitely determine the location of a district boundary by the scale or dimensions indicated in the Kirby Zoning Map he or she 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 these Zoning Regulations.

## ARTICLE IV - RESIDENTIAL DISTRICT

**4.01 Objective.** Years of increased residential development has resulted in reducing the role that Kirby's agricultural lands have played in the past. Kirby's growing community status increasingly places a burden on the town's ability to provide town and educational services to an ever growing population. The rural residential district is designed to meet the new requirements of this growing community to the degree that the infrastructure can handle in terms of fire, police, water, roads, etc.

### 4.02 Permitted Uses.

1.	Accessory Use	6.	Forestry
2.	Accessory Dwelling Unit	7.	Home Occupation
3.	Agriculture	8.	Primitive Camp
4.	Cemetery	9.	Seasonal Camp
5.	Dwelling, Single Family	10.	Stables

### 4.03 Conditional Uses.

1.	Multi-unit dwelling with 2-4 housing units	9.	Essential Services
2.	Bed and Breakfast	10.	Municipal Facility
3.	Campground	11.	Recreational Facility
4.	Church/Religious Facility	12.	Retirement Community
5.	Community Care Home	13.	Wireless Telecommunications Facility
6.	Community Facility	14.	Day Care Facility
7.	Dwelling, Multi-Family	15.	Short term rental, 28 days or less
8.	Educational Facility	16.	Occupied Recreational Vehicles (RV)

### 4.04 Minimum Area and Dimensional Requirements.

1.	Lot Area	5 acres
2.	Lot width	
3.	Front setback	75 feet from centerline of road or if no public road frontage, 50 feet from lot line
4.	Side setback	50 feet
5.	Rear setback	50 feet
6.	Driveway and Right of Way setbacks	See Section 8.10

## ARTICLE V - COMMERCIAL/LIGHT INDUSTRIAL DISTRICT

**5.01 Objective.** This district is designated to provide paved road access, existing phone and electric utilities and adequate lot size requirements for future commercial and residential development. This district has been established: (1) to allow light, non polluting industries and businesses to locate in Kirby; (2) to diversify Kirby's tax base with the goal of reducing the residential tax burden; (3) and to increase the town's employment opportunities.

### 5.02 Permitted Uses.

1.	Accessory Use	10.	Light Industry
2.	Agriculture	12.	Motel/Inn
3.	Animal Shelter	13.	Nursing Home
4.	Bed and Breakfast	14.	Private Club
5.	Church	15.	Professional Services
6.	Community Facility	16.	Recreational Facility
7.	Educational Facility	17.	Warehouse
8.	Forestry	18.	Single Family Dwelling
9.	Light Commercial	19.	Wireless Telecommunication Facility
		20.	Multi-Family Dwelling

### 5.03 Conditional Uses.

1.	Agricultural processing	4.	Wind Generation Facility
2.	Animal Hospital/Kennel	5.	Essential Service
3.	Campground	6.	Forestry Processing
		7.	Fuel Service Facility

### 5.04 Minimum Area and Dimensional Requirements

1.	Lot Area	5 acres
2.	Lot width	300 feet
3.	Front setback	75 feet from centerline of road or if no public road frontage, 50 feet from lot line
4.	Side setback	50 feet
5.	Rear setback	50 feet
6.	Driveway and Right of Way setbacks	See Section 8.10

## **ARTICLE VI - SPECIAL FLOOD HAZARD DISTRICT.**

### **6.01 Incorporation of Inundation Hazard Area Regulations.**

The Town of Kirby Inundation Hazard Area Regulations (Attached hereto as Appendix A) are hereby adopted and incorporated into the Kirby Zoning Regulations, subject to the following minimum area and dimensional requirements and shall henceforth govern all future development in the Special Flood Hazard District.

### **6.02 Minimum Area and Dimensional Requirements**

1.	Lot Area	5 acres
2.	Lot width	300 feet
3.	Front setback	75 feet from centerline of road or if no public road frontage, 50 feet from front lot line
4.	Side setback	50 feet
5.	Rear setback	50 feet
6.	Driveway and Right of Way setbacks	See Section 8.10

## **ARTICLE VII - HIGHLANDS DISTRICT**

**7.01 Objective.** The Highlands District includes areas of the Town lying above 1,800 feet in elevation that mostly have shallow clay soils over bedrock ledge and include steep hillsides which, as a whole, are not suitable for high density development. Consistent with the purposes set forth in Act Section 4302, the Kirby Planning Commission deems it necessary to safeguard this district from higher density residential development and any commercial development, and to encourage such development in other areas of the Town.

### **7.02 Permitted Uses.**

1.	Accessory Use	5.	Forestry
2.	Agriculture	6.	Home Occupation
3.	Camps	7.	Dwelling, Single Family
4.	Dwelling, Multi-family	8.	Accessory Dwelling Units

### **7.03 Conditional Uses.** None

### **7.04 Minimum Area and Dimensional Requirements.**

1.	Lot Area	25 acres
2.	Lot width	600 feet
3.	Front setback	75 feet from centerline of road or if no public road frontage, 50 feet from lot line
4.	Side setback	50 feet

5.	Rear setback	50 feet
6.	Driveway and Right of Way setbacks	See Section 8.10

## **ARTICLE VIII - GENERAL PROVISIONS**

**8.01 Prohibited Uses.** If a use is not permitted in a given district, the use is prohibited. Without limiting the foregoing, the following uses are specifically prohibited in Kirby:

- A. Manufacturing uses involving primary production of the following products from raw materials: asphalt, and cement; chemicals: aniline dyes, ammonia, carbide, caustic soda, cellulose, chlorine, carbon black, creosote, hydrogen and oxygen, industrial alcohol, nitrates of an explosive nature, potash, plastic material and synthetic resins, pyroxylin, and hydrochloric, nitric, phosphoric, and sulfuric acids. The manufacturing of gas and/or explosives is also prohibited.
- B. The following commercial manufacturing processes: nitrating of material; refining, smelting, and alloying of metal or metal ores; refining petroleum products.
- C. Storage of explosives other than fuel storage for on-site use.
- D. Junkyards (Any land, structure, or place of storage, whether in connection with another place of business or not, used for the gathering, processing, storage, salvage and/or resale of waste items, corrosive material and materials which pose significant health and/or environmental risks, scrap materials, four or more unregistered motor vehicles or other discarded goods), automotive dismantling plants, and or unsheltered storage of used automotive and/or machine parts for resale.
- E. Commercial Wind Towers or Private Wind Towers over 30 feet in height unless they are connected to the grid
- F. Commercial Solar Farms unless they are connected to the grid

**8.02 Existing Small Lots.** Any Lot that is legally subdivided, is in individual and separate and non-affiliated ownership from surrounding properties, and is in existence on the effective date of these Zoning Regulations, may be developed for the purposes permitted in the district in which it is located, even though the small Lot no longer conforms to minimum lot size requirements of the Zoning Regulations, provided that (i) the lot is not less than one-eighth acre, or (ii) has a width or depth dimension of at least forty feet. Existing small lots must be in conformance with all possible district regulations, and any proposed Development on such a lot that would increase nonconformance with any District standard shall require a variance and satisfy State requirements.

If an existing small lot subsequently comes under common ownership with one or more contiguous lots, the nonconforming lot shall be deemed merged with the contiguous lot.

**8.03 Required Frontage.** Development may be permitted on any Lot that does not either have frontage on public road, class four town highways and public waters, provided that access to such a public road or waters by permanent easement or right-of-way at least twenty (20) feet in width has been approved by the Planning Commission. An access easement or right-of-way must meet the requirements of Section 8.10.

**8.04 Protection of Home Occupation.** No regulation may infringe upon the right of any resident to use a minor portion of their dwelling, associated structure(s), or their land for an occupation that is customary in residential areas. Activities associated with the home occupation must be conducted in such a manner so as not to generate excessive noise, smoke, vibration, dust, glare, odors, electrical interference, heat, or visual annoyances or excessive traffic and undue burden on the roads.

#### 8.05 Equal Treatment of Housing.

- A. No bylaw shall have the effect of excluding housing that meets the needs of the population as determined in the housing element of the Kirby Town Plan.
- B. Except as provided in Section 4414(1)(E) and (F) of the Act, no zoning regulation shall have the effect of excluding mobile homes, modular housing, or other forms of prefabricated housing from the municipality, except upon the same terms and conditions as conventional housing is excluded.
- C. No bylaw shall have the effect of excluding mobile home parks, as defined in 10 V.S.A. Chapter 153, from Kirby.

8.06 Lot Use. Except as specifically permitting in these Zoning Regulations and not excluded by State law, a Lot shall not be occupied for more than one use, and a Residential Lot shall not have more than one Single Family, Two Family Dwelling or Multi-Family Dwelling, and an Accessory Use Dwelling.

8.07 Residential Care Home or Group Home. Notwithstanding anything in these Zoning Regulations to the contrary, a residential care home or group home to be operated under state licensing or registration, serving not more than eight persons who have a handicap or disability as defined in 9 V.S.A. § 4501, shall be considered by right to constitute a permitted Single Family residential use of property.

8.08 Child Care Facility. A "family childcare home or facility" as used in this subsection means a home or facility where the owner or operator is to be licensed or registered by the state for childcare. A family childcare home serving six or fewer children shall be considered to constitute a permitted Single Family residential use of property. A family childcare home serving no more than six full-time children and four part-time children, as defined in 33 V.S.A. § 4902(3)(A), shall be considered to constitute a permitted use of property but shall require site plan approval pursuant to Section 13.09. A family childcare facility serving more than six full-time and four part-time children is defined and regulated herein as a Day Care Facility.

8.09 Sign Regulations. No Signs shall be permitted in any district except as specifically permitted herein as follows:

- A. Signs shall be prohibited except for the purpose of announcement or advertising the goods or services sold. No sign shall be larger than twenty square feet and more than ten feet high.
- B. No sign shall be permitted at a place other than the actual site of the sale of said goods and services unless approved by the Planning Commission.
- C. No internally illuminated flashing signs shall be permitted.
- D. Special event signs and seasonal signs are allowed without a permit so long as they do not exceed eight square feet in area, are installed for less than sixty (60) days and are removed promptly upon conclusion of the activity.
- E. All permitted signs shall be a minimum of thirty five (35) feet from the centerline of any Town road, unless otherwise approved by the Planning Commission.

**8.10 Driveways; Right of Way Setbacks; Slope; Curb Cut.** All new Driveways shall be located at least fifteen (15) feet from the nearest lot side line. In the event that a Driveway or access easement or right-of-way accessing a Town highway from above has a slope of more than six degrees at any point within one hundred feet of the Town highway, the administrative officer shall have the right to impose conditions related to drainage and grading with respect to the Driveway or access right-of-way in order to protect town highways and adjoining property owners. A Driveway or access easement or right-of-way creating a new access from a public highway requires a Curb Cut permit from the Selectmen, which shall be condition of any permit issued for Development of the Lot served by the Driveway or access easement or right of way. All Structures must be set back at least twenty five (25) feet from the sideline of an access easement or right of way.

The foregoing shall not apply if a Driveway is on a common boundary in an approved subdivision.

The Board of Adjustment may waive the Driveway setback requirements if there is no risk of erosion to adjoining properties and/or the adjoining landowner(s) agree to the waiver.

**8.11 Yard Sales.** Yard Sales held on any Lot shall not exceed a total of thirty days per calendar year.

**8.12 Structure Height.** A Structure shall not exceed thirty five (35) feet in height measured from the highest point of the foundation grade to the highest point of the structure. The foregoing limitation does not apply to the following if installed for personal use: (i) agricultural silos and barns, or (ii) antenna structures, wind turbines with blades less than twenty feet in diameter, or rooftop solar collectors less than ten feet high, any of which are mounted on complying structures.

**8.13 Lighting.** Outdoor lighting shall be installed to avoid glare cast onto neighboring properties, and shall be shielded as necessary. Twenty-four hour outdoor lighting shall be avoided when possible.

## **ARTICLE IX - SEWAGE DISPOSAL SYSTEMS**

**9.01 Purpose.** The purpose of these regulations is 1. to preserve the public health and prevent pollution and to secure the sanitary protection of surface and subsurface waters, 2. to affirm that any development that requires a permit from a State of Vermont agency, including Primitive and Seasonal Camps and sewage disposal systems, shall be developed and maintained in conformance with pertinent state regulations and statutes.

## **ARTICLE X - NON-CONFORMING USES**

**10.01 Non-Conforming Uses:** The following provisions shall apply to all structures and uses existing on the effective date of these regulations, which do not conform to the requirements set forth in these regulations, and to all buildings and uses that in the future may not conform, by reason of any subsequent amendment to these regulations. Any non-conforming use of structures or land, except those specified below, may be continued indefinitely, but:

- A. Shall not be moved, enlarged, altered, extended, reconstructed, or restored (except as provided below), nor shall any external evidence of such use be increased by any means whatsoever, with the exception that: a dwelling which was built in accordance with setbacks, but which is now out of compliance in terms of setbacks as a result of changes in zoning regulations, may be enlarged or extended as long as such additions are not any closer to the road than the original structure, and only as approved by the Zoning Board.
- B. Shall not be changed to another non-conforming use without approval by the Zoning Board of Adjustment, and then only if the proposed use, in the opinion of the Board, is of the same or of a lesser degree of non-conformity.

- C. Shall not be re-established if such use has been discontinued for a period of six months, or has been changed to, or replaced by, a conforming use. Intent to resume a non-conforming use shall not confer the right to do so.
- D. Shall not be restored for any other than a conforming use after damage from any cause, unless the non-conforming use or structure is reinstated within two years of such damage. If repair is not completed within two years, a new permit must be applied for. If the restoration of such use or structure is not completed within one year, the non-conforming use shall be deemed to have been discontinued, unless such non-conforming use is carried on without interruption in the undamaged part of any structure on the property.
- E. Nothing in this section shall be deemed to prevent normal maintenance and repair of non-conforming buildings provided that such action does not increase the degree of non-conformity.
- F. If the structure in use is within a state-identified flood hazard area, this provision does not apply and the structure will need to adhere to flood hazard standards.

## **ARTICLE XI. Wireless Telecommunication Facilities**

11.01 Any proposed Wireless Telecommunication Facilities must comply with Vermont Regulations and State statutes.

## **ARTICLE XII WIND GENERATION FACILITIES**

12.01 1.01 Wind Generation Facilities. Purpose. Any wind generation facility will not have an undue adverse effect on the town infrastructure, aesthetics, historic sites, air and water purity, the natural environment, the use of natural resources, and the public health and safety, with due consideration having been given to criteria specified in 10 VSA s:124(d) and 6086 (a)(1) through (8) and (9)(k) and greenhouse gas impacts.

## **ARTICLE XIII ADMINISTRATION AND ENFORCEMENT**

13.01 Administrative Officer. The Administrative Officer shall be appointed for a term of three years by the Planning Commission, with the approval of the legislative body. The Administrative Officer shall administer the Zoning Regulations literally, and shall not have the power to permit any Development that is not in conformance with the Zoning Regulations. The Administrative Officer may be removed for cause at any time by the legislative body after consultation with the Planning Commission.

### 13.02 Zoning Permits.

- A. No Development may be commenced within Kirby without a zoning permit.
- B. The Administrative Officer shall not issue a zoning permit without first receiving a complete zoning permit application including a site plan indicating the location of:
  1. All structures and proposed structures;
  2. Water sources and waste water disposal system (for future reference);
  3. Lot lines and measurements and abutters names and addresses;
  4. Access roads, driveway or rights-of-way;
  5. If applicable, a copy of any instrument creating a private right-of way that provides access to the applicant's parcel; and
  6. If applicable, a copy of the curb-cut approval, and any state and/or federal permits for the proposed Development.

7. A site visit from the Zoning Administrator may be required before permits can be approved to verify points such as proper distances from brooks, streams, wetlands etc.

- C. Subdivision permits will be issued in addition to and separately from development permits.
- D. The Administrative Officer shall, within thirty (30) days of submission of the completed application, either issue or deny a zoning permit or refer the permit to the appropriate board for review. If the zoning permit is approved, all activities authorized by its issuance shall be completed within two (2) years of its date of issue. Request for extension to the two year requirement for originally approved activities may be submitted to the Zoning Board do to unforeseen circumstances.
- E. No zoning permit issued pursuant to this section shall take effect until the fifteen (15) day appeal period has expired. Construction of Development should not begin until the fifteen-day appeal period has expired. In the event that a notice of appeal is properly filed, until final adjudication of said appeal by the appropriate municipal panel is complete and the time for taking an appeal to the Environmental Court has passed without an appeal being taken. If an appeal is taken to the Environmental Court, the permit shall not effect until the Environmental Court rules in accordance with 10 VSA § 8504 on whether to issue a stay, or until the expiration of fifteen days, whichever comes first.
- F. Within five (5) days of the issuance of a zoning permit, the Administrative Officer shall deliver a copy of the permit to the Kirby listers, the Kirby Town Clerk, post a notice of permit on the subject Property in a location visible to neighbors, and post a copy of the permit at the Town Hall until the expiration of the fifteen-day appeal period.
- G. Within thirty (30) days after a zoning permit has been issued, the Administrative Officer shall deliver the original or a legible copy of the permit in the form set forth in 24 VSA § 1154(c) to the Town Clerk for recording, and file a copy of the permit in the Town offices.

13.03 Exemptions. Outside the Special Flood Hazard Area a zoning permit is not required for the following:

- A. Permanent fences, or walls that (i) are not more than four (4) feet in height, (ii) are not within the traveled portion of the public or private road;, and (iii) do not interfere with road maintenance or corner visibility. Fences in the town highway right of way may require a permit from the Selectboard.
- B. Patios, terraces or steps that are not covered overhead and that meet setback requirements.
- C. Stand alone structures such as doghouses, sheds, tree houses, or similar structures having a footprint of less than one hundred (100) square feet and a height of less than twelve (12) feet provided that the same shall meet all lot setback requirements.
- D. Any sign erected by the Town or State for directional information or traffic control purposes.
- E. Above-ground pools and hot tubs provided that they meet all necessary setback requirements.

13.04 Temporary Use Permit. Outside the Special Flood Hazard Area the Zoning Board may issue a temporary use permit for a period not to exceed one year to allow for temporary structures on a Lot during a period of construction.

13.05 Certificate of Occupancy. It shall be unlawful to use or occupy or permit the use or occupancy of any dwelling or part thereof created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure, within the area affected by such zoning regulations, until a Certificate of Occupancy is issued therefore by the Administrative Officer stating that the proposed use of the dwelling conforms to the requirements of these Zoning Regulations. Construction is not deemed complete until a Certificate of Occupancy has been issued. The Administrative Officer shall have the right to inspect the

land or structure to determine compliance. All septic systems must be approved by a licensed engineer and a letter from an engineer shall be given to the Administrative Officer. The Administrative Officer has the option of issuing a temporary Certificate of Occupancy for up to 60 days. It is the responsibility of the permittee to complete the permit process which includes:

1. Ensuring that a licensed engineer inspect and approves the septic system
2. Ensuring that the required Energy Audit is completed and filed with the Town Clerk
3. Ensuring that the dwelling has operable heating/mechanical systems, independent cooking and sleeping areas, water, and septic system

13.06. Certificate of Compliance. any structure, other than a dwelling, over 100 square feet must be issued a Certificate of Compliance by the Administrative Officer.

13.07 Conditional Use Approval. No zoning permit shall be issued by the administrative officer for any use or structure that requires Conditional Use approval pursuant to these Zoning Regulations until the board of adjustment grants such approval. In considering its action, the board of adjustment shall make findings on general and specific standards, hold hearings and attach conditions, if any, as provided for in Section 4414(3) of the Act.

A. When determining the appropriateness of a proposed conditional use, the Board of Adjustment shall determine that the development or use will not adversely affect any of the following general conditional use criteria:

1. The capacity of existing or planned community facilities. A conditional use shall not overburden or exhaust existing or planned municipal facilities or services.
2. The character of the area affected, as defined by purposes of the zoning district within which the project is located, specifically stated policies, and standards of the municipal plan
3. Traffic on roads and highways in the vicinity. The estimated traffic generated by a conditional use shall not exceed the estimated volume of traffic that would be generated by the highest traffic volume permitted for the district if developed in compliance with the district regulations on the same conditional use site. Where the capacity of the road to accept increased traffic is limited, the conditional use shall not exceed the remaining capacity of the road.
4. Zoning Regulations then in effect. A conditional use must comply with the Zoning Regulations adopted at the time of submission of the application.
5. Utilization of renewable energy resources. A conditional use shall not excessively inhibit or restrict access to or the use of renewable natural resources (including, but not necessarily limited to, water and sunlight) for energy generation.

B. As a result of its review of the aforementioned general criteria in response to a conditional use application, the Board of Adjustment may make such additional requirements as it deems necessary with respect to the following specific standards:

1. Minimum lot size. Where the Board of Adjustment has determined that the minimum lot size for the applicable zoning district is inadequate to permit the proposed conditional use without negative impacts to neighboring uses, it may increase the minimum requirement.
2. Distance from the adjacent or nearby uses. Where the Board of Adjustment has determined that the minimum front, side or rear yard setback for the applicable zoning district is inadequate to permit the proposed conditional use without negative impacts to neighboring uses, it may increase the minimum requirement.
3. Landscaping and fencing. The Board of Adjustment may require landscaping or fencing improvements beyond the minimum standards specified in these regulations if it determines that the proposed landscaping and buffering is insufficient to screen the adverse visual impacts of the

proposed conditional use from adjoining streets or properties or such additional landscaping is necessary to mitigate adverse visual impacts.

4. The design and location of structure and service areas. The Board of Adjustment may require such reasonable changes in the design or location of structures and service areas as it deems necessary to ensure that the conditional use will be compatible in scale and design with neighboring uses in the area.
5. The size, location and design of signs. A conditional use sign shall, at a minimum, comply with the sign standards outlined in Section 0. However, the Board of Adjustment may impose additional requirements on signs as it deems to protect the character of the area.
6. Other factors. Such other factors as the zoning regulations may include and that the Board of Adjustment deems are sufficient to satisfy the general conditional use criteria specified above.

**13.08 Variances.** The zoning board of adjustment may grant a variance, in accordance with Act Section 4469 only, when the following conditions are met:

- A. There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of the Zoning Regulations in the neighborhood or district in which the property is located.
- B. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- C. Unnecessary hardship has not been created by the party seeking the variance.
- D. The variance, if authorized, will not alter the residential/agricultural 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, or be detrimental to the public welfare.
- E. The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.

In rendering a decision in favor of an applicant under this section, the 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 this section and the town plan. In the event Development is to occur within twenty-five (25) feet of the center of the public highway, selectboard approval shall be required prior to final approval of the variance.

**13.09 Site Plan Approval.** Pursuant to Section 4416 of the Act, any use other than Single Family Dwelling, Two Family Dwellings and Accessory Dwelling Units located within a Single Family Dwelling, shall require site plan approval by the Planning Commission. In addition to information required pursuant to Section 03.02 above, an application for Site Plan Approval shall also contain information regarding existing traffic access, proposed traffic flow and parking, and proposed landscaping and screening. A highway access permit will be required if accessing a State highway.

In reviewing a site plan, the Planning Commission may impose appropriate conditions and safeguards with respect to: the adequacy of traffic access, circulation and parking; landscaping and screening; the protection of the utilization of renewable energy resources; and other matters specified in these Zoning Regulations. The Planning Commission shall review all site plan applications in accordance with Section 4464 of the Act.

## ARTICLE XIV - VIOLATIONS; ENFORCEMENT

**14.01 Notice of Violation.** Recording. If any Development is proposed or undertaken in violation of these Zoning Regulations, the Administrative Officer may institute any appropriate action necessary to prevent, restrain, correct or abate the violation. This includes, but is not limited to, issuance of a notice of cease and desist or a notice of violation. Pursuant to Section 4449 of the Act, within thirty (30) days of issuance of any notice of violation, if the violation is not cured, then the Administrative Officer shall deliver an original or a legible copy of the notice of violation to the Town Clerk for recording, and file a copy with the zoning board.

**14.02 Enforcement.** Violations of these regulations shall be regulated as prescribed in Sections 4451(a) and (b) and 4452 of the Act. Currently, those sections provide as follows:

### § 4451. Enforcement; penalties

- (a) Any person who violates any bylaw after it has been adopted under this chapter or who violates a comparable ordinance or regulation adopted under prior enabling laws shall be fined not more than \$100.00 for each offense. No action may be brought under this section unless the alleged offender has had at least seven days' warning notice by certified mail. An action may be brought without the seven-day notice and opportunity to cure if the alleged offender repeats the violation of the bylaw or ordinance after the seven-day notice period and within the next succeeding 12 months. The seven-day warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days. In default of payment of the fine, the person, the members of any partnership, or the principal officers of the corporation shall each pay double the amount of the fine. Each day that a violation is continued shall constitute a separate offense. All fines collected for the violation of bylaws shall be paid over to the municipality whose bylaw has been violated.
- (b) Any person who, being the owner or agent of the owner of any lot, tract, or parcel of land, lays out, constructs, opens, or dedicates any street, sanitary sewer, storm sewer, water main, or other improvements for public use, travel, or other purposes or for the common use of occupants of buildings abutting thereon, or sells, transfers, or agrees or enters into an agreement to sell any land in a subdivision or land development whether by reference to or by other use of a plat of that subdivision or land development or otherwise, or erects any structure on that land, unless a final plat has been prepared in full compliance with this chapter and the bylaws adopted under this chapter and has been recorded as provided in this chapter, shall be fined not more than \$100.00, and each lot or parcel so transferred or sold or agreed or included in a contract to be sold shall be deemed a separate violation. All fines collected for these violations shall be paid over to the municipality whose bylaw has been violated. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the seller or transferor from these penalties or from the remedies provided in this chapter.

### § 4452. Enforcement; remedies

If any street, building, structure, or land is or is proposed to be erected, constructed, reconstructed, altered, converted, maintained, or used in violation of any bylaw adopted under this chapter, the administrative officer shall institute in the name of the municipality an appropriate action, injunction, or other proceeding to prevent, restrain, correct, or abate that construction or use, or to prevent, in or about those premises, any act, conduct, business, or use constituting a violation. A court action under this section may be initiated in environmental court, or as appropriate, before the judicial bureau, as provided under section 1974a of this title.

## Article XV INTERPRETATION, AMENDMENTS, AND REPEALER

**15.01 Interpretation.** In their interpretation and application, the provisions of this regulation shall be held to be the minimum requirements adopted for the promotion of the public health, safety, comfort, convenience, general welfare and economic stability. If any by-law is enacted with respect to any land development subject to regulations under the state statutes, the more stringent regulation applicable shall apply.

**15.02 Amendment.** These regulations may be amended according to the requirements and procedures established in Section 4441 and 4442 of the Act.

**15.03 Severability.** Should a court of competent jurisdiction decide that any section or provision of these Zoning Regulation is unconstitutional or invalid, such decision shall not affect the validity of these Zoning Regulations as a whole or any part thereof other than the part deemed unconstitutional or invalid, and to that end these Zoning Regulations are deemed severable.

**15.04 Repealer.** Upon enactment, these Zoning Regulations shall supersede all prior zoning regulations of the Town of Kirby.

STJ.204431.5

## APPENDIX A

- 1. Accessory Dwelling Unit:** A dwelling unit located within or appurtenant to an owner-occupied Single Family Dwelling for which (i) the property has sufficient wastewater capacity, (ii) the unit does not exceed 50% of the total habitable floor area of the Single-Family Dwelling with a cap of 1200 sq ft, and (iii) applicable setback, coverage, and parking requirements specified in the bylaws are met.
- 2. Accessory Use or Structure:** A use or structure on the same Lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.
- 3. Agricultural Processing:** The processing of agricultural plants or animals into related by-products. Example: a slaughterhouse or meat-packing facility.
- 4. Agriculture:** The production, keeping, or maintenance, for sale, lease, or personal use, of useful plants and animals, including but not limited to animal farming and maple sugar production; or the devoting of lands to soil conservation.
- 5. Alteration:** A structural change in a structure that changes its total size either in height, or amount of land surface covered. Also includes relocation or moving of a structure.
- 6. Animal Hospital/Kennel:** Any structure or premises in which animals or pets are given medical or surgical treatment or are kept, boarded, bred, or trained for commercial gain.
- 7. Animal Shelter:** Any Structure in or Lot on which animals or pets are given shelter and nourishment for the purposes of housing them until suitable homes are found for said animal.
- 8. Base Flood:** The flood having a one percent chance of being equaled or exceeded in any given year.
- 9. Bed and Breakfast:** A Single Family Dwelling in which the resident owner or permanent dwelling occupant provides short-term lodging to paying guests, containing no more than six guest rooms and in which guests are served meals limited to breakfasts or brunches but do not have commercial restaurant or commercial kitchen facilities.

- 10. Building:** An assembly of materials for the support or enclosure of persons, animals, or chattel of any kind.
- 11. Buffer Zone:** The perimeter region on a property established by the setback distances, which creates a Structure-free area.
- 12. Building Height:** Vertical distance measured from the highest point of the foundation grade to the peak roof point on any structure. Any alteration of a structure's existing ridge pole is considered building development.
- 13. Building, Principal:** The building in which is conducted the main or principal use of the lot on which said building is located.
- 14. Burned and/or Destroyed Buildings:** Buildings that have been all or partially burned or have reached a point of unfitness for human habitation, to be removed within one year of the initial fire or within one year of the date the Town Zoning Officer deems it officially unfit for human habitation.
- 15. Camp:** See Seasonal Camp and Primitive Camp.
- 16. Campground:** A plot of land upon which is located space for four or more mobile or temporary living quarters for recreation, educational or vacation purposes.
- 17. Cemetery:** An area for burial or entombment as in accordance with state regulations.
- 18. Certificate of Occupancy:** Certificate issued by zoning administrator pursuant to Section 13.05 of these Zoning Regulations.
- 19. Church/Religious Facility:** A building for public worship operated by a recognized religious society.
- 20. Club:** Building or use catering exclusively to club members and their guests for recreational, educational, or service purposes.
- 21. Community Care Home:** A place, however named, excluding a licensed foster home, that provides, for profit or otherwise, room, board and personal care to three or more residents unrelated to the home operator. Care levels shall be determined by the current State regulations.
- 22. Community Facility:** Any meeting hall, place of assembly, museum, art gallery, library, school, church, or other similar establishment that is operated for public use or not operated primarily for profit.
- 23. Conditional Use:** Use which may be permitted only by approval of the Board of Adjustment after public notice and public hearing to determine whether the proposed use will conform to general and specific standards as set forth or referred to in this regulation.
- 24. Construction Debris:** Building materials and rubble resulting from construction, remodeling, repair or demolition operations.
- 25. Curb Cut:** An entrance way into a town or state road or highway, requiring an approved permit signed by the Selectmen prior to the development and/or use of a roadway, driveway and/or parking area.
- 26. Day Care Facility:** Any home or center licensed or registered with the Vermont Department of Social and Rehabilitative Services to provide child care services to six full-time children.

**27. 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 of more than one hundred (100) square feet, or of any mining, excavation or landfill, and any change in the use of any building or other structure, or land, or extension of use of land. See also Zoning Regulations Section 13.03 for exemptions from Development and permit requirements.

**28. Driveway:** A private access way or right-of-way providing access to a Lot or Parcel.

**29. Dwelling Unit:** One room, or rooms connected together, constituting a separate, independent housekeeping establishment for year-round owner occupancy or rental/lease and physically separated from any other rooms or dwelling units that may be in the same structure, and containing independent cooking and sleeping facilities, and serviced by a water supply and sewage system. A boarding or rooming house, motel/hotel/inn, nursing home or other similar home or structure shall not be deemed to constitute a dwelling unit.

**30. Dwelling, Multi-Family:** Building or structure used as living quarters by two or more families.

**31. Dwelling, Single Family:** A detached residential dwelling unit, serviced with a water supply and sewage system, and designed for year round occupancy by one family only.

**32. Educational Facility:** Any private instructional or learning facility or similar establishment operated for profit.

**33. Essential Services:** The erection, construction, alteration, or maintenance by public utilities or municipal or other governmental agencies, of underground or overhead transmission or distribution systems, and structures reasonably necessary for furnishing adequate service by such public utilities or municipal or governmental agencies or for the public health or safety or general welfare.

**34. Family Unit:** One family whose members live together in the same dwelling and share the same facilities.

**35. Floodproofing:** Any combination of structural and nonstructural additions, changes, or adjustments to properties and structures that substantially reduce or eliminate flood damage to any combination of real estate, improved real property, water or sanitary facilities, structures, and the contents of structures.

**36. Floodway:** The channel of a river or other watercourse and the adjacent land area that must be reserved in order to discharge the Base Flood without accumulatively increasing the water surface elevation more than one foot.

**37. Forestry:** The active cultivation and harvesting of timber from forest land.

**38. Forestry Processing:** The processing of harvested timber into lumber or related products.  
Example: a sawmill.

**39. Fringe Areas:** Flooded Areas outside of the Floodway.

**40. Front Lot Line:** Lot abutting public road or waters providing access to Lot, or lot line where access easement from public road or waters enters Lot.

**41. Frontage of Lot:** Shall mean the same as Lot width.

**42. Fuel Service Facility:** Any area of land, including structures thereon, that is used or designed to store above or below ground and/or distribute fuel or fuels including but not limited to: gasoline, kerosene, bottled gas and heating oils.

**43. Guest House:** See Accessory Residential Structure.

**44. Home Occupation:** An Accessory Use to a Residential Use conducted within a Dwelling unit in or on Accessory structure or upon the Lot by the Residential Dwelling occupants only and does not change the character of the dwelling, associated structures, or the land.

**45. Junkyard:** Any land, structure or place of storage, whether in connection with another place of business or not, used for the gathering, processing, storage, salvage and/or resale of waste items, corrosive materials, materials which pose significant health and/or environmental risks, scrap materials, four or more unregistered motor vehicles or other discarded goods.

**46. Kennel:** See Animal Hospital/Kennel.

**47. Land Development:** See Development.

**48. Light Commercial:** Small retail and/or service businesses including: motel/hotel, real estate, day care center, agricultural equipment sales, grocery, restaurant and hardware stores.

**49. Light Industry:** Any facility for the assembly, manufacture, compounding, processing, packing, treatment, or testing of materials, goods, or products provided these activities are conducted in such a manner so as not to generate noise, smoke, vibration, dust, glare, odors, electrical interference or heat that is detectable at the boundaries of the property.

**50. Lot:** A parcel of land divided and deeded out of a larger parcel of land.

**51. Lot of Record:** A lot that is part of a subdivision recorded in the Kirby land records, or a lot or parcel described by metes and bounds, the description of which has been recorded in the Kirby land records.

**52. Lot Width:** Width of lot measured at the proposed or existing building front line.

**53. Manufacturing:** The assembly, manufacture, compounding, processing, packing, treatment, or testing of materials, goods, or products for commercial purposes conducted in such a manner as to generate noise, smoke, vibration, dust, glare, odors, electrical interference or heat that may be detectable at the boundaries of the property on which it is conducted.

**54. Motel/Inn:** A building containing rooms that are rented as a series of sleeping units for transient, each sleeping unit consisting of at least one bedroom and a bathroom. This shall include hotel.

**55. Multi-unit dwelling with 2 - 4 housing units:** A building in which units are rented or leased to 2 - 4 individuals or families.

**56. Municipal Facility:** Land and/or structures used for municipal activities, including office and meeting space; schools; storage of municipal equipment and supplies; and solid waste storage.

**57. Natural Resource Mining:** The harvesting of natural resources from the land for retail or commercial use, including but not limited to gravel pits, rock quarries, and mines.

**58. Non-Conforming Use:** Use of land or structure that does not conform with the Zoning Regulations for the district in which it is located, when such use conformed to all applicable laws and regulations prior to enactment of these regulations.

**59. Non-Residential Use:** All uses of buildings, structures, or land except for dwelling units and lodging houses.

**60. Nursing Home:** A place, other than a hospital, which maintains and operates facilities and provides nursing care, for profit or otherwise, accommodating a person or persons, unrelated to the home operator, who are suffering from illness, disease, injury or deformity and require nursing care.

- 61. Parking Space, Off Road:** A parking space measuring at least ten feet by twenty feet in size.
- 62. Primitive Camp:** A structure to provide temporary shelter and sleeping accommodations during leisure and recreational activities on its own individual Lot with no interior plumbing consisting of more than a sink with water that is used for no more than three consecutive weeks per year and no more than a total of sixty days per year.
- 63. Private Club:** See Club.
- 64. Professional Services:** Services by a professional including but not limited to barber, doctor, lawyer, hairdresser, consultant, forester, surveyor, and post office.
- 65. Property Development:** See Development.
- 66. Recreational Facility:** A place designed and equipped for the conduct of sports, leisure time activities, and other customary and usual recreational activities.
- 67. Residential Lot:** A Lot for Residential Use.
- 68. Residential Use:** A use for Dwelling Units.
- 69. Sawmill:** A Structure built for the processing of timber into lumber products. This does not include portable sawmill units that operate without the use of Structures.
- 70. Seasonal Camp:** A structure to provide temporary shelter and sleeping accommodations during leisure and recreational activities, and that is not used for more than six months per calendar year, and is not be occupied nor identified as a Residential Dwelling.
- 71. Setback:** Area adjacent to the front-, rear- or side-lot boundary lines, as the case may be, in which Development is prohibited.
- 72. Sewage Disposal System:** A system for disposal of waste using undisturbed, on site, soil as a disposal medium, including a tank for collection of solids and a leach area for liquids, or other systems which disposes of waste water on site.
- 73. Shooting Range:** Any Lot or Structure used to provide an environment for the purpose of shooting firearms at targets, other than for personal recreational use.
- 74 Short Term Rental:** Less than twenty eight (28) days.
- 75. Sign:** A name, identification, display or illustration that is affixed to, painted or represented directly or indirectly upon a Lot or Structure that directs attention to an object, product, place, activity, person, institution, organization or business located on or off the premises. This term does not include government notices nor the flag, emblem or insignia of a governmental unit or religion.
- 76. Stables:** A facility where horses are kept, whether private or open to the public.
- 77. Storage Facilities:** A Structure consisting of individual storage units available for private or commercial lease for non-residential use, and that may not be used for sheltering of any animals.
- 78. Structure:** An assembly of materials for occupancy or use, including, but not limited to, a building, mobile home or trailer, billboard, sign, wall or fence, in-ground swimming pools, modular homes, porches, decks, framed dwellings, septic systems, barns, sheds, wells and man-made ponds. A "Structure" does not include a wall or fence on an operating farm, or a fence not taller than four (4) feet in height and not in the traveled portion of the town highway right of way.
- 79. Temporary Use:** Use of a Lot or Structure for a limited period of time with approval of the Zoning Board in accordance with Section 13.04.

**80. Use, Permitted:** Use specifically allowed in a district.

**81. Variance:** A departure from the Zoning Regulations that is granted by the Board of Adjustment pursuant to Section 14.07 of the Zoning Regulations.

**82. Warehouse:** A building or structure for the temporary storage of goods or merchandise.

**83. Wireless Telecommunications Facility:** Facilities for the provision of wireless telecommunication services, including all wireless telecommunication providers, licensed and/or regulated by the Federal Communications Commission, including ancillary improvements such as associated equipment and buildings.

**84. Wind Generation Facility:** Development using wind for general of power for sale to users other than the owner of the Lot on which the Development is located.

**85. Yard Sale:** A public sale of personal property on the homeowner's lot or property.

## TOWN OF KIRBY INUNDATION HAZARD AREA REGULATIONS

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### **I. Statutory Authorization and Effect**

In accordance with 10 V.S.A. Chapter 32, and 24 V.S.A. Chapter 117 §4424, §4411 and §4414, there is hereby established a bylaw for areas at risk of flood damage in the Town of Kirby, Vermont. Except as additionally described below, all administrative procedures follow municipal procedures under 24 VSA Chapter 117.

## **II. Statement of Purpose**

It is the purpose of this bylaw to:

- A. Implement the goals, policies, and recommendations in the current municipal plan;
- B. Avoid and minimize the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flooding;
- C. Ensure that the selection, design, creation, and use of development is reasonably safe and accomplished in a manner that is consistent with public wellbeing, does not impair flood plain services or the stream corridor,
- D. Manage the flood hazard area designated pursuant to 10 V.S.A. Chapter 32 § 753, the municipal hazard mitigation plan; and make the Town of Kirby, its citizens, and businesses eligible for federal flood insurance, federal disaster recovery funds, and hazard mitigation funds as may be available.

## **III. Other Provisions**

### **A. Precedence of Bylaw**

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

### **B. Validity and Severability**

If any portion of this bylaw is held unconstitutional or invalid by a competent court, the remainder of this bylaw shall not be affected.

### **C. Warning of Disclaimer of Liability**

This bylaw does not imply that land outside of the areas covered by this bylaw will be free from flood damages. This regulation shall not create liability on the part of the Town of Kirby, or any municipal official or employee thereof, for any flood damages that result from reliance on this regulation, or any administrative decision lawfully made hereunder.

## **IV. Lands to Which these Regulations Apply**

### **A. Regulated Flood Hazard Areas**

These regulations shall apply to the Special Flood Hazard Area in and on the most current flood insurance studies and maps published by the Department of Homeland Security, Federal Emergency Management Agency, National Flood Insurance Program, as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. Chapter 32 § 753, which are hereby adopted by reference and declared to be part of these regulations. The location of the boundary shall be determined by the Zoning Administrator (ZA). If the applicant disagrees with the determination made by the ZA, a Letter of Map Amendment from FEMA shall constitute proof.

### **B. Base Flood Elevations and Floodway Limits in Special Flood Hazard Areas**

Where available, base flood elevations and floodway limits provided by the National Flood Insurance Program and in the Flood Insurance Study and accompanying maps shall be used to administer and enforce these regulations. In Special Flood Hazard Areas where base flood elevations and/or floodway limits have not been provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps, it is the applicant's responsibility to develop the necessary data. Where available, the applicant shall use data provided by FEMA, or State, or Federal agencies.

## V. Summary Table: Development Review in Hazard Areas

The hazard areas are not appropriate sites for new structures nor for development that increases the elevation of the base flood.

	Activity	Hazard Zone	
	P Permitted C Conditional Use Review X Prohibited A Exempted	Special Flood Hazard Area	Floodway
1	New Structures	X	X
2	Storage	X	X
3	Improvements to Existing Structures	P, C	C
4	Small Accessory Structures	P	X
5	At Grade Parking	P	C
6	Replacement water supply or septic systems	C	C
8	Fill as needed to elevate existing structures	C	C
9	Fill	X	X
12	Grading	C	C
13	Road maintenance	A	A
14	Road improvements	C	C
15	Bridges and culverts	C	C
16	Channel management	C	C
17	Recreational vehicles	P	P
18	Open space, recreation	A	A
19	Forestry	A	A
20	Agriculture	A	A

## VI. Development Review in Hazard Areas

### A Permit

A permit is required from the Administrative Officer for all development in all areas defined in Section IV. Development that requires conditional use approval, non-conforming use approval, or a variance from the Development Review Board (DRB) under these flood hazard regulations, must have such approvals prior to the issuance of a permit by the ZA. Any development subject to municipal jurisdiction in the designated hazard areas shall meet the criteria in Section VI and VII. Any permit issued will require that all other necessary permits from State or Federal Agencies have been received before work may begin.

## B. Permitted Development

For the purposes of review under these regulations, the following development activities in the Special Flood Hazard Area where outside of the Floodway, and meeting the Development Standards in Section VII, require only an administrative permit from the ZA:

1. Non-substantial improvements;
2. Accessory structures;
3. Development related to on-site septic or water supply systems;
4. Building utilities;
5. At-grade parking for existing buildings; and,
6. Recreational vehicles.
7. Road Ready registered and licensed Recreational Vehicles (RV)

## C. Prohibited Development in Special Flood Hazard Area

1. New residential or non-residential structures (including the placement of manufactured homes);
2. Storage or junk yards;
3. New fill except as necessary to elevate structures above the base flood elevation;
4. Accessory structures in the floodway;
5. Critical facilities are prohibited in all areas affected by mapped flood hazards; and,
6. All development not exempted, permitted, or conditionally permitted.

Conditional use review and approval by the DRB, is required prior to the issuance of a permit by the ZA for the following proposed development:

1. Substantial improvement, elevation, relocation, or flood proofing of existing structures;
2. New or replacement storage tanks for existing structures;
3. Improvements to existing structures in the floodway;
4. Grading, excavation; or the creation of a pond;
5. Improvements to existing roads;
6. Bridges, culverts, channel management activities, or public projects which are functionally dependent on stream access or stream crossing;
7. Public utilities;

## E. Exempted Activities

The following are exempt from regulation under this bylaw:

1. The removal of a building or other structure in whole or in part;
2. Maintenance of existing roads and storm water drainage;
3. Silvicultural (forestry) activities conducted in accordance with the Vermont Department of Forests and Parks Acceptable Management Practices; and,
4. Agricultural activities conducted in accordance with the Vermont Department of Agriculture's Accepted Agricultural Practices (AAP). Prior to the construction of farm structures the farmer must notify the ZA in writing of the proposed activity. The notice must contain a sketch of the proposed structure including setbacks.

## F. Variances

Variances may be granted in writing by the DRB only in accordance with all the criteria in 24 V.S.A. § 4469, § 4424 (E), and 44 CFR Section 60.6, after a public hearing noticed as described in Section VIII.

Any variance issued in the Special Flood Hazard Area will not increase flood heights, and will inform the applicant in writing over the signature of a community official that the issuance of a variance to construct a structure below the base flood elevation increases risk to life and property and will result in increased flood insurance premiums up to amounts as high as \$25 for \$100 of coverage. Such notification shall be maintained with a record of all variance actions.

## G. Nonconforming Structures and Uses

The DRB may, after public notice and hearing, approve the repair, relocation, replacement, or enlargement of a nonconforming structure within a flood hazard area provided that:

1. The proposed development is in compliance with all the Development Standards in Section VII of this bylaw;
2. A nonconforming structure that is substantially damaged or destroyed may be reconstructed only in circumstances when the structure cannot be relocated to a less hazardous location on the parcel. The lowest floor of the reconstructed structure must be rebuilt to one foot or more above the base flood elevation, and the structure must otherwise comply with all requirements of the National Flood Insurance Program
3. Nonconforming structures or uses shall be considered abandoned where such structures or uses are discontinued for more than 12 months; and
4. An individual manufactured home lot in an existing manufactured home park that is vacated shall not be considered a discontinuance or abandonment of nonconformity. Replacement manufactured homes must be placed so as to meet the development standards in this bylaw.

**VII. Development Standards** – The criteria below are the minimum standards for development in the flood hazard areas. Where more than one zone or area is involved, the most restrictive standard shall take precedence.

### A. Special Flood Hazard Area

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

2. In Zones AE, AH, and A1 – A30 *where base flood elevations and/or floodway limits have not been determined*, development shall not be permitted unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated encroachment, will not increase the base flood elevation more than 1.00 foot at any point within the community. The demonstration must be supported by technical data that conforms to standard hydraulic engineering principles and certified by a registered professional engineer.
3. *Structures to be substantially improved* in Zones A, A1-30, AE, and AH shall be located such that the lowest floor is at least one foot above base flood elevation, this must be documented, in as-built condition, with a FEMA Elevation Certificate;
4. Non-residential structures to be substantially improved shall:
  - a. Meet the standards in VII A 3; or,
  - b. Have the lowest floor, including basement, together with attendant utility and sanitary facilities be designed so that two feet above the base flood elevation the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy; A permit for flood proofing shall not be issued until a registered professional engineer or architect has reviewed the structural design, specifications and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.
5. *Fully enclosed areas below grade* on all sides (including below grade crawlspaces and basements) are prohibited.
6. *Fully enclosed areas that are above grade*, below the lowest floor, below BFE and subject to flooding, shall
  - a. Be solely used for parking of vehicles, storage, or building access, and such a condition shall clearly be stated on any permits; and,
  - b. Be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Such designs must be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria: A minimum of two openings on two walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
7. *Recreational vehicles* must be fully licensed and ready for highway use;
8. A *small accessory* structure of 500 square feet or less that represents a minimal investment need not be elevated to the base flood elevation in this area, provided the structure is placed on the building site so as to offer the minimum resistance to the flow of floodwaters and shall meet the criteria in VII A 6 (above).
9. *Water supply systems* shall be designed to minimize or eliminate infiltration of flood waters into the systems.
10. *Sanitary sewage systems* shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
11. *On-site waste disposal systems* shall be located to avoid impairment to them or contamination from them during flooding.
12. *The flood carrying and sediment transport capacity* within the altered or relocated portion of any watercourse shall be maintained, and any alteration or relocation shall not result in any decrease of stream stability;

13. *Bridges and culverts*, which by their nature must be placed in or over the stream, must have a stream alteration permit from the Agency of Natural Resources where applicable.
- 14 Subdivisions and Planned Unit Developments must be accessible by dry land access outside the special flood hazard area.
15. *Existing buildings, including manufactured homes, to be substantially improved in Zone AO* shall have the lowest floor, including basement, elevated above the highest adjacent grade, at least as high as the depth number specified on the community's FIRM, or at least two feet if no depth number is specified.

#### B. Floodway Areas

1. Encroachments or development above grade and less than one foot above the base flood elevation, are prohibited unless hydrologic and hydraulic analyses are performed in accordance with standard engineering practice, by a registered professional engineer, certifying that the proposed development will:
  - a) Not result in any increase in flood levels (0.00 feet) during the occurrence of the base flood;
  - b) Not increase any risk to surrounding properties, facilities, or structures from erosion or flooding.
2. Public utilities may be placed underground, and the analyses may be waived, where a registered professional engineer certifies that there will be no change in grade and the utilities will be adequately protected from scour.

### **VIII. Administration**

#### A. Application Submission Requirements

1. Applications for development shall include:
  - a. Where applicable, a site plan that depicts the proposed development, all water bodies, Special Flood Hazard Areas, floodways, any existing and proposed drainage, any proposed fill, and pre and post development grades, and the elevation of the proposed lowest floor, as referenced to the same vertical datum as the elevation on the current Flood Insurance Rate Maps;
  - b. A Vermont Agency of Natural Resources Project Review Sheet for the proposal. The Project Review Sheet shall identify all State and Federal agencies from which permit approval is required for the proposal, and shall be filed as a required attachment to the municipal permit application. The identified permits, or letters indicating that such permits are not required, shall be submitted to the ZA and attached to the permit before work can begin;

#### B. Referrals

1. Upon receipt of a complete application for a substantial improvement or new construction the ZA shall submit a copy of the application and supporting information to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, in accordance with 24 V.S.A. § 4424. A permit may be issued only following receipt of comments from the Agency, or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner.
2. If the applicant is seeking a permit for the alteration or relocation of a watercourse, copies of the application shall also be submitted to the adjacent communities, the Stream Alteration Engineer at the Vermont Agency of Natural Resources, and the Army Corps of Engineers. Copies of such notice shall be provided to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation. A permit may be issued only following receipt of comments from the Vermont Agency of Natural Resources, or the expiration of 30 days from the date the application was mailed to the Vermont Agency of Natural Resources, whichever is sooner. The Board should consider comments from the NFIP Coordinator at ANR.

## C. Records

The Administrative Officer shall properly file and maintain a record of:

1. All permits issued in areas covered by this bylaw;
2. Elevation Certificates with the as-built elevation (consistent with the datum of the elevation on the current Flood Insurance Rate Maps for the community) of the lowest floor, including basement, of all new or substantially improved buildings (not including accessory buildings) in the Special Flood Hazard Area
3. All flood proofing and other certifications required under this regulation; and, 4. All decisions of the Board (including variances and violations) and all supporting findings of fact, conclusions and conditions.

## IX Certificate of Occupancy

In accordance with Chapter 117 §4449, it shall be unlawful to use or occupy, or permit the use or occupancy of any land or structure, or part thereof, created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure within Special Flood Hazard Area until a certificate of occupancy is issued therefore by the Administrative Officer, stating that the proposed use of the structure or land conforms to the requirements of these bylaws. A certificate of occupancy is not required for structures that were built in compliance with the bylaws at the time of construction and have not been improved since the adoption of this bylaw. Within 14 days of the receipt of the application for a certificate of occupancy, the ZA shall inspect the premises to ensure that all permits identified on the Project Review Sheet have been acquired and all that all work has been completed in conformance with the zoning permit and associated approvals. If the ZA fails to grant or deny the certificate of occupancy within 14 days of the submission of the application, the certificate shall be deemed issued on the 15th day. If a Certificate of Occupancy can not be issued, notice will be sent to the owner and copied to the lender.

## X. Enforcement and Penalties

- A. This bylaw shall be enforced under the municipal zoning bylaw in accordance with 24 VSA § 1974a, § 4451, and § 4452. A copy of the notice of violation will be mailed the State NFIP Coordinator.
- B. If any appeals have been resolved, but the violation remains, the ZA shall submit a declaration to the Administrator of the National Flood Insurance Program requesting a denial of flood insurance to the property pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended.
- C. Violations of the Accepted Agricultural Practices shall be enforced under this Section as violations of this bylaw. Such violations shall also be immediately reported to the Secretary of Agriculture for enforcement under 6 V.S.A. Section 4812.

## XI. Definitions

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

***“Area of Special Flood Hazard”*** is synonymous in meaning with the phrase “special flood hazard area” for the purposes of these regulations.

***“Base Flood”*** means the flood having a one percent chance of being equaled or exceeded in any given year (commonly referred to as the “100-year flood”).

**“Base Flood Elevation” (BFE)** is the elevation of the water surface elevation resulting from a flood that has a 1 percent chance of equaling or exceeding that level in any given year. On the Flood Insurance Rate Map the elevation is usually in feet, in relation to the National Geodetic Vertical Datum of 1929, the North American Vertical Datum of 1988, or other datum referenced in the Flood Insurance Study report, or the average depth of the base flood, usually in feet, above the ground surface.

**“BFE”** see Base Flood Elevation

**“Common plan of development”** is where a structure will be refurbished over a period of time. Such work might be planned unit by unit.

**“Critical facilities”** - include police stations, fire and rescue facilities, hospitals, shelters, schools, nursing homes, water supply and waste treatment facilities, and other structures the community identifies as essential to the health and welfare of the population and that are especially important following a disaster. For example, the type and location of a business may raise its status to a Critical Facility, such as a grocery or gas station.

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

**“Fill”** means any placed material that changes the natural grade, increases the elevation, or diminishes the flood storage capacity at the site.

**“FIRM”** see Flood Insurance Rate Map

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



**“Flood Insurance Rate Map” (FIRM)** means an official map of a community, on which the Federal Insurance Administrator has delineated both the special flood hazard areas and the risk premium zones applicable to the community. In some communities the hazard boundaries are available in paper, pdf, or Geographic Information System formats as a Digital Flood Insurance Rate Map (DFIRM).

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

**“Floodplain or flood-prone area”** means any land area susceptible to being inundated by water from any source (see definition of “flood”).

**“Flood proofing”** means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

***“Floodway”*** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point. Please note that Special Flood Hazard Areas and floodways may be shown on a separate map panels.

***“Floodway, Regulatory in Town of Kirby”*** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot at any point.

***“Functionally dependent use”*** means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water.

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

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

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

***“Manufactured home (or Mobile home)”*** means 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 attached to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

***“New construction”*** for regulation under this bylaw, means structures for which the start of construction commenced on or after the effective date of the floodplain management regulation adopted by the community and includes any subsequent improvements to such structures.

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

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

***“Special Flood Hazard Area”*** is the floodplain within a community subject to a 1 percent or greater chance of flooding in any given year. For purposes of these regulations, the term “area of special flood hazard” is synonymous in meaning with the phrase “special flood hazard area”. This area is usually labeled Zone A, AO, AH, AE, or A1-30 in the most current flood insurance studies and on the maps published by the Federal Emergency Management Agency. Maps of this area are available for viewing in the municipal office or online from the FEMA Map Service Center: [msc.fema.gov](http://msc.fema.gov) Base flood elevations have not been determined in Zone A where the flood risk has been mapped by approximate methods. Base flood elevations are shown at selected intervals on maps of Special Flood Hazard Areas that are determined by detailed methods. Please note, where floodways have been determined they may be shown on separate map panels from the Flood Insurance Rate Maps.

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

***“Structure”*** means, for regulatory purposes under this bylaw, a walled and roofed building, as well as a manufactured home, and any related built systems, including gas or liquid storage tanks.

***“Substantial damage”*** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged conditions would equal or exceed 50 percent of the market value of the structure before the damage occurred.

***“Substantial improvement”*** means any reconstruction, rehabilitation, addition, or other improvement of a structure after the date of adoption of this bylaw, the cost of which, over three years, or over a the period of a common plan of development, cumulatively equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures which have incurred “substantial damage”, regardless of the actual repair work performed. The term does not, however, include either: (a) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specification which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions or (b) Any alteration of a “historic structure”, provided that the alteration will not preclude the structure’s continued designation as a “historic structure”.

***“Violation”*** means the failure of a structure or other development to be fully compliant with this bylaw. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in 44 CFR 60.3 is presumed to be in violation until such time as that documentation is provided.