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Annotations for changes to Administration and Enforcement Article of the Unified Development Bylaw

Article started with a V designation and that has not changed. Language in red have been changed and the notes and original language will be in *italics*. Terms in green have been added to the original text.

§5.1 Zoning Administration

§5.1.1 Related Permit Programs

No zoning permit application will be accepted by the Zoning Administrator until such time as the applicant has secured, where required, a permit from the Agency of Natural Resources for wastewater disposal and potable water supply; state of Vermont shoreland development approval; road access permitting from Vermont Department of Transportation or the Fairlee Selectboard; and any required Fairlee Development Review Board approvals, reviews or permits. *This section was moved and renumbered in keeping with the three set numbering system adopted for the Unified Development Bylaw. It has been moved to the beginning of the section to make clear the subordinate relationship of the local zoning permit to other approvals, the zoning permit is the terminal permit and only issued when the others have been obtained. The original text read as follows:*” No zoning permit application will be accepted by the Zoning Administrator until such time as the applicant has secured, where required, a permit from the Town of Fairlee Board of Health for construction of or alteration to a subsurface sewage disposal system and/or permit from the Board of Selectmen/District Highway Engineer for planned access from a Town/State highway.”

§5.1.2 Zoning Permit

No land development shall commence unless a zoning permit has been duly issued by the Zoning Administrator, as provided for in §4443 of the Act. The fee for such zoning permit shall be established by the Town Selectmen. **The Administrative Officer shall provide to interested persons such forms, checklist and information necessary for the proper filing and processing of zoning permit applications.** *Again the section is renumbered. The added language directs the administrator to assist applicants with the forms and process.*

§5.1.3 Appointment: Administrative Officer, the Zoning Administrator

A. The Administrative Officer shall be appointed by the Selectboard, with the advice of the Planning Commission, for a term of three years. Appointments to fill a vacancy shall be for the period of the current unexpired term.

B. Employment terms, compensation, reimbursement of reasonable expenses, and hours of operation shall be set by the Selectboard consistent with state laws concerning municipal employees.

C. 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.

§5.1.4 Duties and Powers of the Administrative Officer

A. The Administrative Officer shall literally enforce the land use and development regulations as adopted by the Town of Fairlee. Any discretion as may be construed in the administration of these regulations is only as explicitly granted under the bylaw language.

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B. Prior to the issuance of any zoning permit the Administrative Officer shall first be satisfied that the subject of the application is in conformance with any and all land use regulations in effect in the Town of Fairlee. The Administrative Officer may require 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 Development Review Board required by the applicable bylaws have been properly obtained and are submitted in connection with the application

C. Prior to the administrative issuance of a zoning permit for a commercial change in tenancy, the Administrative Officer shall establish that the application is for a use or activity of an equal or lesser intensity in terms of parking, circulation and traffic. This permit may be included with permits for commercial signage. Where the use or activity will increase intensity of burdens on parking, circulation and traffic or entail the construction of or addition to any structure, the Administrative Officer shall refer the application to the Development Review Board for a site plan review and shall only issue the required permit upon Development Review Board approval of the site plan.

D. Any decision made under these provisions may be appealed to the Development Review Board per the process for appeal per 24 VSA Chapter 117 as amended.

This entire section was redrafted to make the appointment provision consistent with state law, clarify that the administrator must literally enforce the bylaw, grant the administrator the authority to issue administrative permits for commercial changes in tenancy under specific circumstances and make clear that any decision made by the administrator is liable to appeal. The original language read as follows: "A Zoning Administrator shall be appointed by the Planning Commission, with approval of the Selectmen, for a term of three years, to administer the zoning regulations as provided for in §4442 of the Act. The Zoning Administrator shall administer the zoning regulations literally and shall not have the power to permit any land development which is not in conformance with these Regulations. The Zoning Administrator may be removed for cause at any time by the Planning Commission."

§5.2.1 Creation and Powers

D. To hear and adjudicate each request for a waiver of setback requirements.

E. To review and approve or reject plats.

F. To hear and adjudicate a request for variance. *In the renumbering scheme DRB provisions are renumbered as 5.2 with the section 5.2.1 detailing the creation of the DRB and its powers. These items were added to group the powers inclusively in one section for ease of use.*

Language below added to section 5.6(A), conversion of seasonal dwellings to year round has always been a conditional use, relocating the performance standards from Article IV General Provisions directly into the conditional use standards makes interpretation easier for the DRB and establishes that an applicant that can meet the performance standards are entitled to the conditional use.

The DRB's review of a Conditional Use Permit for the conversion of seasonal dwellings to year round dwellings shall apply the following performance standards:

1. Wastewater and potable water supply systems shall be permitted for year round use by the Wastewater Division of the Agency of Natural Resources.
2. Emergency access shall be approved by the Fire Chief.

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3. Off street parking for two vehicles shall be provided.

Conditional Use permits for year round use shall be issued only to conforming lots.

Language rewritten and reorganized for section 5.6(C), these are the application requirements and instruct the administrator as to what is and is not complete in terms of application materials

C. Every application for a Conditional Use Permit for any use shall include the submission of the following plans and supporting information:

1. An application deemed complete by the Zoning Administrator;

2. A scale map showing the location of the site, including existing roads and highways and adjacent land uses;

3. A statement that includes the names and addresses of the owners of the land immediately adjacent to and across the road from the property at issue.

4. Sign-off statements of all appropriate Town Departments that they have the capacity to service the proposed conditional use. *The original language for the section read as follows: "C. Every application for a Conditional Use Permit for any use shall include the submission of the following plans and supporting information: A map showing the location of the site within the community including existing roads and highways, adjacent land uses, and a statement including the names and addresses of the owners of the land immediately adjacent to and across the road from the property at issue."*

§5.4 Variances

The Development Review Board may grant a variance for specific cases, as authorized under VSA 24 §4469, only if **all** of the following facts apply, and such findings are specified in its written decision:

C. The unnecessary hardship has not been created by the applicant, *i.e.*, an applicant who has purchased a non-conformity has created the hardship for themselves.

Again the section has been renumbered, the word all was underlined to emphasize that all five criteria must be met per the state law. The language in C. was added to clarify the limitations that a court ruling has imposed on variances granted after property has changed ownership.

§5.5 Setback Waivers

Applicants may apply for site waivers of setback requirements in some circumstances. The Administrative Officer may waive requirements only where necessary for ADA compliance and/or EMS access. The Development Review Board may waive setback requirements only after a warned public hearing. The Development Review Board may not waive lot dimensional requirements, Permitted or Conditional Use lists as cited in Article III or other provisions of the development bylaws. *The preamble for the section was rewritten and expanded. The discretion of the administrator is defined and limited along with the power of the DRB to waive anything but setbacks and in what circumstances.*

§5.5.1 Waiver Criteria: Administrative Waiver

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In all districts, waivers from the provisions of these bylaws may be granted by the Zoning Administrator without a hearing for:

- A. Reductions in front or side setbacks as necessary to allow for ADA compliant disability access;
- B. Reductions in side setbacks to allow for necessary EMS access improvements. *Subsection was added to comply with ADA requirements to reduce process impediments to the installation of access upgrades.*

§5.5.2 Waiver Criteria: Warned Public Hearing

In all districts, waivers for setbacks may be granted after a hearing and approval by the Development Review Board if at least one of the following criteria is met:

- 1. The proposed waiver is less non-conforming than existing conditions or the proposed waiver reduces non-conformity associated with the land use district;
- 2. The proposed development will cluster development and more effectively preserve open land, forest land, or scenic vistas; or
- 3. In the Village Center Area, front setbacks may be reduced by the DRB to those found on adjacent properties as long as traffic and pedestrian safety is maintained. *New language establishes the circumstances under which a setback waiver may be waived by the DRB.*

§5.5.3 Waiver Limitations

- 1. Setback waivers to extend a non-conforming building line may be applied to only one lot line.
- 2. Lot coverage by footprints of all structures on the lot after the application of the lot line waiver may not exceed 25%.
- 3. In the Village Center Area, center of the road setbacks may be waived to a distance of the average of the abutting properties. *This language sets the limits to waivers as may be granted.*

In order to achieve these objectives, the DRB shall apply the performance standards in §5.6.3, §5.6.4, §5.6.5, §5.6.6 and where applicable the specific performance standards imposed in the Village and Interchange Areas per §5.6.7 and §5.6.8. *This language is designed to enable the Development Review Board to impose the performance standards listed below, a weakness of the previous bylaw was that there was no path to deemed approval but just vague terms open to interpretation. The specific performance standards are entirely new language as detailed below.*

§5.6.3 Harmonious Relationship

- A. Where the proposed project site abuts a residential use a 15 foot buffer strip shall be maintained.
- B. Site lighting shall be night sky compliant and shall not cause glare or other unwarranted intrusions into abutting properties.

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- C. Stormwater run-off and treatment shall be dealt with on-site.
- D. Dumpsters and trash storage shall be located in an accessible location to the rear of the building or site. This area shall be screened from view of abutting properties and the public roadway.

§5.6.4 Vehicular Circulation and Access

- A. The applicant shall obtain state and town access permits prior to the site plan review.
- B. The applicant is responsible for vehicle stacking and may be required to upgrade public roadways with turn lanes if trip-end estimates call for them.

§5.6.5 Circulation, Parking and Loading

- A. Aisles between parking rows shall be as follows:

Parking Angle	Space Width	Space Length	Aisle Width 1-way	Aisle Width 2-way	Width At Curb
90	10'	20'	24'	24'	10'
60	10'	20'	18'	20'	11'
45	10'	20'	15'	20'	13'
30	10'	20'	12'	20'	18'
Parallel	10'	20'	12'	24'	20'

- B. The number of off-street parking spaces shall meet the requirements of §4.7 unless it can be demonstrated the public interest is served by an increase or decrease in the number of specified spaces. Stalls shall be oriented so that vehicle headlamps do not illuminate residential properties. Site limitations shall not be grounds for alteration of these requirements.
- C. Loading and delivery docks shall be located to the rear of the building; delivery vehicles shall be able to maneuver within the site without using the public right of way.

§5.6.6 Landscaping, Screening and Setbacks

- A. The property owner shall plant materials appropriate to the soil and moisture conditions of the particular location. All plant stock intended to fulfill these landscaping requirements must be hardy to USDA Zone 4 or lower.

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- B. Tolerance for Site Conditions: Plantings should be tolerant for salt, drought, hydrophilic soils, wind, and any other adverse site conditions.
- C. Plants on the list of invasive species (available at Vermont Agency of Natural Resources, Vermont Invasive Exotic Plant Committee) shall not be used.
- D. Where a site abuts a residential use, a 15' buffer strip shall be maintained. Where tree lines currently exist at the property line, they shall be maintained at current densities; otherwise, trees and shrubs shall be planted at sufficient densities to screen the residential properties.
- E. Landscape requirements for public road frontage: Where possible, suitable hardwood shade trees shall be planted where there are or otherwise would be no trees. Where possible at least one shade canopy tree shall be planted or maintained every 40' along the frontage of each lot. All new trees shall measure at least 2-1/2 inches in diameter measured at a point one foot above ground line at the time of planting. Where overhead utility lines prevent taller trees the applicant shall substitute dwarf or semi-dwarf varieties.
- F. Function: Plantings should be suited to the aesthetic and functional needs of the site and should not be put in unsafe locations.
- G. All landscaping required by a notice of decision, finding of fact or permit condition shall be installed before the issuance of a final Certificate of Compliance and any such landscaping shall be maintained for the life of the use.

§5.6.7 Village and Interchange Area Site Plan Provisions

- A. Approved buildings in the Village and Interchange Areas shall be two and a half story gabled roof structures or buildings of at least two stories in the Colonial or Federalist styles in the general generic shape of those illustrated below.



Dutch colonial Georgian hipped gothic center gable Italian hipped

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prairie

Victorian

federal side gabled

Greek revival side-wing

- B. Wherever possible in the Village and Interchange Area, parking shall be to the rear of the site. In the Village Area, where not possible, parking shall be to the side of the building. Parking shall never be located in front of a new building in the Village Area.
- C. Landscaping: Provide grass, trees, shrubs, flowers and similar landscaping in new site development, particularly in the front and highly visible areas of the property.
- D. Identify any existing trees on the property survey which have a caliper of eight inches or more. These trees should be shown on all plans during site plan review. Attempt to incorporate these existing trees into new site plan development to reduce waste and salvage older trees.
- E. Outdoor storage of materials, inventory or equipment shall be located to the rear of the site and screened from both abutting property and the public roadway by landscaping or fencing sufficient for the purpose. *The provisions of this section apply specifically to the village and interchange areas that are of a commercial or multi-family nature requiring a site plan approval only. The building illustrations are only meant to designate building shapes and not require specific finish details, exterior wall treatments or color schemes. The intention is to maintain the general appearance and scale of the village while allowing modern uses and construction technique.*

§5.7 Hearing and Notice Requirements and Procedures

§5.7.1 Notice Procedures

All development review applications before the Development Review Board under procedures set forth in this section shall require notice as follows.

- A. A warned public hearing shall be required for conditional use review, variances, waivers, administrative officer appeals, site plan reviews and final plat review for subdivisions. Any public notice for a warned public hearing shall be given not less than fifteen days prior to the date of the public hearing by all of the following:
 1. Publication of the date, place, and purpose of the hearing in a newspaper of general circulation in the municipality;

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2. Posting of the same information in three or more public places within the municipality in conformance with location requirements of 1 V.S.A. § 312(c)(2), including posting within view from the public right-of-way most nearly adjacent to the property for which an application is made;
 3. Written notification to the applicant and to owners of all properties adjoining the property subject to development, including the owners of properties which would be contiguous to the property subject to development but for the interposition of a highway or other public right-of-way and, in any situation in which a variance is sought regarding setbacks from a State highway, also including written notification to the Secretary of Transportation. The notification shall include a description of the proposed project and shall be accompanied by information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal.
- B. The applicant may be required to bear the cost of the public warning and the cost of notification of adjoining landowners through the payment of application fees.
- C. The AO will also make public notice through other effective means such as a notice board, municipal website and email list.
- D. No defect in the form or substance of any requirements in A. (1) or (2) of this subsection shall invalidate the action of the Development Review Board where reasonable efforts are made to provide adequate posting and notice. However, the action shall be invalid when the defective posting or notice was materially misleading in content. If an action is ruled to be invalid by the Environmental Division of the Vermont Superior Court or by the Development Review Board itself, the action shall be remanded to the applicable municipal panel to provide new posting and notice, hold a new hearing, and take a new action. *This section was drafted to consolidate the process language from the previous stand-alone Flood Hazard and Subdivision bylaws that are now integrated into the Unified Development Bylaw. It defines the responsibilities of the administrator, the applicant and the Development Review Board for the warning and conduct of a legal hearing.*

§5.7.2 Decisions

- A. The Development Review Board may recess the proceedings on any application pending submission of additional information. The Development Review Board should close the evidence promptly after all parties have submitted the requested information. The Development Review Board shall adjourn the hearing and issue a decision within 45 days after the adjournment of the hearing, and failure of the Development Review Board to issue a decision within this period shall be deemed approval and shall be effective on the 46th day upon granting of a petition to that effect by the Environmental Division of the Vermont Superior Court. Decisions shall be issued in writing and shall include a statement of the factual bases on which the Development Review Board has made its conclusions and a statement of the conclusions. The minutes of the meeting may suffice,

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provided the factual bases and conclusions relating to the review standards are provided in conformance with this subsection.

- B. In rendering a decision in favor of the applicant, the Development Review Board may attach additional reasonable conditions and safeguards as it deems necessary to implement the purposes of this chapter and the pertinent bylaws and the municipal plan then in effect. A bylaw may provide for the conditioning of permit issuance on the submission of a bond, escrow account, or other surety in a form acceptable to the Selectboard of the Town of Fairlee to assure one or more of the following: the completion of the project, adequate stabilization, or protection of public facilities that may be affected by a project.
- C. Unless waived by the applicant in an uncontested application, any decision shall be sent by certified mail within fifteen days to the applicant and the appellant in matters on appeal. Copies of the decision shall also be mailed to every person or body appearing and having been heard at the hearing and a copy of the decision shall be filed with the administrative officer and the clerk of the municipality as a part of the public records of the municipality.
- D. Conditions may require that no zoning permit, except for any permits that may be required for infrastructure construction, may be issued for an approved development unless the streets and other required public improvements have been satisfactorily installed in accordance with the approval decision and pertinent bylaws. In lieu of the completion of the required public improvements, the Development Review Board may require from the owner for the benefit of the municipality a performance bond issued either by a bonding or surety company approved by the Selectboard of the Town of Fairlee or by the owner with security acceptable to the Selectboard of the Town of Fairlee in an amount sufficient to cover the full cost of those new streets and required improvements on or in those streets or highways and their maintenance for a period of two years after completion as is estimated by the Development Review Board or such municipal departments or officials as the Development Review Board may designate. This bond or other security shall provide for, and secure to the public, the completion of any improvements that may be required within the period fixed in the subdivision bylaws for that completion and for the maintenance of those improvements for a period of two years after completion. The performance bond required by this subsection shall run for a term to be fixed by the Development Review Board, but in no case for a longer term than three years. However, with the consent of the owner, the term of that bond may be extended for an additional period not to exceed three years. If any required improvements have not been installed or maintained as provided within the term of the performance bond, the bond shall be forfeited to the municipality and upon receipt of the proceeds of the bond, the municipality shall install or maintain such improvements as are covered by the performance bond.
- E. The Selectboard may enter into an agreement governing any combination of the timing, financing, and coordination of private or public facilities and improvements in

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accordance with the terms and conditions of a municipal land use permit, if agreement complies with all applicable bylaws in effect. *This section requires the Development Review Board to issue written decisions, specifies time periods for decisions to be issued and specifies under what circumstances they may require performance bonding and how that is to be administered.*

§5.8 Certificate of Compliance

Where a Development Review Board adjudication or approval is required, no use, occupancy or public accommodation shall be allowed until the Administrative Officer has confirmed compliance with permit terms and any special conditions imposed and certified as such through the issuance of a Certificate of Compliance. Prior to the issuance of any required Certificate of Compliance, the Administrative Officer shall first be satisfied that the proposed use of the structure or the land conforms to the requirements of the DRB approval, zoning permit and any applicable Town of Fairlee 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 Compliance, stating the cause for the denial in writing to the applicant. Such a denial is a decision liable to appeal. *Certificates of Compliance are required under FEMA regulations anytime a conditional use permit is issued under the Flood Hazard Regulations. Under this provision they will also be required when the Development Review Board issues a written decision and compliance with standard and special conditions is to be verified by the administrator. Certificates of Compliance are not required for administrative permits issued by the administrator for residential structures or changes in commercial tenancy or sign permitting that doesn't require public hearings.*

§5.10 Penalties *renumbered*

Violations of these Regulations shall be regulated as outlined in 24 VSA Sections 4444 and 4445. 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 Development Review Board, and the Selectboard. The Administrative Officer shall pursue further enforcement action, if required, in a manner as provided for under Town of Fairlee bylaws, ordinances, and state statute. *The added language is designed to limit groundless notice of violation complaints, limit the discretion of the administrator and ensure accountability with reporting requirements.*

Annotations for changes to Definition Article of the Unified Development Bylaw

Starting with the numbering system for the Article title. The definitions are now located in Article VIII rather than Article VI. The change was made to move a new definition Article which now contains terms for zoning, subdivision and flood hazard regulations to the back of the unified bylaw.

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Terms in **red** are definitions added since the last adoption on October 26, 2015. Terms in **green** have been redefined or clarified since the last adoption date. They are compared below:

Acre – 43,560 square feet. *This was added to provide a ready reference in the bylaw.*

Annexation – The merger of previously subdivided lots into a unified parcel, lots subject to an annexation must be in common ownership and may not be bisected by a public ROW or road. *In Article VI Subdivision the process for unifying lots was added to the provisions, this had previously been an orphaned process that the DRB could only treat as an “inferred” power as it was not detailed in the original regulations.*

Certificate of Compliance – A permit, typically issued at the completion of construction that required a DRB approval but preceding the use or change in use of a property, documenting compliance with all of a community’s land use regulations and building codes and authorizing the owner to use the property for the purposes specified in the permit. *This replaces the language for Certificate of Occupancy. In most cases this applies only to permits that required a public hearing before the Development Review Board and is designed as an enforcement mechanism for standard and special conditions imposed by that body. It does not apply to residential buildings and uses unless a waiver/variance or conditional use permit is required and an administrative permit issued by the ZA never requires one. In some circumstances a property owner, relator or attorney may request one to certify compliance for purposes of a property transfer or mortgage closing.*

Halfway House, Halfway Housing – Community release institution. *Use defined so it may be regulated.*

Lot Line Adjustment – A mutually agreed to shift in a boundary line between two parcels. *Term added for the same reason as annexation, previously both processes had to be handled as major subdivision processes. A definition here allows a simpler one hearing process to be used.*

Methadone Clinic – A medical facility whose primary function is the distribution of methadone or other treatments to patients for the outpatient treatment of opioid addiction. *Methadone clinic is not a permitted or condition use in the Town of Fairlee. Use defined so as to ban it from town, this prevents the use from being permitted under another description.*

Minor Subdivision - Minor subdivisions are characterized by lot counts below the trigger for Act 250 permitting, they lack complicated site conditions and involve relatively simple access and easement arrangements. *This was redefined to bring it into conformity with language contained in Article VI where a clear delineation for minor subdivision triggers a simplified process, the original definition read: “Any residential subdivision containing two or more but less than four lots that does not qualify as a major subdivision.” Reliance on the definition of other terms for a term definition is bad practice and should be avoided when possible.*

Trip-end- Traffic count term referring to a vehicle arriving or leaving a location via the public roads. *Trip-ends are a way of calculating additional burdens on local roads and frequency of traffic entering roadways from parking lots and driveways. It is defined here so it may be used by the Development Review Board in Site Plan Review and Conditional Use proceedings.*

Variance - An exception to the Zoning Regulations resulting from the physical circumstance, or characteristics of the particular property in question that causes a hardship not created by the property owner (i.e. purchasing a non-conformity is a self-created hardship). *Term added in support of an effort to*

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apply state court rulings in Development Review Board decisions to grant variances to the bylaw provisions.

Waiver - An exception to the setback requirements granted by the AO to improve ADA compliant access or by the DRB to relieve a hardship. This was rewritten to reflect the actual bylaw provisions which apply standards, criteria and conditions. The original definition read: “An exception to the Zoning Regulations due to the individual preference of the applicant.”

Yard Sale, also Garage Sale, Lawn Sale, Tag Sale – The sale of pre-owned household goods by the owner of those goods from a residence on an incidental basis. Yard sales may be held no more than six (6) times a year from any single residence and may not feature the sale of goods specifically purchased for re-sale. Items for sale and display paraphernalia shall be removed upon the conclusion of each event. The term was expanded by the addition of the last line “Items for sale and display paraphernalia shall be removed upon the conclusion of each event” was inserted to avoid outdoor storage of items though the week between events. The entire definition of the term is to demark the difference between a yard sale and a retail business operated as a home occupation.