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Article V ADMINISTRATION AND ENFORCEMENT

§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.

§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.

§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.

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.

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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.

§5.2 The Development Review Board (DRB)

§5.2.1 Creation and Powers

There is hereby established a Development Review Board appointed as provided by law, having the powers and duties set forth in 24 VSA Chapter 117, as amended. The Development Review Board shall have the following powers and duties:

A. To hear and decide appeals, including, without limitation, where it is alleged that an error has been committed in any order, requirement, decision, or determination made by the Zoning Administrator.

B. To hear and adjudicate each request for a zoning permit for a conditional use.

C. To review and approve or reject site plans.

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.

Rules of procedure, nature of appeals, public notice, conditions for variance relief, and all other matters shall be established as provided in Sub-Chapter 8 of VSA T.24 Chapter 117.

§5.3 Conditional Uses

- A. Any structure or use of a structure which requires a Conditional Use Permit shall not be granted a zoning permit by the Zoning Administrator unless the Development Review Board determines that the proposed use shall conform to the specific standards prescribed in these Regulations and shall not adversely affect:

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1. the capacity of existing or planned community facilities,
2. the character of the zoning district affected,
3. traffic on roads and highways in the vicinity,
4. bylaws then in effect,
5. utilization of renewable energy resources.

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

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

B. In granting or denying a Conditional Use Permit, the procedures followed by the Development Review Board shall be in accordance with §4414 (3) of the Act.

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.

D. The effective date of a zoning permit issued as a conditional use shall be thirty (30) days from the date of issuance, during which time appeals from the decision may be filed, in which case the result of the appeal shall determine outcome.

§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:

- 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 an unnecessary hardship is due to these conditions and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.

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- 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 would therefore be necessary to enable reasonable use of the property.
- 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.
- D. The variance, if authorized, would not alter the essential character of the neighborhood or district in which the property is located, would not substantially or permanently impair the appropriate use or development of adjacent property, would not reduce access to renewable energy resources, or would not be detrimental to the public welfare.
- E. The variance, if authorized would represent the minimum variance that would afford relief and would represent the least deviation possible from the bylaw and from the plan.

§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.

§5.5.1 Waiver Criteria: Administrative Waiver

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.

§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.

§5.5.3 Waiver Limitations

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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.

§5.5.4 Waiver Procedures

Application

The applicant shall submit to the Zoning Administrator, at least 30 days prior to the meeting of the DRB, a complete A1 and W1 form and other forms appropriate to the proposed waiver, and all other information necessary to illustrate compliance with these regulations and for the DRB to make its decision, including property identification numbers of the property taken from the latest tax records; name and address of the owner of record and those of adjoining lands; name and address of person or firm preparing the map; scale of map, north point and date. In addition to the information noted above, the DRB may require the following:

1. An accurate map of the property showing existing features, including contours, structures, large trees, streets, utility easements, rights of way, land use and deed restrictions.
2. A scaled plan, showing proposed structure locations and land use areas; streets, driveways, traffic circulation, parking and loading spaces and pedestrian walks; and landscaping plans, including site grading, landscape design and screening.
3. Other information pertinent to the issue before the DRB.

§5.5.5 Waiver Review Criteria

The DRB may grant waivers to reduce setback requirements if the applicant can satisfy the following standards:

1. The waiver requested is for a use permitted within the district.
2. The waiver requested is in conformance with the town plan and the goals set forth in the town plan.
3. The waiver requested is designed to conform to the character of the land use area in which it lies as defined in the Plan and further designed to reasonably limit impact or the potential for impact upon one's neighbors.
4. The design used incorporates elements, screening, or other remedies to reasonably limit impact or the potential for impact upon ones neighbors.

§5.5.6 Decision

The DRB shall make its decision on the request for waiver by applying the facts presented in the application and at hearing to the criteria listed above, and incorporating all into its decision. Upon the close of the hearing, the DRB shall issue its decision pursuant to the procedure established for variances.

§5.5.7 Conditions

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In approving a project, the DRB shall act to ensure, and may impose conditions requiring that the waiver, if authorized, would represent the minimum waiver that would afford relief and would represent the least deviation possible from the zoning regulation and from the plan. The nature of any waiver and any conditions attached to it shall be entered on the face of the zoning permit incorporated therein and shall be enforceable in the same manner as all other applicable requirements of these regulations.

§5.6 Development Review Board Approval of Site Plans

In accordance with §4402 and §4414 of the Act, no zoning permit shall be issued by the Zoning Administrator for any multi-family dwellings, commercial or industrial uses that require new construction or increase the intensity of use for existing structures and parcels, or for public and quasi-public uses, or parking and recreation facilities made available to the public, until the Development Review Board grants Site Plan approval. In instances where conditional use approval from the Development Review Board is also necessary, Site Plan approval must be obtained first.

§5.6.1 Site Plan Information

Every application for a site plan approval shall include submission of the following plans and supporting information:

- A.** Name and address of the owner of record and also adjoining lands, the name and address of person preparing the map, the scale of the map, north point, and the date.
- B.** Perimeter lines of the property showing existing features, including contours, structures, large trees, streets, utility easements, rights-of-way, lakes, rivers, streams, land use and deed restrictions.
- C.** Site plan showing proposed structures, locations, and land use areas; streets, driveways, traffic circulation, parking and loading spaces, and pedestrian walks; landscaping plans, including site grading, landscaping design and screening; septic and water systems used.
- D.** Proposed construction sequence and scheduled timeline for completion of each phase of the entire development.

§5.6.2 Site Plan Review Criteria

Upon receipt of the Site Plan, the Development Review Board shall review the plans and supporting information. In rendering its approval, the Development Review Board may impose appropriate conditions and safeguards with respect only to the adequacy of traffic areas, circulation and parking, and landscaping and screening. In rendering its decision, the Development Review Board shall give specific consideration to the following objectives:

- A.** Harmonious relationship between proposed uses and existing adjacent uses.

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- B. Maximum safety of vehicular circulation between the site and the street network.
- C. Adequacy of circulation, parking and loading facilities within the site with particular attention to safety.
- D. Adequacy of landscaping, screening and setbacks in regard to achieving maximum compatibility and protection to adjacent property.

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.

§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.
- 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'

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Parallel	10'	20'	12'	24'	20'
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- 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.
- 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.

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§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 hip gothic center gable Italian hip



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.

§5.6.8 Administrative Review

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The Zoning Administrator may review and approve minor amendments to previously approved development that would otherwise require review by an appropriate municipal panel in accordance with the provisions of the act where no material changes or impacts are expected and where bylaw conformance is found. Any decision by a Zoning Administrator under this subsection may be appealed as provided in Section 6.7 (4465 and 4466). However, the authority to approve an application administratively does not mean that the administrative officer is required to do so. The administrative officer reserves the right to refer any application to the Development Review Board where it is deemed that Board level review or interpretation is appropriate or necessary. In such cases, the applicant shall be responsible for any additional fees or submittals needed for Board review. The Zoning Administrator shall notify the Development Review Board of all actions made under this section within 48 hours via email.

§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;
 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.

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- 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.

§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, 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

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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 accordance with the terms and conditions of a municipal land use permit, if agreement complies with all applicable bylaws in effect.

§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.

§5.9 Appeals

§5.9.1 Appeals of Decisions of the Administrative Officer

An interested person may appeal any decision or act taken by the Administrative Officer by filing notice of appeal with the Development Review Board. If the appeal is taken with respect to a decision or act of an Administrative Officer, such notice of appeal must be filed within fifteen (15)

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days of date of such decision, and a copy of the notice of appeal shall be filed with such officer. If the Administrative Officer fails to act with regard to an application for a permit within thirty (30) days, a permit may be deemed approved upon the petition of the applicant for relief from the Development Review Board or Environmental Court.

§5.9.2 Appeals of Decisions of the Development Review Board

An interested person may appeal a decision of the Development Review Board to the court of the county in which the property is located in accordance with Sections 4471, Title 24 VSA. Such appeal shall be taken within thirty (30) days of the date of issuance of a decision.

§5.10 Penalties

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.