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## ARTICLE 5. DEVELOPMENT REVIEW

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### Section 5.1 Applicability of Development Review Processes

(A) Development review procedures and related standards under this article apply to development that requires, prior to the issuance of a zoning permit under Section 7.2, the approval of the Planning Commission or Board of Adjustment, under one or more of the following review procedures.

- (1) **Site Plan Review.** Site plan review by the Planning Commission under Section 5.4 shall be required for all development designated as a “Permitted Use” in Article 2, excluding single (one) and two family dwellings, agriculture and related farm structures, forestry, and development that is specifically exempted from review and permit requirements under Section 4.3. Site plan review standards and conditions are intended to ensure that building and site design is attractive, safe, functional and consistent with the purpose and character of the district within which it is located.
- (2) **Conditional Use Review.** Conditional use review by the Board of Adjustment under Section 5.5 shall apply only to those uses designated as conditional uses in Article 2 or as otherwise specified in these regulations. Standards and conditions address the impact of proposed land uses on adjacent properties, the neighborhood or district in which the project is located, and the community at large.
- (3) **Flood Hazard Area Review.** Conditional use approval by the Board of Adjustment, including the application of flood hazard area development standards, is required for all conditional uses within the Flood Hazard Area Overlay District. Table 2.7 lists the conditional uses in Flood Hazard Areas. These conditional uses shall be subject only to review under Section 5.6 and not under the conditional use standards of Section 5.5.
- (4) **Planned Residential Developments (PRDs) and Planned Unit Developments (PUDs).** PRD and PUD standards and procedures may be applied, at the request of the applicant, to the subdivision of any size parcel in all zoning districts.

### Section 5.2 Coordination of Conditional Use & Site Plan Review

(A) Where an application requires both site plan review and conditional use review, the Board of Adjustment shall consider the application for conditional use approval pursuant to Section 5.5, act to approve or disapprove it, and provide its written findings and conditions to the Planning Commission for consideration in its deliberations under Section 5.4. The following should be considered with regard to respective review procedures and standards:

- (1) Conditional use review typically requires compliance with standards addressing the impact of proposed land uses on adjacent properties, the neighborhood or district in which the project is located, and the community at large. Standards and conditions emphasize those considerations in which off-site impacts of a proposed project can be identified, avoided and/or mitigated.
  - (2) Site plan review typically requires that a project be consistent with the purpose and character of the district within which it is located. Standards and conditions emphasize those considerations related to internal layout of the site, its physical design and appearance as viewed from off-site, and the functional integration of the site with surrounding properties and uses.
- (B) Specific uses subject to both flood hazard review and conditional use review shall be reviewed concurrently in accordance with Section 5.5 and 5.6 by the Board of Adjustment.

**Section 5.3 Application Requirements [Site Plan & Conditional Use Review]**

(A) **Development Plan.** An applicant for site plan review by the Planning Commission or conditional use review by the Board of Adjustment shall submit, in addition to a zoning permit application under Section 4.2, one (1) original and two complete copies of a development plan and supporting information, to include the following information, unless specifically waived by the Planning Commission or Board of Adjustment (whichever body has jurisdiction) under Subsection (B):

- (1) the names and addresses of the property owner(s) of record, the applicant if different from the property owners, and the person(s) or firm preparing the application and plan;
- (2) the names and addresses of all adjoining property owners, as determined from the current Middlesex Grand List, and proof of written notification to all adjoining property owners notifying them of the application, in accordance with Act [4464(a)].
- (3) a project location map showing the location of proposed development in relation to other properties, surface waters, land uses, roads and utilities within the vicinity of the project; and
- (4) a site development plan, drawn to scale, which shows the following unless specifically waived by the Planning Commission or Board of Adjustment:
  - title block, north arrow, scale, and the application date;
  - existing and proposed property boundaries, easements and rights-of-way;
  - designated zoning district boundaries, including overlay districts;
  - site features, including contours, prominent topographic features and areas of steep slope (in excess of 25%); surface waters, wetlands and associated setback distances; designated floodplain areas; land cover, including tree lines ; designated water supply source protection areas; critical habitat areas; and designated archaeological and/or historic sites;
  - the location of existing and proposed structures and facilities, including building footprints and elevations, walls and fence lines, utilities, roads, driveways, parking and loading areas, and pedestrian paths;
  - proposed traffic and pedestrian circulation patterns, including access points to adjoining properties, public roads and public waters;
  - the location of proposed water supply and wastewater disposal systems and design details; and
  - proposed grading, drainage, landscaping, screening, signs, and lighting details.
- (5) a project schedule, including the sequence of construction and a schedule for the completion of each phase of development, including site clearing and preparation, building construction, the installation of roads, driveways, parking areas, utilities, facilities and landscaping, and site reclamation, as applicable to the development; and
- (6) any additional information required by the Planning Commission or Board of Adjustment to determine project conformance with the provisions of these regulations (e.g., erosion control, stormwater management or site reclamation plans; or traffic, fiscal or visual impact analyses).

(B) The application shall not be considered complete until all required forms, information and associated fees have been submitted. The Planning Commission and/or Board of Adjustment may waive one or more application requirements upon determination that the information is unnecessary for the comprehensive review of the application. Such waiver shall be made at the time the application is accepted and deemed complete.

## 5.4 Site Plan Review

(A) **Applicability.** Any use or structure requiring site plan approval shall not be issued a zoning permit by the Zoning Administrator until the Planning Commission grants such approval in accordance with the Act [§4416], and the following standards and procedures.

(B) **Review Process.** Upon making the determination that the application as submitted is complete, the Planning Commission shall schedule a public hearing, warned in accordance with the Act [4464(a)]. The Commission shall act to approve, approve with conditions, or deny an application for site plan review within 45 days of adjournment of the final public hearing; and shall issue a written decision. The written decision shall include a statement of the factual bases on which the Commission made its conclusions, a statement of those conclusions, any conditions, and shall specify the period of time within the decision may be appealed to the Environmental Court. Failure to act within the 45 day period shall be deemed approval. The decision shall be mailed, via certified mail, to the applicant within the 45 day period. 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 recorded in accordance with subsection 4.8(D).

(C) **General Standards.** The Planning Commission shall consider and may impose appropriate conditions and safeguards with respect to the adequacy of traffic and pedestrian access, on-site circulation, parking, landscaping and screening, and other aspects of site development, in accordance with the following:

- (1) **Site Features.** Site layout and design, to the extent feasible, shall incorporate and/or protect significant site features, including but not limited to: surface waters, wetlands, critical habitat areas and associated buffers; ridgelines, hilltops, areas of steep slope (>25%) areas; primary agricultural and forest soils and existing farm and pasture land; historic sites and structures; and tree lines, walls and fences. Conditions may be imposed as appropriate with regard to the siting of structures and associated improvements, and the establishment of increased setbacks and/or buffers to incorporate and/or protect existing site features.
- (2) **Access.** Provision shall be made for adequate and safe access from the site to maintained public or private roads in accordance with the requirements of Section 3.2. The Commission may require that access be shared between adjoining properties and/or uses, and may require the reduction, consolidation or elimination of noncomplying accesses or curb cuts. Requirements for shared access shall be made either at the time of site plan approval if similar provision has been made on contiguous parcels, or contingent upon future development of neighboring properties.
- (3) **Circulation.** Provision shall be made for adequate and safe on-site vehicular and pedestrian circulation, in relation to the intended use and the location of buildings and parking areas. Clearly marked travel lanes, pedestrian crossings, and pedestrian paths connecting buildings, parking areas, and adjoining properties are encouraged, and may be required as appropriate by the Planning Commission to ensure vehicular and pedestrian safety and convenience.
- (4) **Parking, Loading, Service & Outdoor Storage Areas.** On-site parking, loading and service areas shall be provided. Conditions may be imposed with regard to the extent, siting, landscaping, screening, paving, curbing and/or sharing of parking, loading and service areas as appropriate to ensure site safety, function and attractiveness, and to avoid or minimize adverse off-site impacts.
- (5) **Layout & Site Design.** The location and orientation of structures on the site will be compatible with their proposed setting and context, as determined from zoning district objectives, existing site conditions and features, adjoining or facing structures in the vicinity, and other applicable provisions of these regulations, including setback and buffering requirements. Conditions may be imposed as

appropriate with regard to structure siting, orientation, and setbacks to ensure development is compatible with its setting and context.

- (6) **Landscaping & Screening.** Site plans shall incorporate landscaping and screening which is suited to existing site conditions, enhances development and features unique to the site, integrates the development and site with surrounding properties, and/or serves to buffer or screen incompatible development and/or outdoor storage or service areas from neighboring properties or public rights-of-way.
- (7) **Stormwater Management & Erosion Control.** Stormwater management and erosion control on-site shall be provided.
- (8) **Lighting.** Information regarding the location, type and level of illumination of all outdoor lighting shall be provided. Exterior lighting shall be kept to the minimum required for safety, security and intended use, consistent with the character of the neighborhood in which it is located. .

## 5.5 Conditional Use Review

(A) **Applicability.** Any use or structure requiring conditional use approval shall not be issued a zoning permit by the Zoning Administrator until the Board of Adjustment grants such approval in accordance with the Act [§4414(3)], and the following standards and procedures.

(B) **Review Process.** Upon making the determination that the application as submitted is complete, the Board of Adjustment shall schedule a public hearing, warned in accordance with the Act [4464(a)]. The Board shall act to approve, approve with conditions, or deny an application for conditional use review within 45 days of adjournment of the final public hearing; and shall issue a written decision. The written decision shall include a statement of the factual bases on which the Board made its conclusions, a statement of those conclusions, any conditions, and shall specify the period of time within the decision may be appealed to the Environmental Court. Failure to act within the 45 day period shall be deemed approval. The decision shall be mailed, via certified mail, to the applicant within the 45 day period. 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 recorded in accordance with subsection 4.8(D).

(C) **General Standards.** Conditional use approval shall be granted by the Board of Adjustment upon finding that the proposed development will not result in an undue adverse effect on any of the following:

- (1) **The capacity of existing or planned community facilities and services.** The Board shall consider the demand for community facilities and services that will result from the proposed development. The Board may request information or testimony from appropriate local officials to help evaluate potential project impacts on existing and proposed community facilities and services. Conditions may be imposed regarding the provision of services and facilities, and/or the timing and phasing of development in relation to anticipated municipal capital expenditures or improvements, to minimize any adverse impacts to community facilities and services.
- (2) **Character of the neighborhood or area affected.** The Board shall consider the design, location, scale, and intensity of the proposed development in relation to the character of adjoining and other properties likely to be affected by the proposed use. Conditions may be imposed as appropriate to ensure that the proposed development is compatible with the character of the area or neighborhood, as determined from zoning district purpose statements, the municipal plan, and relevant testimony presented to the Board. Conditions may be imposed as necessary to eliminate or mitigate adverse

impacts, including but not limited to conditions on the design, scale, intensity or operation of the proposed use.

- (3) **Traffic on roads and highways in the vicinity.** The Board shall consider the potential impact of traffic generated by the proposed development on the capacity, safety, efficiency, and maintenance of roads, highways, intersections, and bridges in the vicinity. A traffic impact assessment may be required. Conditions may be imposed as necessary to ensure that a proposed development will not result in unsafe conditions for pedestrians or motorists, including but not limited to physical improvements on or off site, or the use of accepted traffic management strategies.
- (4) **Bylaws in effect.** The Board shall determine whether the proposed development conforms to other municipal bylaws and ordinances currently in effect, including but not limited to the specific policies of the *Middlesex Town Plan*. The Board shall not approve a proposed development that does not meet the requirements of other bylaws and ordinances in effect at the time of application.

(D) **Zoning District Standards.** All conditional uses shall comply with the dimensional, density, siting and associated standards for the district(s) in which the use or development is located, including overlay districts.

## 5.6 Flood Hazard Areas

### A. Development Review in Flood Hazard Areas

(1) **Permit.** Any development subject to municipal jurisdiction in the designated Flood Hazard areas shall require a permit as provided for in Section 5.6. Development that requires conditional use approval, non-conforming use approval, or a variance from the Board of Adjustment, must have such approvals prior to the issuance of a permit by the Zoning Administrator. Any permit issued will require that all other necessary permits from state or federal agencies will have been received prior to the commencement of any work.

(2) **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 B, 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.

(3) **Prohibited Development in Special Flood Hazard Area.** The following development is prohibited in Special Flood Hazard areas.

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.

(4) **Conditional Use Review.** Conditional use review and approval by the Board of Adjustment, is required prior to the issuance of a permit by the ZA for proposed development within the following:

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;

(5) Exempted Activities. The following are exempt from regulation under this section:

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.

(6) Variances. Variances within the Flood Hazard Area may be granted in writing by the Zoning Board of Adjustment 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 subsection (c ) of this section.

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.

(7) Non Conforming Structures and Uses. The Zoning Board of Adjustment 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.

**(B) Development Standards in Flood Hazard Areas** – *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.*

**(1) Special Flood Hazard Area**

(a) All development shall be:

- i Reasonably safe from flooding;
- ii Designed, operated, maintained, modified, and adequately anchored to prevent flotation, collapse, release, or lateral movement of the structure;
- iii Constructed with materials resistant to flood damage;
- iv Constructed by methods and practices that minimize flood damage;
- v 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;
- vi Adequately drained to reduce exposure to flood hazards;
- vii Located so as to minimize conflict with changes in channel location over time and the need to intervene with such changes; and,
- viii 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.

(b) 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.

(c) 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;

(d) Non-residential structures to be substantially improved shall:

- i. Meet the standards in 5.6(B)(1)(c); or,
- ii. 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.

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

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(f) Fully enclosed areas that are above grade, below the lowest floor, below BFE and subject to flooding, shall

i. Be solely used for parking of vehicles, storage, or building access, and such a condition shall clearly be stated on any permits; and,

ii. 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.

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(g) Recreational vehicles must be fully licensed and ready for highway use;

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(h) 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 5.6 (B)(f)(ii) (above).

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(i) Water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems.

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(j) 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.

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(k) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

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(l)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;

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(m) 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.

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

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(o)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.

## (2) Floodway Areas

(a) 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:

- i. Not result in any increase in flood levels (0.00 feet) during the occurrence of the base flood;
- ii. Not increase any risk to surrounding properties, facilities, or structures from erosion or flooding.

(b) 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.

### **(C) Administration**

#### **(1) Application Submission Requirements**

(a) Applications for development shall include:

i. 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;

ii. A Vermont Agency of Natural Resources ( ANR) 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 Zoning Administrator and attached to the permit before work can begin;

iii. Where available, base flood elevations and floodway limits provided by the National Flood Insurance Program ( NFIP) and in the Flood Insurance Study and accompanying maps shall be used where base flood elevations and/or floodway limits have not been provided by the NFIP 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

#### **(2) Referrals**

(a) Upon receipt of a complete application for a substantial improvement or new construction the Zoning Administrator shall submit a copy of the application and supporting information to the State NFIP Coordinator at ANR, in accordance with 24 V.S.A. § 4424. A permit may be issued only following receipt of comments from ANR, or the expiration of 30 days from the date the application was mailed to ANR, whichever is sooner.

(b) 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 ANR, and the Army Corps of Engineers. Copies of such notice shall be provided to the State NFIP Coordinator at ANR, Department of Environmental Conservation. A permit may be issued only following receipt of comments from ANR, or the expiration of 30 days from the date the application was mailed to the ANR, whichever is sooner. The Board should consider comments from the NFIP Coordinator at ANR.

**(3) Records**

The Zoning Administrator shall properly file and maintain a record of:

- a All permits issued in areas covered by this bylaw;
- b 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
- c All flood proofing and other certifications required under this regulation; and.
- d All decisions of the Board (including variances and violations) and all supporting findings of fact, conclusions and conditions.

**(D) 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 Zoning Administrator, 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 15<sup>th</sup> day. If a certificate of occupancy can not be issued, notice will be sent to the owner and copied to the lender.

**(E) Enforcement and Penalties**

A. This bylaw shall be enforced under the municipal zoning bylaw in accordance with 10 VSA § 1974a, § 4451, and § 4452.

B. If any appeals have been resolved, but the violation remains, the ZA shall submit a declaration to the NFIP Administrator 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.

**(F) Warning of Disclaimer of Liability**

This section does not imply that land outside of the areas covered by this section will be free of flood damages. This regulation shall not create liability on the part of the Town of Middlesex 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.

**(G) Definitions**

The following definitions apply to Section 5.6 and Table 2.7.1

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

“Base Flood Elevation” (BFE) 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.

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

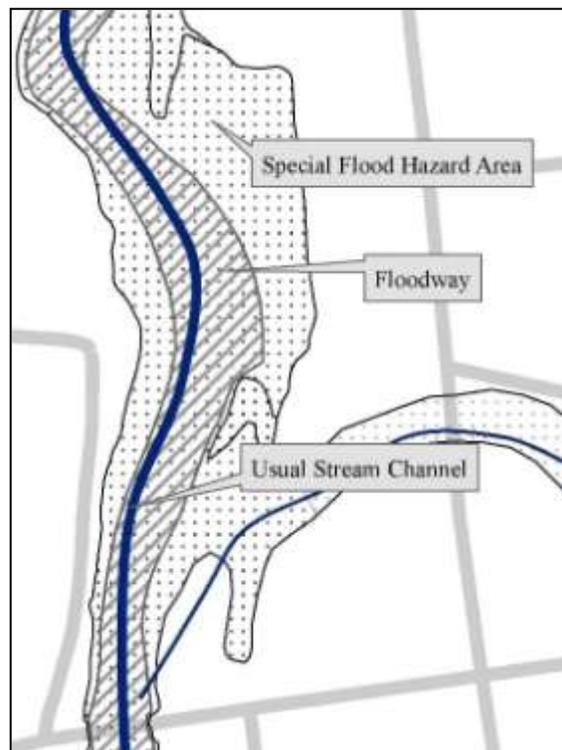
“Critical facilities” - Police stations, fire and rescue facilities, hospitals, shelters, schools, nursing homes, water supply and waste treatment facilities, and other structures the community identifies as essential to the health and welfare of the population and that are especially important following 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” Any human-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

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

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

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



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

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

**“Historic structure”** 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 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; 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 in states without approved programs.

**“Letter of Map Amendment (LOMA)”** A letter issued by the Federal Emergency Management Agency (FEMA) 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.

**“Manufactured home (or Mobile home)”** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities. The term “manufactured home” does not include a “recreational vehicle”.

**“New construction”** 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”** 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. 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 AI-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”** A walled and roofed building, as well as a manufactured home, and any related built systems, including gas or liquid storage tanks.

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

**“Substantial improvement”** Any reconstruction, rehabilitation, addition, or other improvement of a structure after the date of adoption of this section, the cost of which, over three years, 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”** The failure of a structure or other development to be fully compliant with Section 5.6. In Middlesex 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.

### **5.7 Planned Residential Developments (PRDs) and Planned Unit Developments (PUDs)**

(A) **Purpose.** In accordance with the Act [§4417], the following two categories of Planned Developments are established under these regulations: Planned Residential Developments (PRDs) and Planned Unit Developments (PUDs). PRDs are allowed in all zoning districts excluding the Industrial District. PUDs are permitted in the Village District, Mixed Use District and Industrial District. Both PRDs and PUDs are intended to allow for innovative and flexible design and development that will promote the most appropriate use of land, and specifically achieve one or more of the following objectives:

- (1) increase density, reduce lot size and/or facilitate the adequate and economical provision of streets and utilities to provide housing in a cost effective manner;
- (2) cluster residential development to preserve and maintain open space, including but not limited to important resource or conservation lands;
- (3) protect significant natural, cultural or scenic features as identified in the Middlesex Town Plan, or through site investigation; and/or,
- (4) allow for creative design and layout of development, an efficient use of land, and to provide for the integrated mix of uses.

(B) **Review Procedure.** A PRD or PUD shall be reviewed concurrently with a subdivision review procedures as set forth in Article 6 of these regulations. In addition to the application requirements for

subdivisions set forth in Section 6.2, an application for PRD or PUD approval shall include a statement describing any proposed modifications, changes or supplements to existing requirements of these regulations. Any modifications of one or more provisions of these regulations approved by the Planning Commission shall be noted in writing and filed in the Middlesex Land Records. Any provision of this bylaw not specifically modified shall remain in effect and be applicable to the project.

(C) **Coordination with Conditional Use Review.** Approval granted by the Planning Commission under this Section for a PRD or PUD involving the development of one or more uses subject to conditional use review shall not exempt the proposed development from subsequent Board of Adjustment review in accordance with Section 5.5. The Board of Adjustment shall incorporate any applicable conditions of subdivision and PRD or PUD approval, including modifications to one or more provisions of these regulations, in conditional use review.

(D) **General Standards.** The modification of zoning regulations by the Planning Commission may be permitted in accordance with the following standards:

- (1) The PRD or PUD shall meet all applicable standards set forth in Article 6 and shall be consistent with the Middlesex Town Plan and all other applicable municipal regulations and ordinances currently in effect. The PRD shall also meet all local and state regulations for sewage disposal and the protection of water quality.
- (2) The PRD or PUD shall represent an effective and unified treatment of the development site, including provisions as appropriate for the preservation or protection of surface and ground waters; wetlands and floodplains; significant topographic features, including hilltops and ridgelines; areas of steep slope or shallow soil; significant resource lands, including agricultural and forest land; historic or archaeological sites and structures; natural and critical habitat areas; and open spaces, including scenic views and vistas.
- (3) The Planning Commission may allow for a greater concentration or intensity of development within some section(s) of the development than in others, on individual lots which are smaller than the minimum lot size for the district within which the PRD or PUD is located, provided that there is an offset by a lesser concentration in other sections.
- (4) The minimum front, side and rear yard setbacks at the periphery of the PRD or PUD shall be as dictated for the particular district unless otherwise specified by the Planning Commission. The Commission may allow other setback standards, such as zero lot lines, as part of PRD or PUD approval.
- (5) Provision shall be made for the preservation of open space within the Medium Density Residential, Rural Residential and Conservation Districts. Preserved open space shall be dedicated, either in fee or through a conservation easement to the Town, a community association comprising all of the present and future owners of lots or dwellings in the project, or a non-profit land conservation organization. The Planning Commission shall approve such easement. Land held in common shall be subject to appropriate deed restrictions stipulating the permitted and restricted use of such lot, and establishing the person or entity responsible for maintenance and long-term stewardship. The Commission shall approve the location, size and shape of lands set aside to be preserved for open space in accordance with the following:
  - a. Open space land shall provide for the protection of identified resources, including farmland, productive forest, wildlife habitat, natural areas, aquifer protection areas, surface waters, stream banks, historic and archaeological sites, and scenic views and vistas;

- b. Designated open space may include the portion of a single lot which is characterized by one or more of the above-referenced features, or may encompass the contiguous boundaries of the above referenced feature located on multiple lots;
  - c. The location, shape, size and character of the open space shall be suitable for its intended use. Generally, open space shall be at least 50% of the total area for projects involving a parcel(s) of 25 acres or more. For smaller parcels, open space should be in proportion to the size and scope of the project, and its intended use;
  - d. Open space shall be suitably improved and/or maintained for its intended use, except for open space containing natural or cultural resources worthy of preservation that may be required to be left unimproved. Provisions shall be made to enable lands designated for agriculture and forestry to be used for these purposes. The Commission as appropriate may require management plans for forests and/or wildlife habitat. Areas preserved for agricultural and/or forestry use should be of a size that retains their eligibility for state and town tax abatement programs;
  - e. Open space land shall be located so as to conform with and extend existing and potential open space lands on adjacent parcels; and
  - f. Sewage disposal areas and utility and road rights-of-way or easements, access and parking areas shall not be counted as open space areas, except where the applicant can prove, to the satisfaction of the Commission, that they will in no way disrupt or detract from the values for which the open space is to be protected.
- (6) Provision for the preservation of open space should also be made within the Village and Mixed Use Districts. In these districts, which are intended to accommodate compact development at higher densities than in more rural residential and conservation districts, open space should be integrated into compact development patterns and be designed as formal green spaces, such as “village greens,” pathways and trails, parkland and playgrounds, intended to serve the proposed development.
- (7) Where a district boundary line divides a parcel, the Planning Commission may allow the development of a single PRD or PUD with a total density based on the combined allowable density of each district.
- (8) Two or more contiguous parcels under the ownership or control of the applicant may be combined for review as a PRD or PUD. The permitted density on one parcel may be increased as long as the overall density for the combined parcels does not exceed that which could be permitted, in the Planning Commission’s judgement, if the land were subdivided into lots in conformance with district regulations.

**(E) Standards Specific to Planned Residential Developments.** In addition to the general standards under subsection (D), PRDs shall also meet the following specific standards:

- (1) The total number of dwelling units shall not exceed that which would be permitted in the Planning Commission’s judgement if the parcel were subdivided into buildable lots in conformance with the district minimum lot area required for single family dwellings. The Planning Commission may, however, grant a density bonus increasing the number of dwelling units allowed in a PRD in accordance with the following:
- a. The Commission may grant a density increase of up to 25% of the allowable number of units in instances in any district in which a significant portion (75% or greater) of the site is preserved as open space and/or the Commission determines that the PRD reflects an exceptional site design that will result in the preservation of important natural resources and the creation of such amenities as pedestrian paths, parkland and/or playgrounds; or
  - b. The Commission may grant a density increase of up to 50% of the allowable number of units in any district in instances in which not less than 50% of the total number of dwelling units created are affordable housing units, as defined in Appendix 1, Section 2; or
  - c. The Commission may grant a density increase of up to 50% of the allowable number of units in the Conservation District in instances in which not less than 50% of the site is preserved as open

space. For the purpose of granting a density bonus within the Conservation District, the 50% density bonus will be applied to the maximum fractional number of dwelling units that may be allowed based upon the maximum density allowed in the district, to be rounded down to the nearest whole number after the bonus is applied (e.g. a 30 acre parcel may have 1.5 units x 50% bonus = 2.25 units/lots, rounded to 2 units/lots).

- (2) A PRD shall include only residential uses and associated accessory structures and uses allowed within the district in which the PRD is located. The dwelling units permitted may, at the discretion of the Planning Commission, be of varied types, including single-family, two-family, or multi-family construction, and may be attached or detached.

**(F) Standards Specific to Planned Unit Developments.** In addition to the general standards under subsection (D), PUDs shall also meet the following specific standards:

- (1) The total number of allowable residential units and/or commercial or industrial space within the PUD shall not exceed the number which could be permitted in the Planning Commission's judgement, if the land were subdivided into lots in conformance with the zoning regulation for the district in which the project is located.
- (2) A PUD may include any permitted or conditional uses allowed in the district in which it is located. Multiple principle structures and/or uses on a lot, or multiple ownership of a single structure may be permitted.
- (3) Principal buildings and mixed uses shall be arranged to be compatible, and buffered as appropriate to ensure visual and acoustical privacy for the residents of the development and for adjacent properties.