

**Planning Commission Report
On the Municipal Bylaw Amendments
As amended at the Public Hearing of August 30, 2021**

This report is in accordance with 24 V.S.A. 441 © which states:

When considering an amendment to a bylaw, the planning commission shall prepare and approve a written report on the proposal. A single report may be prepared so as to satisfy the requirements of this subsection concerning bylaw amendments and subsection 4384 © of this title concerning plan amendments.

The report shall provide:

(A) *Brief explanation of the proposed bylaw, amendment or repeal and ... include a statement of purpose as required for notice under section 4444 of this title.*

The proposed changes to **Article IV, Districts and Uses; Article VII, Standards; and Article X, Definitions** are intended to address

- 1) Design Standards for buildings in Wilmington, VT, specifically, establishing a **Senior/ADA-Compliant Housing/Adult Living Community** conditional use as well as **Senior/ADA-Compliant Housing/Adult Living Community Specific Standard**,
- 2) Specifying in what districts the **Senior/ADA-Compliant Housing/Adult Living Community** conditional use may be applied,
- 3) Definitions of terms used in the Wilmington Zoning Ordinance related to **Senior/ADA-Compliant Housing**.

In the spirit of the Wilmington Town Plan adopted 10/2/2018 (Goal 7): “Ensure the availability of housing for all residents of Wilmington,” and further, to implement Goal 7 Policy 1: “Provide housing at varied prices, sizes and locations to meet the needs of all residents including low to moderate income and elderly,”

The Planning Commission of the Town of Wilmington has determined that:

1. Establishing standards for development of senior housing serves an important inclusionary purpose in addressing the need for senior housing.
2. Housing for seniors, located near services, shopping, transportation and support networks, is beneficial to the general welfare and health of seniors and the public.
3. Encouraging the development of market-priced and affordable multiple-dwelling units for seniors provides a range of housing choices that can enable seniors of various abilities and income levels to live without leaving established networks of nearby family and friends.
4. The safety and convenience of residents will be enhanced through site and housing unit design requirements which consider:
 - The special physical and social needs of seniors; and
 - The physical characteristics of the project site.
5. When establishing senior housing in a setting that involves renovating or adding residential space to an existing building, allowing a mix of complementary uses is encouraged, such as medical offices, retail, entertainment and services on the first floor of residential buildings, which would be compatible with the senior housing developments. Preserving and repurposing our historic structures and their design elements is a goal within the village which motivates the design of new construction to be compatible with existing buildings.
6. Creating a conditional use for the Village (including overlays), Commercial/Residential, and Resort/Residential Districts provides flexibility in designing senior housing options, whether

on a large or small scale. It also provides that future development of Senior Housing will be located on transportation corridors and/or where development is already concentrated, limiting sprawl, allowing for future development of public transportation along these corridors, and preserving the character of the compact village settlement.

7. These senior housing opportunities should be designed to be integrated within the existing fabric of the community where the use is being proposed, which promotes social interactions and encourages the integration of senior housing into established neighborhoods.

Therefore, the Planning Commission proposes the following changes and additions to the Wilmington, VT zoning ordinances:

1. **Addition of proposed Section 733 (Senior/ADA-Compliant Housing/Adult Living Community Specific Standards) to Article VII (Standards)**
2. **Changes to Article IV (Districts and Uses) to incorporate the 'Senior/ADA-Compliant Housing/Adult Living Community' conditional use.**
3. **Addition of proposed definitions to Article X (Definitions)**

The report shall also

“(B) include findings regarding how the proposal:

1. *Conforms with or furthers the goals and policies contained in the municipal plan, including the effect of the proposal on the availability of the safe and affordable housing:”*

This plan, it is hoped, will increase the development of safe and affordable housing in Wilmington, particularly for individuals over the age of 62.

2. *Is compatible with the proposed future land uses and densities of the municipal plan:*

The proposed amendment, while it includes increased density for Senior Housing, also specifies that all housing developed under these Standards Senior Housing “shall not thereafter be used for any purpose other than the provision of senior housing unless the alternative use satisfies all applicable land use regulations pertaining to the underlying zoning of the district in which the parcel is located.” In addition, limiting development of Senior Housing to the Village (including Overlays), Commercial/Residential, and Resort/Residential districts will ensure that future development of Senior Housing is located on transportation corridors and/or where development is already concentrated, limiting sprawl and preserving the character of the compact village settlement.

Therefore, these amendments are compatible with the proposed future land uses called for in the municipal plan.

3. *Carries out, as applicable, any specific proposal for any planned community facilities.*

No planned community facilities are affected by this amendment.

Approved in our meeting of September 13, 2021

Meg Staloff, Chair

John Lebron, Vice Chair

Angela Yakovleff, Secretary

Brian Holt

Michele Carlson

ARTICLE IV DISTRICTS & USES

Section 400: Establishment of Zoning

The Town of Wilmington is hereby divided into six (6) zoning districts as shown on the Official Zoning Map. Each district has a stated development purpose to guide state agencies, local agencies and public bodies in their work within each district – See Section 450 below. Every Use must obtain a Permit unless otherwise exempt.

Districts:

- CON = Conservation
- VIL = Village
- RES = Residential
- R – RES = Resort - Residential
- COM/RES = Commercial/Residential
- R - COM/RES = Resort - Commercial/Residential

In addition to these districts, there are three (3) zoning overlays:

- HDRD = Historic Design Review District (Article V)
- VDRD = Village Design Review District (Article V)
- FLOOD = Flood Hazard Area Regulations (Article VI)

These zoning overlays are established through the use of maps and/or criteria referenced in this ordinance. These zoning overlays are further defined in Articles V & VI, with their boundaries and specific regulations.

Section 401: Interpretation of Zoning District Boundaries

When a parcel is located in two or more districts, the proposed Structure or Use must meet the regulations of the district in which it is physically located.

Where the boundary line between two zoning districts divides a parcel then the development provisions of either district may be extended by one hundred (100) feet. In extending the district line the overall effect of the development should, as much as practicable, retain the character and usability of each district.

Where the boundary line between two zoning districts divides a proposed Structure, then the proposed Structure or Use must meet the regulations of the district in which more than fifty percent (50%) of the footprint of the Structure is located. If a Structure footprint is fifty percent (50%) in each district, then the more restrictive district requirements of the two districts shall apply.

Only Uses, Permitted or Conditional, in each district and their Accessory Structures may be Used on the portion of the property covered by the district. Accessory Uses may be allowed with a Permit in any district.

Adopted by the Wilmington Selectboard 08/20/2019, effective 09/10/2019.

Section 410: Non-Zoned Land

Any area not presently zoned, through inadvertence or otherwise, shall be considered to be in the most restrictive district immediately adjoining it.

Section 420: Uses

Each district has defined “Uses” which may be:

1. Allowed: Not requiring a zoning Permit
2. Permitted: Requiring a zoning Permit, unless specifically exempted
3. Conditional: Requiring a Development Review Board written decision and approval and a zoning Permit
4. Secondary: An additional Use to the Primary Use, requiring a Development Review Board written approval and a zoning Permit
5. Not Allowed: A prohibited Use

Section 421: Uses and Structures Allowed without a Zoning Permit

Uses and Structures allowed without a Permit or Development Review Board written decision and approval include:

- A. Agriculture or Silviculture as defined in 24 V.S.A. § 4413(d) (Primary or Accessory Structure/Use)
- B. Small Structures of one hundred fifty (150) square feet or less
- C. Bus Shelters
- D. Home Occupations as defined in Section 460, 461, and 462.
- E. Recreation, Outdoor.

Section 422: Permitted Uses

A Permitted Use is, in any district, a Use that is allowed only through issuance of a Permit by the Zoning Administrator.

Section 423: Conditional Uses

A Conditional Use is, in any district, a Use that is allowed by a Development Review Board written decision and approval followed by issuance of a zoning Permit by the Zoning Administrator.

Section 424: Secondary Uses

In order to provide for limited, sensible, mixed Use of properties within the community, Secondary Uses are allowed as Conditional Uses in those zoning districts that allow only one principal building and one principal Use on a Lot. Home Business and Home Industry are considered Secondary Uses. In order for a Use to be allowed as a Secondary Use, it must meet the Conditional Use standards of Article VII Sections 710, 720, 730, 731, 732, 740, 741 and 742, as well as the following standards:

- A. The Use must be allowed in the district as a Permitted Use, a Conditional Use, or a Use Not Provided For in the list of Uses.
- B. The Use must meet all requirements as specified in the district and this ordinance.

- C. Where the standards for the Secondary Use are more restrictive than those for the Primary Use, the more restrictive standards shall be met.
- D. Conditional Use written decision and approval must be obtained from the Development Review Board for the addition of any Secondary Use. The Development Review Board may review the Use of the entire site when the Primary Use is also a Conditional Use.

Section 425: Uses Not Allowed

Except as protected by Vermont law as an Agricultural Use or an Accessory Agricultural Use licensed or Permitted under 10 VA 1021(f) and 1259(f) and 6 V.S.A. 4810, including but not limited to a Slaughterhouse, Agricultural:

In all districts the following Uses are not allowed:

Manufacturing, operation of, processing of or a commercial operation involving or providing bulk storage of:

- A. Ammonia
- B. Asphalt
- C. Blast furnaces
- D. Chlorine
- E. Concentrated animal feeding
- F. Dumps (except municipally operated sanitary landfill or transfer stations)
- G. Explosives
- H. Fertilizer (except for organic compost)
- I. Gas
- J. Hide tanning or curing
- K. Machinery wrecking
- L. Petroleum
- M. Products producing toxic environmental runoff or emissions
- N. Rendering
- O. Rubber
- P. Slaughterhouses - Commercial (See Definitions, Slaughterhouse, Commercial)
- Q. Smelters
- R. Wind energy Commercial facilities of any size (See Article VII, Section 732 (K) for Small Wind Turbine provisions.)

Section 426: Uses Not Provided For

Any legal Use not listed or not defined herein that does not appear on the list of Uses Not Allowed (see Section 425 of this ordinance) may be approved as a Conditional Use upon a finding by the Development Review Board that such Use is of the same general character as those Permitted or Conditional Uses within the district and will not be detrimental to other Uses within the district or to the adjoining land Uses.

Section 430: Nonconformities (See 24 V.S.A. § 4412 (7))

A Nonconforming Structure, Lot and/or Use is a Structure, part of a Structure, a Lot (or parcel), and/or a Use that does not comply with the present ordinance, but which was developed legally in conformance with the ordinance in effect that the time it was created or established. This includes:

- A. Structures, Lots and/or Uses improperly authorized as a result of error by the Zoning Administrator. [See 24 V.S.A. §§ 4303(13) and 4412(7)].
- B. All Structures, parts of Structures, Lots and/or Uses existing prior to January 26, 1968, when the first Wilmington zoning ordinance was adopted.

See Definitions and Section 705-709 for information on changes to Legal Nonconforming Structures, Lots and Uses.

Section 440: Districts and District Requirements

For the Districts of the town:

- Conservation
- Village
- Residential
- Resort - Residential
- Commercial/Residential
- Resort - Commercial/Residential
- Design Review Districts – Overlay Districts
- Flood Hazard District – An Overlay District

This section provides a description of:

- A. The purpose of the district
- B. Features of the district
- C. Permitted Uses in the district (those requiring a zoning Permit)
- D. Conditional Uses in the district (those requiring Development Review Board written decision and approval)
- E. Allowed Uses in the district (those not requiring a zoning Permit or Development Review Board written decision and approval)
- F. Any special development incentives in the district
- G. A chart outlining development requirements of the district for:
 1. Density limits (how many Structures are allowed based on Lot acreage)
 2. Structures or Uses per Lot
 3. Maximum number of principle Structures or Uses allowed
 4. Minimum Lot Size (how big the Lot must be)
 5. Minimum Frontage (how many feet of the Lot must “front” a legal source of access)
 6. Minimum Depth (how many feet the sides of the Lot must be “deep” from the front.
 7. Structure Height Maximum (how tall a Structure may be)
 8. Setback – Front (how many feet a Structure must be from the access road or right-of-way)
 9. Setback – Side/Rear (how many feet a Structure must be from a side or rear property line)

Section 441: Height Limitations

Nonconforming Structures and Land Development to Nonconforming Lots shall not exceed thirty (30) feet to the highest point of the ridge line. (See Section 705 – 709 for Nonconforming Structures, Lots and/or Uses) Nonconforming Structures and Land

Development of Nonconforming Lots are not eligible for Height Limitation Exceptions – Review Options under Section 442 of this ordinance or for Waivers under Section 231 of this ordinance.

For all other Land Development:

No Structures shall exceed thirty-eight (38) feet to the highest point of the ridge line. (See District requirements of Section 450.)

All proposed Land Development of a Structure exceeding thirty-eight (38) feet to the highest point of the ridge line is eligible for a Height Limitation Exception if, in the opinion of the Development Review Board, the proposed Structure meets the requirements of Section 442, Height Limitation Exceptions – Review Options. Nonconforming structures and Land Development of Nonconforming Lots are not eligible for Height Limitation Exceptions – Review Options under Section 442 of this ordinance.

All proposed Land Development of a Structure exceeding twenty-four (24) feet to the eave line is subject to the written decision and approval of the Development Review Board. Adequate fire protection and safety shall be addressed by Development Review Board written decisions and approvals for all Structures exceeding twenty-four (24) feet to the eave line. Explanation of the need for Fire Consideration on Heights over 24 feet to the Eave: According to the Wilmington Fire Chief, as of 03/23/15 Wilmington Fire Department has a 35' ladder that can reach up to 24 feet on a building. With an eave line height of 24 feet they can then get on the roof with other equipment to fight a fire, regardless of the overall roof peak height. In some cases, a fire may break out in a manner such that the fire department may access a building from a window within 24 feet of the ground and access the roof from the interior. This may not be possible in some cases. In the interest of protecting Wilmington property owners, all properties should provide fire access to the roof within 24 feet of the ground level.

Section 442: Height Limitation Exceptions – Review Option

The Development Review board may approve Structures exceeding this limit, other than Nonconforming Structures or Land Development to Non-Conforming Lots, if the Structure is found to be justified based on one of the following criteria:

- A. Lot characteristics, topographical conditions or other natural features, allowing the additional height to meet the safety and aesthetic intent of this ordinance, or
- B. The added height benefits the town and contributes to the character, historical, and scenic value of the neighborhood, town, and region.

Nonconforming structures and Land Development of Nonconforming Lots are not eligible for Height Limitation Exceptions – Review Options under Section 442 of this ordinance.

All exceptions to exceed the height limitation, except as defined in Section 443 below, shall require evidence of written approval from the Wilmington, VT Fire Department.

All applications for a Height Limitation Exception under this provision Section 442 shall be required to visually demonstrate for 2 weeks where and how high the proposed Structure would be. The demonstration may be by placing, in the proposed location at the proposed

maximum height, a pole with a colorful flag, floating large colorful balloons, or by some other easily visible landmark. Notice of such height limitation exception visual demonstration shall be provided to the public through normal hearing notice channels.

Section 443: Height Limitation Exceptions – Excluded Structures

Exceptions to height limits are rooftop gardens, terraces, and similar features, ornamental and symbolic features of buildings and Structures, including chimneys, turrets, spires, steeples, cupolas, belfries and domes, where such features are not used for human occupancy or commercial identification. The feature will cover no more than 10% of the footprint of the building. In no case shall the height of any Structure exceed the limit Permitted by federal and state regulations regarding flight paths of aircraft.

Section 444: Calculation of Lot Dimensions and Setbacks

All Lot dimensions including Lot size and Structure setbacks shall be calculated from the edge of any applicable road or right-of-way. In the case of a property line that may include a road or right-of-way, that portion of the property within the road or right-of-way shall not be considered in any dimensional calculations.

Section 445: Exceptions to Front Setback Requirements for Private Roads & Rights-of-Way

Front setbacks from private roads and rights-of-way serving more than one house or commercial locations shall be a minimum of 20 feet from the edge of the right-of-way. (Note: A right-of-way line is not necessarily the edge of the traveled portion of the road.)

Section 446: Exception to Setback Requirements - Small Structures

Small Structures as defined in Appendix III (see Structure, Small) have a zero setback and do not require a zoning Permit.

Section 447: Agricultural Exceptions

Agricultural (Farm) Structures for an Agricultural Use or Accessory Agricultural Use licensed or Permitted by the State of Vermont under 10 VA 1021(f) and 1259(f) and 6 V.S.A. § 4810 and meeting the criteria outlined in 24 VSA § 4413(d)(1) do not require a Permit. While no Permit is required the applicant shall notify the Zoning Administrator of intent to build a qualified Agricultural Structure by submitting a plot plan showing property lines, all Structures on the Lot, setbacks and dimensions (pursuant to 24 VSA § 4413(d)(2)).

Section 448: Community Facility Development Exceptions

All Community Facility development is subject to the terms of this ordinance including the application, approval and Permitting by the Zoning Administrator and the written decision and approval of the Development Review Board, with the exception that, pursuant to 24 V.S.A. § 4413:

- A. Zoning restrictions may not interfere with the municipality's intended functional Use, and

- B. Only those zoning restrictions of the following types may be applied: location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping and screening. Zoning provisions for other than these types of restrictions may not be applied to municipal projects.

Community Facility includes all development, including sidewalks, for the following Uses:

- 1) State or Community-owned and operated institutions and facilities.
- 2) Public and private schools and other educational institutions certified by the state department of education.
- 3) Churches and other places of worship, convents, and parish houses.
- 4) Public and private hospitals.
- 5) Regional solid waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. § 248.

Section 450: District Purposes and Descriptions

A. Conservation District (CON)

1. Purpose: To protect the undeveloped nature of those forest lands that provide scenic and recreational opportunities, public water supply, watershed protection, flood storage, fish and wildlife habitat, and timber production.
2. Description: These lands are primarily publicly-owned lands including the Green Mountain National Forest and privately owned utility lands with conservation easements pursuant to the Federal Energy Regulatory Commission (FERC) settlement agreement, except for those lands located within the Village District boundary.
3. Permitted Uses, Conservation District:
(Requiring a zoning Permit)
 - Accessory Use
 - Boundary Line Adjustment
 - Subdivision of Land, five or fewer Lots
 - Temporary Retail Stand
 - Utility Facility
 - Wildlife Refuge

4. Conditional Uses, Conservation District:

(Requiring Development Review Board written decision and approval and a zoning Permit)

- Agritourism
- Camp, Recreational
- Community Facility
- Dwelling, One-Family
- Dwelling, Seasonal
- Parking Lot
- Recreation Facility, Outdoor
- Snowmaking Facility
- Subdivision of land, more than five Lots

For profit lodging with any number of guest rooms is prohibited in the Conservation District.

See Section 421 for Uses and Structures Allowed without a zoning Permit.

5. Site Criteria – Conservation District:

Density Limits	Maximum of: 1 Camp or 1 Dwelling, One-Family per 25 acres Each Camp, Dwelling, One-Family is allowed one Accessory Structure. Fences are not counted toward density limits.
Structures / Uses per Lot	Maximum of: 1 Principal Structure and 1 Principal Use per Lot Home Business & Home Industry are not considered Principal Uses. Fences are not counted toward Structure limits.
Dimensional Requirements - New Lots	
Minimum Lot Size:	5 Acres
Minimum Lot Frontage:	500 ft
Minimum Lot Depth:	500 ft
Structure Height (Max):	38 ft to the highest point of the ridge line All Structures over 24 feet from average grade to the eave line or 38 feet to the ridge line are subject to Development Review Board written decision and approval. *

Setback-Front (Min):	40 ft Measured from edge of the actual or proposed road right-of-way
Setback-Side/Rear (Min):	25 ft Measured from the property line

6. Zoning District Incentives – Conservation District: None

While Home Occupations are allowed in the Conservation District, Home Businesses and Home Industry are not allowed in the Conservation District. (See Sections 460 – 463)

*See Section 441 – 443 for Structure Height Maximum information and Section 706 (D) and 707 (C)(3) for special height limitations to Nonconforming Structures and Lots.

B. Village District (VIL)

1. Purpose: To retain the character of the existing village, provide for future residential and commercial development through historically appropriate Structures and business types at appropriate densities, and promote residential and tourist quality of life by preserving and developing a clustered village reflecting a visibly vibrant and energized community.

Development and reconstruction shall reflect the character and ambiance of the historic village. Businesses shall promote economic stability and sustainability of the town through contributing substantially to the economic viability of the community. Businesses shall provide a substantially unique retail and service experience to attract visitors and meet the needs of residents. Businesses shall reflect the special character and ambiance of the town. Business sizes will be small in scale, consistent with the clustered downtown of the historic village.

The village district will encourage development which creates a visible sense of excitement and activity, drawing people to stop and participate. Examples of desired activities include village strolls, street fairs, retail markets, art displays, outdoor dining, street-front dining, public seating areas, performance art venues, street performance and clustered communal areas. Building Structures will be reflective of the historic nature of the town. Outdoor spaces will reflect the rural and bucolic nature of the area.

The Historic Design Review District, as defined in Article V, is included in this district. Some of the parcels in the village are also subject to the Historic Design Review District Guidelines in Article V.

2. Description: These parcels fall within the Village District boundary on the Zoning Map. The Village District boundary was derived from the proposed land Use Village District boundary in the 2015 Wilmington Town Plan.

3. Permitted Uses, Village District:
(Requiring a zoning Permit)

- Accessory Apartment
- Accessory Use
- Boundary Line Adjustment
- Dwelling, One Family
- Dwelling, Two-Family or Duplex
- Family Child Care Home
- Group Home, 1-8 residents
- Office
- Registered Family Child Care Home
- Subdivision of land, five or fewer Lots
- Temporary Retail Stand

4. Conditional Uses, Village District:

(Requiring Development Review Board written decision and approval and a zoning Permit)

- Affordable Housing Development
- Agritourism
- Automotive Service Station & Repair Garage
- Automotive Services
- Bank
- Bar or Lounge
- Child Care Facility
- Community Facility
- Dwelling, Seasonal
- Dwelling, Multiple Family
- Educational or Institutional Facility
- Entertainment/Cultural Facility
- Food Stand
- Group Home, more than 8 residents
- Health Care Facility
- Home Industry
- Lodging - more than 2 guest rooms
- Maintenance Facility
- Manufacturing
- Mixed-Use
- Multi Business Center
- Municipal Utility or Safety Related Facility
- Nursing Home /Assisted Living Facility
- Parking Lot
- Place of Worship
- Planned Unit Development (see Definitions)
- Private Club
- Recreation, Indoor
- Recreation Facility, Outdoor
- Restaurant
- Retail Business
- Service Business
- Senior/ADA-Compliant Housing/Adult Living Community
- Subdivision of land, more than five Lots
- Transportation Center
- Utility Facility
- Wholesale Business

Home Business (See Sections 460 – 463) and Lodging with less than or equal to two (2) guest bedrooms are allowed without a zoning Permit in the Village District.

See Section 421 for additional Uses and Structures Allowed without a zoning Permit.

5.a Site Criteria – Village District inside the Historic Design Review District:

Density Limits	Unlimited
Structures/Uses Per Lot	Unlimited
Dimensional Requirements - New Lots	
Minimum Lot Size:	1/8 acre
Minimum Lot Frontage:	40 ft
Structure Height (Max):	38 ft to the highest point of the ridge line All Structures over 24 feet from average grade to the eave line or 38 feet to the ridge line are subject to Development Review Board written decision and approval. *
Setback-Front (Min):	0 ft Measured from edge of the actual or proposed road right-of-way to the dripline for 0 setback
Setback-Side/Rear (Min):	0 ft Measured from the dripline.

5.b Site Criteria – Village District outside of Historic Design Review District:

Density Limits:	Maximum of: 2 Dwelling units per acre. See Zoning District Incentives below. Fences are not counted toward density limits.
Structures/Uses Per Lot:	Maximum of: 2 Principal Structures and 2 Principal Uses Home Business and Home Industry are not considered Principal Uses. Fences are not counted toward Structures limits.
Dimensional Requirements – New Lots	
Minimum Lot Size:	1/8 acre
Minimum Lot Frontage:	150 ft
Structure Height (Max):	38 ft to the highest point of the ridge line All Structures over 24 feet from average grade to the eave line or 38 feet to the ridge line are subject to Development Review Board written decision and approval. *
Setback-Front (Min):	20 ft Measured from edge of the actual or proposed road right-of-way
Setback-Side/Rear (Min):	20 ft Measured from the property line

6. Zoning District Incentives – Village District:

Increased Density Option outside of Historic Design Review District: Affordable housing may be allowed an increase in the density at a rate of an additional two (2) dwelling units per ½ acre. Senior/ADA-Compliant Housing/Adult Living Community housing may be constructed, if approved, up to the maximum densities specified in Article VII, Section 733.

*See Section 441 - 443 for Structure Height Maximum information and Section 706 (D) and 707 (C)(3) for special height limitations to Nonconforming Structures and Lots.

Senior/ADA-Compliant Housing/Adult Living Community housing may be constructed, if approved, up to the maximum densities specified in Article VII, Section 733.

C. Residential District (RES)

1. Purpose: To provide areas for dwellings and low impact Uses with consideration being given to historic settlement patterns, aesthetics, natural resources, and economic vitality.
2. Description: Lands in this District are already committed to residential development and comprise the remainder of land in Town not designated in any other district.

3. Permitted Uses, Residential District:
(Requiring a zoning Permit)

- Accessory Apartment
- Accessory Use
- Boundary Line Adjustment
- Dwelling, One Family
- Dwelling, Two-Family or Duplex
- Dwelling, Seasonal
- Family Child Care Home
- Group Home, 1-8 residents
- Subdivision of land, five or fewer Lots
- Temporary Retail Stand

4. Conditional Uses, Residential District:

(Requiring Development Review Board written decision and approval and a zoning Permit)

- Affordable Housing Development
- Agritourism
- Camp, Recreational
- Campground/Recreational Vehicle Park
- Cemetery
- Child Care Facility
- Community Facility
- Dwelling, Multiple-Family
- Educational or Institutional Facility
- Golf Course
- Home Business
- Home Industry
- Mobile Home Park (a type of Planned Unit Development)
- Municipal Transfer Station
- Municipal Utility or Safety Related Facility
- Office
- Parking Lot
- Place of Worship
- Planned Unit Development (see Definitions)
- Quarry Operation - extraction of Earth Resources
- Recreation Facility, Outdoor
- Subdivision of land, more than five Lots
- Utility Facility
- Wildlife Refuge

Lodging with less than or equal to two (2) guest bedrooms are Allowed without a zoning Permit in the Residential District.

See Section 421 for additional Uses and Structures Allowed without a zoning Permit.

5. Site Criteria - Residential District:

Density Limits	Maximum of 25% Lot Coverage: 1 dwelling unit plus an Accessory Apartment or 1 two-unit dwelling per acre. Fences are not counted toward density limits.
Structures/Uses Per Lot	Maximum of : 1 Principal Structure and 1 Principal Use. Home Business and Home Industry are not considered Principal Uses. A second dwelling in a separate Principal Structure may be constructed on any Lot with more than three acres. Fences are not counted toward Structures limits.
Dimensional Requirements – New Lots	
Minimum Lot Size:	1 Acre
Minimum Lot Frontage:	150 ft
Minimum Lot Depth:	150 ft
Structure Height (Max):	38 ft to the highest point of the ridge line All Structures over 24 feet from average grade to the eave line or 38 feet to the ridge line are subject to Development Review Board written decision and approval. *
Setback-Front (Min):	40 ft Measured from edge of the actual or proposed road right-of-way
Setback-Side/Rear (Min):	20 ft Measured from the property line

*See Section 441 – 443 for Structure Height Maximum information and Section 706 (D) and 707 (C)(3) for special height limitations to Nonconforming Structures and Lots.

D. Resort - Residential District (R – RES)

1. Purpose: To provide areas for dwellings with consideration being given to historic settlement patterns, aesthetics, natural resources, and economic vitality.
2. Description: The Resort/Residential district is as shown on the Zoning Map and corresponds to parcel boundaries shown. It is primarily some or all of the areas designated in the 1970 Haystack Master Plan as the “Golf Course Tract” and the “East Tract.” It is to be applied to those areas of the town covered by the “Agreement: Haystack Mountain Ski Area, Inc. to Town of Wilmington” dated Feb 5, 1970 and amended from time to time by the DRB.

3. Permitted Uses, Resort - Residential:

(Requiring a zoning Permit)

- Accessory Apartment
- Accessory Use
- Boundary Line Adjustment
- Dwelling, One Family
- Dwelling, Two-Family or Duplex
- Dwelling, Seasonal
- Family Child Care Home
- Group Home, 1-8 residents
- Subdivision of land, five or fewer Lots
- Temporary Retail Stand

4. Conditional Uses, Resort-Residential:

(Requiring Development Review Board written decision and approval and a zoning Permit)

- Affordable Housing Development
- Agritourism
- Airport runway
- Airport hangers
- Airport terminal facility
- Camp, Recreational
- Campground/Recreational Vehicle Park
- Cemetery
- Child Care Facility
- Community Facility
- Dwelling, Multiple-Family
- Educational or Institutional Facility
- Golf Course
- Home Business
- Home Industry
- Mobile Home Park (a Planned Unit Development)
- Municipal Transfer Station
- Municipal Utility or Safety Related Facility
- Office
- Parking Lot
- Place of Worship
- Planned Unit Development (see Definitions)
- Quarry Operation -Extraction of Earth Resources
- Recreation Facility, Outdoor
- Senior/ADA-Compliant Housing/Adult Living Community
- Subdivision of land, more than five Lots
- Utility Facility
- Wildlife Refuge

Lodging with less than or equal to two (2) guest bedrooms are Allowed without a zoning Permit in the Resort – Residential District.

See Section 421 for additional Uses and Structures Allowed without a zoning Permit.

5. Site Criteria: Resort - Residential District:

Density Limits	Maximum of: 25% Lot Coverage. 1 dwelling unit plus an Accessory Apartment or 1 two-unit dwelling per acre. Fences are not counted toward density limits.
Structures/Uses Per Lot	Maximum of: 1 Principal Structure and 1 Principal Use Home Business and Home Industry are not considered Principal Uses. A second dwelling in a separate Principal Structure may be constructed on any Lot with more than three acres. Fences are not counted toward Structure limits.
Dimensional Requirements – New Lots	
Minimum Lot Size:	1 Acre
Minimum Lot Frontage:	150 ft
Minimum Lot Depth:	150 ft
Structure Height (Max):	38 ft to the highest point of the ridge line All Structures over 24 feet from average grade to the eave line or 38 feet to the ridge line are subject to Development Review Board written decision and approval. *
Setback-Front (Min):	40 ft Measured from edge of the actual or proposed road or right-of-way
Setback-Side/Rear (Min):	20 ft Measured from the property line

*See Section 441- 443 for Structure Height Maximum information and Section 706 (D) and 707 (C)(3) for special height limitations to Nonconforming Structures and Lots.

6. Zoning District Incentives – Resort-Residential District: Senior/ADA-Compliant Housing/Adult Living Community housing may be constructed, if approved, up to the maximum densities specified in Article VII, Section 733.

E. Commercial/Residential District (COM/RES)

1. Purpose: The purpose of this district is to: encourage clustered economic development while preserving designated open spaces and historic village settlement patterns thus preventing sprawl and roadside strip development. PUDs are encouraged within the Commercial District and such types of development must meet the PUD requirements as well as consider physical and environmental limitations, such as flood hazard areas, wildlife habitat, steep slopes and traffic volume and flow.

2. Description: The Commercial/Residential districts are as shown on the Zoning Map and correspond to parcel boundaries shown.

3. Permitted Uses, Commercial/Residential:
(Requiring a zoning Permit)

- Accessory Apartment
- Accessory Use
- Boundary Line Adjustment
- Dwelling, One-Family
- Dwelling, Two-Family or Duplex
- Dwelling, Seasonal
- Family Child Care Home
- Group Home, 1-8 Residents
- Office
- Subdivision of land, five or fewer Lots
- Temporary Retail Stand
- Wildlife Refuge

4. Conditional Uses, Commercial/Residential:

(Requiring Development Review Board written decision and approval and a zoning Permit)

- Affordable Housing Development
- Agritourism
- Automotive Service Station & Repair Garage
- Automotive Services
- Bank
- Bar or Lounge
- Camp, Recreational
- Campground/Recreational Vehicle Park
- Cemetery
- Child Care Facility
- Community Facility
- Dwelling, Multiple-Family
- Educational or Institutional Facility
- Entertainment/Cultural Facility
- Food Stand
- Golf Course
- Group Home (more than 8 residents)
- Health Care Facility
- Home Industry
- Kennel
- Lodging – more than 2 guest rooms
- Maintenance Facility
- Manufacturing
- Mini-Storage Facility
- Mixed-Use
- Mobile Home Park (a Planned Unit Development)
- Multi-Business Center
- Municipal Transfer Station
- Municipal Utility or Safety Related Facility
- Nursing Home/Assisted Living Facility
- Parking Lot
- Place of Worship
- Planned Unit Development (see Definitions)
- Private Club
- Quarry Operations - Extraction of Earth Resources
- Recreation, Indoor
- Recreation Facility, Outdoor
- Restaurant
- Retail Business
- Service Business
- Senior/ADA-Compliant Housing/Adult Living Community
- Slaughterhouse, Custom Processor
- Snowmaking Facility
- Storage Facility
- Subdivision of land, more than five Lots
- Transportation Center
- Utility Facility
- Warehouse
- Wholesale Business

Home Business (See Sections 460 – 463) and Lodging with less than or equal to two (2) guest bedrooms are Allowed without a zoning Permit in the Commercial/Residential District

See Section 421 for additional Uses and Structures Allowed without a zoning Permit.

5. Site Criteria – Commercial/Residential District:

	Commercial Uses	Residential Uses
Density Limits	Maximum of : 25% Lot Coverage. Fences are not counted toward density limits.	Maximum of : 25% Lot Coverage. 1 dwelling unit plus an Accessory Apartment or 1 two-unit dwelling per acre. Fences are not counted toward density limits.
Structures/Uses Per Lot	Unlimited.	Maximum of: 1 Principal Structure and 1 Principal Use. Home Business and Home Industry are not considered Principal Uses. A second dwelling in a separate Principal Structure may be constructed on any Lot with more than three acres. Fences are not counted toward Structures limits.
Dimensional Requirements:	Commercial and Residential Uses	
Minimum Lot Size:	1 Acre	
Minimum Lot Frontage:	150 ft	
Minimum Lot Depth:	150 ft	
Structure Height (Max):	38 ft to the highest point of the ridge line All Structures over 24 feet from average grade to the eave line or 38 feet to the ridge line are subject to Development Review Board written decision and approval. *	
Setback-Front (Min):	40 ft Measured from edge of the actual or proposed road right-of-way	
Setback-Side/Rear (Min):	20 ft Measured from the property line	

6. Zoning District Incentives – Commercial/Residential District:

Lot Coverage Increase Option: If Lot coverage consists of two (2) or more buildings, Lot coverage may be increased from twenty-five (25%) percent to thirty (30%) percent.

Senior/ADA-Compliant Housing/Adult Living Community housing may be constructed, if approved, up to the maximum densities specified in Article VII, Section 733.

F. Resort - Commercial/Residential District (R - COM/RES)

1. Purpose: The purpose of this district is to: encourage clustered economic development while preserving designated open spaces and historic village settlement patterns thus preventing sprawl and roadside strip development. PUDs are encouraged within the Resort/Commercial District and such types of development must meet the PUD requirements as well as consider physical and environmental limitations, such as flood hazard areas, wildlife habitat, steep slopes and traffic volume and flow.

2. Description: The Resort-Commercial/Residential district is as shown on the Zoning Map and corresponds to parcel boundaries shown. It is primarily some or all of the area designated in the 1970 Haystack Master Plan as the “Base Tract.” It is to be applied to those areas of the town covered by the “Agreement: Haystack Mountain Ski Area, Inc. to Town of Wilmington” dated Feb 5, 1970 and amended from time to time by the DRB

3. Permitted Uses, Resort - Commercial/Residential:
(Requiring a zoning Permit)

- Accessory Apartment
- Accessory Use
- Boundary Line Adjustment
- Dwelling, One-Family
- Dwelling, Two-Family or Duplex
- Dwelling, Seasonal
- Family Child Care Home
- Group Home, 1-8 Residents
- Office
- Subdivision of land, five or fewer Lots
- Temporary Retail Stand
- Wildlife Refuge

4. Conditional Uses, Resort - Commercial/Residential:

(Requiring Development Review Board written decision and approval and a zoning Permit)

- Affordable Housing Development
- Agritourism
- Automotive Service Station & Repair Garage
- Automotive Services
- Bank
- Bar or Lounge
- Camp, Recreational
- Campground/Recreational Vehicle Park
- Cemetery
- Child Care Facility
- Community Facility
- Dwelling, Multiple-Family
- Educational or Institutional Facility
- Entertainment/Cultural Facility
- Food Stand
- Golf Course
- Group Home (more than 8 residents)
- Health Care Facility
- Home Industry
- Kennel
- Lodging – more than 2 guest rooms
- Maintenance Facility
- Manufacturing
- Mini-Storage Facility
- Mixed-Use
- Mobile Home Park (a Planned Unit Development)
- Multi-Business Center
- Municipal Transfer Station
- Municipal Utility or Safety Related Facility
- Nursing Home/Assisted Living Facility
- Parking Lot
- Place of Worship
- Planned Unit Development (see Definitions)
- Private Club
- Quarry Operations -Extraction of Earth Resources
- Recreation, Indoor
- Recreation Facility, Outdoor
- Restaurant
- Retail Business
- Service Business
- Senior/ADA-Compliant Housing/Adult Living Community
- Snowmaking Facility
- Storage Facility
- Subdivision of land, more than five Lots
- Transportation Center
- Utility Facility
- Warehouse
- Wholesale Business

Home Business (See Sections 460 – 463) and lodging of less than or equal to two (2) guest bedrooms are Allowed without a zoning Permit in the Resort - Commercial/Residential District.

See Section 421 for additional Uses and Structures Allowed without a zoning Permit.

5. Site Criteria – Resort - Commercial/Residential District:

	Commercial Uses	Residential Uses
Density Limits	Maximum of: 25% Lot Coverage. Fences are not counted toward density limits.	Maximum of: 25% Lot Coverage. 1 dwelling unit plus an Accessory Apartment or 1 two-unit dwelling per acre. Fences are not counted toward density limits.
Structures/Uses Per Lot	Unlimited	Maximum of: 1 Principal Structure and 1 Principal Use. Home Business and Home Industry are not considered Principal Uses. A second dwelling in a separate Principal Structure may be constructed on any Lot with more than three acres. Fences are not counted toward Structure limits.
Dimensional Requirements:	Commercial and Residential Uses	
Minimum Lot Size:	1 Acre	
Minimum Lot Frontage:	150 ft	
Minimum Lot Depth:	150 ft	
Structure Height (Max):	38 ft to the highest point of the ridge line All Structures over 24 feet from average grade to the eave line or 38 feet to the ridge line are subject to Development Review Board written decision and approval. *	
Setback-Front (Min):	40 ft Measured from edge of the actual or proposed road right-of-way	
Setback-Side/Rear (Min):	20 ft Measured from the property line	

6. Zoning District Incentives – Resort - Commercial/Residential District:

Lot Coverage Increase Option – Resort - Commercial/Residential District:

If Lot coverage consists of two (2) or more buildings, Lot coverage may be increased from twenty-five (25%) percent to thirty (30%) percent.

Senior/ADA-Compliant Housing/Adult Living Community housing may be constructed, if approved, up to the maximum densities specified in Article VII, Section 733.

*See Section 441 – 443 for Structure Height Maximum information and Section 706 (D) and 707 (C)(3) for special height limitations to Nonconforming Structures and Lots.

Section 460: Business Uses within a Dwelling or Accessory Structure

Some businesses within a dwelling or Accessory Structure are allowed, meaning they do not require a Permit. Those not defined to be allowed will require a Permit and/or written decision and approval of the Development Review Board as a Conditional Use. These sections define which business Uses in a dwelling or Accessory Structure are allowed and which require a Permit as a Conditional Use.

Section 461: Criteria for Business Uses within a Dwelling or Accessory Structure

There are three (3) categories of business Use within a dwelling or Accessory Structure: Home Occupation, Home Business, and Home Industry. All three (3) types of business Use within a dwelling or Accessory Structure shall meet the following criteria:

- A. The business Use must be primarily carried out by the resident and their family members who share the residence.
- B. The business has no more than three (3) full-time equivalent non-family member, non-resident employees.
- C. The Use is clearly incidental and secondary to the Use of the dwelling for residential purposes. The Use may take place in no more than 25% of the dwelling space or one thousand (1000) square feet, whichever is greater.
- D. The Use may also be carried out in all or in part of an Accessory Structure, up to a maximum of one thousand (1000) square feet.
- E. The Use may not change the external character of the dwelling.
- F. Any retail sales must be the business' own products and services or ancillary support products.
- G. For Home Business and Home Industry there must be adequate parking for client visits. On premises parking should be to the side and rear of the building if feasible. (See Section 462 below for Business Uses within a Home allowing for client visits.) Home Occupations, by definition, do not allow client visits with the exception of Open Studios as allowed below. As such, no additional parking is required for a Home Occupation.

Section 462: Determining the Type of Business Use within a Dwelling or Accessory Structure

State Protection of Home Occupations: Vermont law protects the right of residents to “use a minor portion of a dwelling unit for **an occupation that is customary in residential areas and that does not have an undue adverse impact upon the character of the residential area** in which the dwelling is located.” 24 V.S.A. § 4412(4)). Home Occupations are an allowed Use. There is no need to obtain a Permit. Further clarification of what is considered a Home Occupation follows.

Home Occupations: in compliance with state law 24 V.S.A. § 4412(4) Home Occupations not requiring a Permit will be conducted in a fashion that is invisible to the character, quality, and nature of the community and the neighborhood.

A business that is not customary to a residential area is not considered a Home Occupation. Businesses drawing customers, clients, or deliveries in excess of more than one (1) visit per day are not considered a Home Occupation under this ordinance.

In addition to the vehicular visits, a Home Occupation is allowed up to two (2) Open Studio events of up to three (3) days each per year.

Home Businesses and Home Industries: are those businesses within a dwelling or Accessory Structure that remain small in scale, using a minor portion of the dwelling or Accessory Structure, but may have impact on the residential area in which the dwelling and/or Accessory Structure is located. They differ in the size of their impact on the residential area in which the dwelling and/or Accessory Structure is located and the type of business being conducted. Both provide products and services created within the dwelling or Accessory Structure.

Client Visits and Type of Business for Home Business and Home Industry

	Home Business	Home Industry
Expected daily client and/or vehicular visits	Less than 5 daily client and/or vehicular visits	Less than 10 daily client and/or vehicular visits
Type of Business	Customary to a residential area	Manufacturing or other business not customary to a residential area

Businesses meeting one or more criteria of a category will be considered to be within that class of Business within a home. A business need not meet both criteria.

Businesses within a Dwelling Requiring Development Review Board Written Decision and Approval: All business Use in a dwelling or Accessory Structure not falling within these three (3) categories or not meeting the criteria of Section 461 above will be a Conditional Use subject to Development Review Board written decision and approval.

Section 463: Districts Allowing Business Use within a Dwelling

District	Home Occupation	Home Business	Home Industry
Conservation	No Permit Required	Not Allowed	Not Allowed
Village	No Permit Required	No Permit Required	Conditional Use
Residential	No Permit Required	Conditional Use	Conditional Use
Resort - Residential	No Permit Required	Conditional Use	Conditional Use
Commercial/ Residential	No Permit Required	No Permit Required	Conditional Use
Resort - Commercial/ Residential	No Permit Required	No Permit Required	Conditional Use

Conditional Uses require a written decision and approval of the Development Review Board

ARTICLE VII STANDARDS

Section 700: Purpose

The purpose of this Article VII, Standards is to define requirements and criteria that shall be applied by the Development Review Board. The goals of these reviews are to:

- A. Preserve the unique character of the town as a rural and agricultural community with a clustered historic downtown as a cornerstone of the town's visitor industry that is a key revenue source for the town's economy,
- B. Protect the economic viability and vitality of the town,
- C. Serve the needs of the community, the downtown, the neighborhoods, and the region.

The standards of this section are required on all Land Development in all Districts and shall be addressed by the Development Review Board to ensure the proposed development meets the required standards. The Development Review Board shall require that proposed Uses and development comply with all requirements of this zoning ordinance.

The role of the Development Review Board is also to work with the landowner of proposed development to achieve solutions that support the character of the community, drawing on Site Plan and Design Guidelines of Appendix I. These guidelines are not hard and fast rules, but are proven and industry accepted guidelines of sound site planning and design.

To achieve this goal, property owners and developers are encouraged to consult with the Zoning Administrator for a pre-application consultation.

Section 705: Changes to Nonconforming Structures, Lots and/or Uses

[See 24 V.S.A. §§ 4303(13)(14)(15)(16) and 4412(7)].

- A. **Nonconforming Structure, Lot and/or Use is a Structure, part of a Structure, a Lot (or parcel), and/or a Use that does not comply with the present ordinance, but which was created or established legally in conformance with the ordinance in effect at the time it was created or established.** [See 24 V.S.A. §§ 4303(13 - 16) and 4412(7)] This includes:
 1. Structures, Lots and/or Uses improperly authorized as a result of error by the Zoning Administrator.
 2. All Structures, parts of Structures, Lots and/or Uses existing prior to January 26, 1968, when the first Wilmington zoning ordinance was adopted.
- B. Nonconforming Structures, Lots and/or Uses created or established legally in conformity with the ordinance in effect at the time it was created or established:
 1. Shall be allowed to exist indefinitely.
 2. Will not be subject to penalties for nonconforming elements that were in conformity with the ordinance in effect at the time they were created or established.
 3. May be altered, renovated, changed, or developed in accordance with the requirements of Sections 706, 707, and 708.
 4. Are not eligible for Waivers under Section 231 of this ordinance.

- C. Changes to a Nonconforming Structure, Lot, or Use which do not comply with the requirements of this Section are illegal and will be subject to remedy consistent with the enforcement, violations and penalties provisions of this ordinance (see Article II Section 215 & 216).

Section 706: Nonconforming Structures on Developed Land/Lot

- A. Developed Land/Lot is any Land, Lot or parcel which includes “the construction, reconstruction, conversion, Structural alteration, relocation, or enlargement of any building or other Structure; the demolition, destruction, or razing of a Structure, whether intentional or unintentional; any change in the Use of any building or other Structure, Land, or Use; the Subdivision of a parcel into two (2) or more parcels; any mining, landfill, or excavation that increases peak off-site flow; and any water impoundment such as lakes and ponds”. [See Definitions Land Development, Lot Development]
- B. A Nonconforming Structure on a Developed Lot/Developed Land may be modified consistent with the guidelines of this Section with the prior written decision and approval of the Development Review Board. Modifications to Nonconforming Structures are not eligible for a Waiver.
- C. In a Development Review Board hearing where there is question as to whether a Lot has been previously Developed, the burden of proof lies with the applicant. This burden may be met through dated photographs, expert testimony, or the provision of town land records or Grand List of the Town of Wilmington records back to January 26, 1968 (the time of the first Wilmington zoning ordinance) or the time when the Lot/land was established or created, whichever is later,
- D. No alteration, renovation, or change shall exceed thirty (30) feet to the highest point of the ridge line. Nonconforming Structures and Land Development of Nonconforming Lots are not eligible for Height Limitation Exceptions – Review Options under Section 442 of this ordinance or for Waivers under Section 231 of this ordinance.
- E. A Nonconforming Structure on a Developed Lot may be altered, renovated, or changed in any direction for any reason, with the written decision and approval of the Development Review Board (except as provided for in item F below), provided that:
 - 1. The change to the non-conforming element of the Structure:
 - a. Remains within the footprint of the original non-conforming element or feature, including any overhangs or cantilevering, or

Determining Footprint of Original Structure:

Evidence of the footprint of the original non-conforming Structure shall be clearly established and maintained by the property owner seeking to rebuild within the footprint of the original non-conforming Structure. The burden of proof as to the location and dimensions of the original Structure remains with the property owner seeking a Permit for such a change. For owners failing to clearly establish and maintain evidence of the footprint and

dimensions of the original Structure on the Lot, the applicant shall provide evidence of the prior Structure's dimensions and photos of the prior Structure's location in relation to the Lot or such other documentation as may demonstrate the location and dimensions of the original footprint of the Structure.

- b. Does not increase the Degree of Nonconformity, except that when alteration, renovation, or change is for the purpose of compliance with environmental, safety, health, or energy codes the change is allowed to increase the degree of nonconformity, but only to the minimum necessary to achieve compliance.

Measuring Degree of Nonconformity:

If a house currently encroaches ten (10) feet into a setback and an attached porch encroaches fifteen (15) feet into the same setback, there is an existing non-conformity of 15 feet. The degree of non-conformity is measured from the greatest degree of non-conformity for that Structure, or in this case 15 feet. Additions that do not exceed the greatest current non-conformity would not be considered an increase in the degree of non-conformity.

Using the above example; the porch with the 15 foot encroachment could be extended so long as it stays less than or equal to the 15 feet of non-conformity, or the 10 foot setback non-conformity of the house could be expanded another 5 feet, up to the 15 foot existing non-conformity, without increasing the degree of non-conformity. No Waiver would be required as the Structure is not increasing the degree of non-conformity.

- F. A Nonconforming Structure which is demolished or destroyed unintentionally may, with a Permit from the Zoning Administrator, be restored to its earlier state, matching all prior dimensions including but not limited to roof pitch, height, footprint, etc., provided the reconstruction commences within two (2) years of the date of loss. Reconstruction seeking any changes to prior dimensions is subject to the terms of this Section and require a written decision and approval from the Development Review Board.

Section 707: Nonconforming Undeveloped Lots (Small Lots)

(See 24 V.S.A. § 4412(2))

- A. Undeveloped Lands are Lands that have not been developed as defined in Land Development/Developed Land.
- B. In a Development Review Board hearing where there is question as to whether a Lot has been previously Developed, the burden of proof lies with the applicant. This burden may be met through dated photographs, expert testimony, or the provision of town land records or Grand List of the Town of Wilmington records back to January 26, 1968 (the time of the first Wilmington zoning ordinance) or the time when the Lot/land was established or created, whichever is later,

C. A Nonconforming Undeveloped Lot may be developed with the prior written decision and approval of the Development Review Board except that the following special provisions apply:

- 1) Lot Size: The Lot is not less than one-eighth (1/8) acre (5445 square feet) in area with a minimum width or depth of forty (40) feet as defined in the property deed. In the event there is a question as to property boundary and whether a property satisfies these criteria, the applicant may be required to submit a survey of the Lot by a Vermont licensed surveyor, and shall have said surveyor pin the Lot.
- 2) Setback: Nonconforming Undeveloped Lots shall be eligible for reduced setback as follows:
 - a) The percentage by which the setback is reduced from the minimum setback required shall not exceed the percentage by which the Lot size is less than the minimum Lot size. For example, if the Lot area is 77% of the minimum Lot size, the required setback(s) shall be at least 77% of the minimum setback.
 - b) Except in the Historic Design Review District that allows a zero (0) setback, under no circumstances shall any setbacks be less than 10 feet from abutting property lines or 20 feet from the public road limits.
- 3) Height Limitation: No Development of a Nonconforming Undeveloped Lot shall exceed thirty (30) feet to the highest point of the ridge line. Nonconforming Structures and Land Development of Nonconforming Lots are not eligible for Height Limitation Exceptions – Review Options under Section 442 of this ordinance or for Waivers under Section 231 of this ordinance.

Nonconforming Undeveloped Lots shall comply with all other provisions of this ordinance including the requirement for a water supply system and wastewater system that comply with the Wastewater System and Potable Water Supply Rules.

D. Contiguous Nonconforming Undeveloped Lots which subsequently come under common ownership shall not be deemed merged and may be separately developed or conveyed.

Section 708: Nonconforming Uses

- A. A Nonconforming Use may be altered or changed for any reason so long as, in the opinion of the Development Review Board, it will not increase the degree of nonconformity.
- B. Any Nonconforming Use which is not actively engaged in for a period of twelve (12) months shall be considered a discontinued Use and the property will become subject to the requirements of this ordinance unless extension is granted by the Development Review Board. In a Development Review Board hearing where there is question as to whether a Use has been actively engaged in for a period of twelve (12) months, the burden of proof is on the applicant to demonstrate active Use in the past twelve (12) months.

Section 709: Changes in Ownership of Nonconforming Structures, Lots, and/or Uses

A nonconforming Structure, Lot, or Use that changes ownership will have the legal nonconforming status pass to the new owner, as a “Grandfathered” nonconforming Structure, Lot or Use. All “Grandfathered” nonconformities of properties changing ownership will be subject to all of the provisions of Nonconforming Structures, Lots, and/or Uses.

Section 710: Use Performance Standards

Pursuant to 24 V.S.A. § 4414(5) Performance Standards, the following standards shall apply to all Uses and land development in the town.

- A. Vibration: No continuous, permanent, ongoing, or frequent vibration shall be produced which, when transmitted, is discernible at the property line without the aid of instruments.

Temporary vibration created during land development should be limited to daylight hours to preserve quality of life in neighboring properties.

- B. Noise: continuous, permanent, ongoing or frequent noise in excess of that of a normal conversation (in the judgment of the Development Review Board) must not exist at the property boundary line. Recurring periodic or intermittent noises in excess of that of a normal lawn mower (in the judgment of the Development Review Board) at the property line is allowed provided it does not occur between the hours of nine (9) PM and seven (7) AM, and does not significantly detract from or diminish other property’s allowed Use or land development.

In that ski-areas reasonably expected to have snowmaking ski-areas and in that those owning property near a ski area would reasonably expect to hear snow-making equipment at any time, snowmaking equipment in a Resort Commercial/Residential District of a Resort Residential District is exempt from this provision.

Temporary noise created during land development should be limited to daylight hours to preserve quality of life for neighboring properties.

- C. Air Emissions for Commercial Operations: There shall be no emission of dust, ash, smoke or other particulate matter:

1. Which can cause damage to human or animal health, vegetation, or property by reason of concentration or toxicity
2. Which can cause contamination of the subject property or beyond the property boundaries
3. Which is composed of solid or liquid particles in concentrations exceeding current state authority standards
4. Which causes emission of non-farming, odorous matter in such quantities, as determined to be offensive.

- D. Injurious or Noxious Practices: No operations or Use shall create electromagnetic, liquid or solid refuse or waste, heat, cold, dampness, explosive, fire, glare, or other hazard which may cause injury or damage to human or animal health, vegetation, or property.

Section 720: Applicability of Conditional Use Standards and Site Plan and Design Guidelines

Conditional Uses are subject to both General and Specific Standards as defined below. Site Plan and Design Guidelines of Appendix I shall be applied to development within the Historic Design Review District and are recommended in all other districts.

The Development Review Board will complete a Site Plan Review and a Design Review as needed to determine conformity with the Standards of this Article VII.

The Development Review Board shall utilize the Listing of Structures in the State and Federal Registers of Historic Places (Appendix II) to determine the historical significance of all pre-existing Structures seeking written decision and approval for alteration, renovation or change.

The Development Review Board shall require conformity with Section 732 within the Historic Design Review District.

For structures outside of the Historic Design Review District listed in Appendix II, the Development Review Board shall encourage the applicant to conform with the standards of Section 723, however, the Development Review Board shall not withhold approval based solely on the applicant's non-compliance with Section 723 outside of the Historic Design Review District.

Section 721: Conditional Use - General Standards

In all districts, all Conditional Use development shall protect from undue adverse effects: (24 V.S.A. § 4414 (3)(A)). No Land Development or Use shall result in an undue adverse effect on any of the following:

- A. The capacity of existing or planned community, municipal or educational facilities
- B. Impact on traffic, roads, highways, transportation systems, pedestrian walkways in the vicinity
- C. By-laws and ordinances in effect at the time
- D. Utilization of renewable energy resources
- E. Air quality
- F. The character, aesthetics, and scenic value of the neighborhood and area affected, as defined by the purpose or purposes of the zoning district within which the project is located and specifically stated policies and standards of this ordinance and the Town Plan.

The Development Review Board shall review all proposed Conditional Use development in all districts, demonstrating no undue adverse effect on Conditional Use General Standards A - F above. In establishing conformity with General Standard F, the Development Review Board shall seek to preserve the character of the town consistent with the rural, agricultural, and historic nature of the town as defined in Section 722 and 723 below.

Section 722: Conditional Use – Preserving the Character of the Town

Land development and Uses in all Districts shall preserve the character of town consistent with its rural and agricultural heritage, conforming to the following:

- A. Preservation of the Town’s Character: Business development shall, to the extent reasonable and possible, occur in a manner that preserves the rural and agricultural character and ambiance of the community and the historic downtown.
- B. Economic Development Contributing to the Character of the Town: Merchandise or services shall not detract from the historic character and nature of the town as a family destination for tourists and a family focused residential community.
- C. Development Consistent with the Rural, Agricultural, and Historic Nature of the Town: Construction, reconstruction, or land development, whether allowed, Permitted, or Conditional shall, to the extent reasonable and possible, reflect and/or compliment the historic nature of the town and the rural and agricultural appearance of the neighborhood and region.
- D. Formula Businesses: The visual appearance of Formula Businesses (also known as chain stores, including things such as grocery stores, gas stations, chain drugs stores, dollar stores, etc. See Article X for a complete definition of this term), including signage, shall project an appearance harmonious with the character of the rural, agricultural, and historic nature of the town, reflecting the distinctive and unique character of the town, consistent with the Site Plan and Design Guidelines of Appendix I.
- E. Maximum Square Footage for Retail: All retail businesses with a proposed footprint of greater than two thousand (2,000) square feet (for example a 50’ long x 40’ wide store) shall require Development Review Board review, written decision and approval in all districts. Stores exceeding the two thousand (2,000) square foot maximum may be approved by the Development Review Board in the event that the business:
 - 1. is consistent with the unique character and ambiance of the community
 - 2. is found to be in the best interest of the community
 - 3. is the minimum size required to reasonably accommodate the business
 - 4. will enhance or preserve the economic base and economic diversity of the town as a whole
 - 5. will create economic stability and viability for the community
- F. Building Scale Conformity: Development shall conform to the scale of the established neighborhood.
- G. Utility Placement: to preserve the aesthetics and natural beauty of the area, underground utilities are encouraged where possible, particularly in areas of natural scenic beauty and in the Historic Design Review District.

Section 723: Conditional Use - Preserving the Character of the Town: Historic Preservation

Compliance with the following guidelines is required in the Historic Design Review District, a Design Review District to the extent reasonable and possible to preserve, rehabilitate, or restore historic Structures, as defined below.

See Section 723 for Historic Preservation Criteria. The term “shall’ in this section is used in reference to the Historic Design Review District.

Compliance with these guidelines is encouraged in all other districts. However, in no case shall the Development Review Board withhold approval of proposed development outside of the Historic Design Review District based solely on conformity with the criteria of this Section 723.

- A. Historic Structures: All Conditional Uses for a certified historic Structure as defined by Internal Revenue Code 26 U.S.C § 47(c) and/or recognized in the National Register of Historic Places, or by the Preservation Trust of Vermont shall not engage in land development that will compromise the Structure’s historic status. Every effort shall be made to preserve and enhance the historic features of Structures dating to 1920 or earlier. Preservation and enhancement of historic Structures shall be compatible with the historic character of the town and region.

No Historic Structure may be demolished without the written decision and approval of the Development Review Board). See also Section 530 and 723(E).

- B. Historic Preservation, Rehabilitation, and Restoration: With particular attention to those historic Structures listed in the state or federal registries of historic places (see Appendix II) Historic features and historic Structures shall, to the extent reasonable and possible, be preserved, rehabilitated, or restored. In determining whether historic elements will be Preserved, Rehabilitated or Restored, the following guidelines shall be considered.
1. Preservation: If historic elements are in good repair, historic materials, features and Structures shall be maintained and repaired to preserve the form and character of the property.
 2. Rehabilitation: If historic elements are not in good repair, to the extent that historic materials, features and Structure must be altered or added to meet continuing or changing Uses, the original material, feature or Structure shall be preserved and any alteration or addition shall retain the property's historic character and not detract from the historic materials, features and Structures.
 3. Restoration including Reconstruction: If historic elements are not salvageable, historic materials, features and Structures that have been altered over time or have had elements added to the Structure from other periods, a restoration shall occur, removing evidence of those elements not in keeping with the historic character of the original Structure and restoring the original features of the Structure. Reconstruction shall re-create vanished or non-surviving portions of a property for interpretive purposes.

Vermont state recommended guidelines for historic preservation are as follows:

Secretary of the Interior's Standards for Rehabilitation:

<https://www.nps.gov/tps/standards/rehabilitation.htm>

Guidelines for Rehabilitating Historic Buildings:

<https://www.nps.gov/tps/standards/rehabilitation/rehab/guide.htm>

The Preservation Briefs: <https://www.nps.gov/tps/how-to-preserve.htm>

- C. Historic Features: For reconstruction, historic features of the Structure or complimenting the historic features of the region shall be retained or reconstructed.
- D. Criteria for Determining Preservation, Rehabilitation, Restoration/Reconstruction: In considering the reasonableness of requiring preservation, rehabilitation, and restoration the Development Review Board shall consider the following criteria:
 - 1. Property's historical significance
 - 2. Property's physical condition
 - 3. Proposed Use
 - 4. Reasonableness of undertaking preservation, rehabilitation, or restoration
 - 5. Degree to which the preservation, rehabilitation, or restoration will contribute to preserving or enhancing the character of the community
- E. Demolition of Historic Structures: An historic Structure that may reasonably be Preserved, Rehabilitated, or Restored/Renovated (See Section 723(B)) by the current owner seeking application for land development, shall not demolish any historic Structure certified as a historic Structure as defined by Internal Revenue Code 26 U.S.C § 47(c) or listed on any State or Federal Register of Historic Places (see Appendix II). The Development Review Board may require the applicant to pay the reasonable costs of an Independent Technical Review and may recess the Hearing pending receipt of Independent Technical Review findings. (See Section 730(N))

Section 730: Specific Standards (24 V.S.A. § 4414 (3)(B))

The Development Review Board shall refer to the Existing Land Use, Natural Resources, Special Resource Areas, Water Resources, Transportation System, and Community Facility and Utilities Maps of Appendices IV – IX to aid their decisions on proposed land development, including but not limited to the following areas:

- 1. Lands Over 2500 Feet in Elevation
- 2. Surface Waters
- 3. Water Source Protection Areas
- 4. Flood Hazard Areas
- 5. Deer Wintering Areas
- 6. Wildlife Crossings
- 7. Rare and Threatened Plants
- 8. Scenic Areas
- 9. Scenic Roads

10. Impact on Community Facilities and Utilities

11. Impact on Transportation Systems

All land development and Uses in all Districts and Overlay Districts shall conform to the following:

- A. Lighting and Glare: All exterior lighting in the Historic Design Review District and Village District shall be in keeping with historic character of the commercial area of the village. All exterior lighting in all districts shall be shielded and downcast. Interior and exterior lighting, glare or reflection are prohibited if they:
- 1) Constitute an unreasonable nuisance to other property owners or tenants
 - 2) Are found to not contribute to the aesthetics, scenic value, or character of the area and the community
 - 3) Could impair the vision of pedestrians or the driver of a motor vehicle or an aircraft
- B. Safety: Where a potential safety hazard exists, either from temporary or permanent activities, provisions shall be undertaken to minimize physical hazards.
- C. Traffic and Pedestrian Safety: Development shall provide for pedestrian walkways to ensure a safe and efficient means for pedestrians to navigate the town on foot or by bicycle. Special consideration shall be made for children's safety. Traffic patterns shall be reviewed for safety, ease of traffic flow, and efficiency. Access to public roadways require the approval of the Town of Wilmington (for access to town roads) or the State of Vermont (for access to state highways) pursuant to 19 V.S.A. § 1111.
- D. Commercial Parking and Loading Areas: Pursuant to 24 V.S.A. § 4414(4) All commercial parking and loading areas in all districts in the town shall adhere to the following standards:
1. Parking Spaces Required: With the exception of the Historic Design Review District, for every building hereafter changed in Use, erected, or altered or extended in such a way as likely to increase the need for more parking, there shall be off-street parking spaces as set forth below.
 2. Size of Parking Spaces: Parking space size shall be a minimum of ten (10) feet by eighteen (18) feet. Smaller parking spaces are allowed only where circumstances calling for added spaces outweigh the risks and public inconvenience of smaller spaces. Special consideration should be given to safety, pedestrian, and disabled persons concerns when smaller spaces are allowed.
 3. Minimum Number of Spaces: The minimum number of required spaces are:
 - i. Dwelling, Multi-Family: Two (2) parking spaces for every Dwelling unit.
 - ii. Lodging: One and one-half (1.5) parking space for every guest bedroom.
 - iii. Multi Business Centers and Offices: One (1) parking space for every four hundred (400) square feet of business or office space.

- iv. Retail Business: One (1) parking space for every two hundred (200) square feet of retail area.
 - v. Restaurant, Bar, Lounge, Entertainment / Cultural Facility: One (1) parking space for every three (3) persons Permitted for occupancy by the Vermont Department of Labor and Industry.
 - vi. Manufacturing: One (1) parking space per employee per shift.
 - vii. Lodging with two (2) guest bedrooms or less does not require additional parking.
4. Drive-Up Windows: Restaurants, banks, and similar establishments with drive-up windows shall have a stacking lane for each drive-up lane or remote customer access service point long enough to prevent the line of waiting vehicles from extending into the public right-of-way.
 5. Minimize the Visual Impact of Parking & Loading Areas: Break up parking with buildings and human scaled landscape islands. Utilize the landscape islands for plantings without obscuring traffic. Avoid the visual impact of a “sea of parking”. Rear parking and access points including loading areas will minimize the visual impact on the public view of the property. Screen unaesthetic features where possible (see Section 730 (E)), sufficient to minimize their physical and aesthetic impact on other land Uses, properties in the area, the town and public or private roads.
 6. Buffer Area to Parking: See Section 730 E (b) Screening and Buffer Areas for Parking.
 7. Public Road Access: Traffic circulation shall provide for automotive and pedestrian safety. Access to public roads should minimize traffic interruption and avoid undue burden on the main arteries of the Town. Approval for changes to a town road requires approval from the Town of Wilmington. Access changes to a state road, including all curb cuts, requires approval from the Vermont Agency of Transportation compliant with 19 V.S.A. § 1111.
 8. Rainwater, Snow, and Ice Removal/Storage: Plan landscaping for safe snow removal and ice management. Plan for storage of snow at the edge of Lots or on parking islands which will not compromise traffic fields of vision or pedestrian walkways (5 foot wide minimum). Plan for rainwater runoff conforming to Section 730 (F) through (K) and salt melt in a fashion that will not damage vegetation or water sources.
 9. Safety: Where a potential safety hazard exists, either from temporary or permanent activities, provisions shall be undertaken to minimize physical hazards. In all cases, consider safe vehicular and pedestrian movement with unobscured view of roadways and pedestrian intersections. Provisions shall be made for maximum traffic and parking safety and pedestrian circulation throughout the town, including provision for safety during snow and ice removal. Particular consideration shall be given to:
 - i. Visibility at intersections
 - ii. Pedestrian safety
 - iii. Convenience
 - iv. Access in case of emergency

10. Neighboring Properties: Provide maximum integration of circulation and parking with neighboring properties. Work collaboratively to maximize flow for efficiency, safety, and attractive solutions.

E. Road Development: Any new roads, whether public or private, shall conform to the Wilmington Town Highway Ordinance.

F. Landscaping, Screening and Buffer Areas: As defined in Section 722(A) development shall “preserve the rural and agricultural character and ambiance of the community”. Natural features characteristic of the town’s rural and agricultural character shall be used in Landscaping and Screening to preserve and protect the aesthetic and scenic value of the town, its neighborhoods, residents, and neighboring properties.

1. Landscaping: Landscape beds, trees, shrubs and plantings shall be required by the Development Review Board as reasonable and possible to protect the aesthetic and scenic value of town, its neighborhoods, residents, and neighboring properties, creating green spaces when possible. Trees, Shrubs, and Landscape Bed plantings shall be maintained for general aesthetics and plant health.

The Development Review Board shall require that if plants do not survive, they will be replanted within the growing season and the Buffer Areas shall be maintained and vegetation replaced to insure continuous seasonal vegetation. See Site Plan and Design Guidelines for planting specification and landscaping recommendations.

2. Screening & Buffer Areas: All reasonable and possible effort shall be made to maximize the visual aesthetics of development from the road, adjoining properties, neighborhoods, and properties with a view of the development area for all of the types of unaesthetic features described below. Every effort shall be made to protect natural vistas and the aesthetics of the area.

All screening shall include natural vegetation, tree plantings, hedges, rocks or combinations thereof. Fences and walls may be used in those circumstances where natural vegetative screening is not possible or as a secondary supplement to natural vegetative screening as needed to achieve a visual barrier.

The Development Review Board shall require that if plants do not survive, they shall be replanted within the growing season and that Buffer Areas shall be maintained and replaced as needed to insure continuous seasonal vegetation.

i. Screening Unaesthetic Features, Small: For unaesthetic features including but not limited to: propane tanks, dumpsters, storage areas, mechanicals, utility features, animal shelters/pens (except for Agricultural Uses or Accessory Agricultural Uses licensed or Permitted with the state and protected under 10 VA 1021(f) and 1259(f) and 6 V.S.A. 4810), creating undue adverse impact on the aesthetics of an abutting property, neighborhood or state, municipal, or private road, screening of the non-aesthetic features shall be provided.

ii. Screening & Buffer Areas for Unaesthetic Features, Large: For unaesthetic features larger than 200 square feet (including but not limited to large mechanical installations or utilities) and within 50 feet of a road or abutting property, creating

an undue adverse impact on the aesthetics of an abutting property or state, municipal, or private road, a minimum Buffer Area of 10 feet in depth shall be provided where reasonable and possible.

- iii. Screening & Buffer Areas for Commercial Structures and Uses: Where there is an undue adverse impact on the aesthetics of an abutting residential property, neighborhood or state, municipal, or private road as a result of the Commercial development (except for development within the Village District or for development within a Planned Unit Development (PUD) not abutting the border of the PUD), a Buffer Area shall be provided between the commercial property and an abutting residential property, neighborhood, or road. A minimum Buffer Area of 10 feet in depth shall be provided where reasonable and possible.
- iv. Screening & Buffer Areas for Parking: Where there is an undue adverse impact on the aesthetics of an abutting property, neighborhood or state, municipal, or private road as a result of parking, screening shall be provided where reasonable and necessary to preserve aesthetics. For parking areas in excess of 200 square feet and within 50 feet of a road or abutting property, a minimum Buffer Area of 10 feet in depth shall be provided where reasonable and possible.
- v. Screening & Buffer Areas for Ground Mounted Solar Arrays and Related Unaesthetic Features: When a ground mounted solar array and/or related unaesthetic features create an undue adverse impact on the aesthetics of an abutting property, neighborhood or state, municipal, or private road, screening of the solar array and/or related non-aesthetic features shall be provided. All reasonable effort shall be made to maximize the visual aesthetics of ground solar development. For ground installation of solar arrays and related unaesthetic features larger than 200 square feet and within 50 feet of a road or abutting property, a minimum Buffer Area of 10 feet in depth shall be provided.

G. Land and Water Management: Pursuant to 24 V.S.A. § 4414 (1)(G) and 24 V.S.A. § 4414 (9) the development plan shall protect properties, transportation systems, and public safety by:

1. Providing for safe and environmentally appropriate water management including but not limited to water supply quality/availability, stormwater retention/absorption and impervious surface runoff management.
2. Preventing water pollution.
3. Making appropriate provision for management of erosion, preservation of rivers and streams, river/stream banks, wetlands, waterways, channels, and agricultural lands.
4. Preserving and promoting scenic or aesthetic features and open spaces

If the project is not subject to the State of Vermont Act 250 written decision and approval process, determination of conformity of this provision may be made through expert testimony or studies.

- H. Wastewater and Potable Water: Pursuant to 24 V.S.A. § 4414 (13) the Zoning Administrator may issue an initial Permit conditioned upon receipt of evidence of a wastewater and potable water supply Permit, if none is provided with the submitted application. A final Permit may be issued by the Zoning Administrator after receiving evidence that a Permit has been issued, as applicable, under chapter 64 Title 10. Development Review Board decisions shall instruct the applicant of their responsibility in obtaining state and federal Permits and may condition their decision on obtaining such a Permit if none has been obtained.
- I. Natural Resources and Features: Existing vegetation, native species, native trees, scenic views, and river access, and other natural features shall be preserved to the extent possible and to the extent that they will enhance and promote the natural assets of the town. Clearing of land to create pasturelands for the creation of scenic spaces and vistas is allowed provided the clearing does not have an unreasonable impact on natural resources. Development shall blend with the topography, vegetation, and natural features of the land.

Development shall not have an undue adverse impact on preservation of natural features, natural resources, and renewable energy including; forested lands, streams and stream banks, steep slopes, wetlands, watersheds, floodplains, soils unsuitable for development, impervious surfaces essential to stormwater detention, agricultural lands, open scenic lands, scenic vistas, scenic features, unique natural and manmade features, and renewable energy sources.

To the extent that a specific land development plan is subject to Act 250 review, the development shall comply with the findings of Act 250 to ensure no undue effect on natural resources, natural features and renewable energy as defined in this section. To the extent that the proposed development is not subject to Act 250, the Development Review Board may request expert testimony and/or independent studies to establish such compliance on those cases where, in the opinion of the Development Review Board, there is evidence that natural features, natural resources, or renewable energy may be adversely impacted.

- J. Wildlife Protection: Development shall not have an undue adverse impact on wildlife habitats and wildlife corridors.

To the extent that a specific land development plan is subject to Act 250 review, the development shall comply with the findings of Act 250 to ensure no undue effect on wildlife habitats and corridors as defined in this section. To the extent that proposed development is not subject to Act 250, the Development Review Board may request expert testimony and/or independent studies to establish such compliance on those cases where there is evidence that, in the opinion of the Development Review Board, wildlife habitats or wildlife corridors may be adversely impacted.

- K. Shoreland Protection: Pursuant to 24 V.S.A. § 4414 (13) all development shall be in conformity with the Shoreland Protection Act (applying to all development within 250 feet of a body of water greater than or equal to 10 acres).

- L. Flood Hazard Protection: All land development in the Flood Hazard District shall comply with all provisions of Article VI, Flood Hazard District. All floatables in any district and in an area which has historically flooded and all Flood Fringe Areas, shall be raised above the estimated Base Flood Elevation (BFE) or firmly secured so as to ensure they are not dislodged in the event of a flood. This includes but is not limited to propane, oil, and gas tanks, chemicals, explosives, flammable liquids, toxic or hazardous materials. (See Flood Hazard Regulations Section 620 (B)(12)). While hay bales and logs are protected Agricultural and Silviculture industries in Vermont, conformity with this provision is encouraged.
- M. Energy Resources: Commercial Development shall comply with Commercial Building Energy Standards. Residential Development shall comply with Vermont Residential Building Energy Standards. 30 V.S.A. § 51 & § 53.
- N. Technical Review Costs: The Development Review Board may require an applicant for Conditional Use review to pay the reasonable costs of an Independent Technical Review of all or part of the application. The Development Review Board may recess the Hearing pending receipt of Independent Technical Review findings.

731: Planned Unit Development Specific Standards

Planned Unit Developments are a Conditional Use and must satisfy the standards of Conditional Use as defined in Sections 710 through 740 above. In addition to meeting the Standards of a Conditional Use, a Planned Unit Development (PUD) must meet the Specific Standards that follow. In the case of any conflict between the Specific Standards of the PUD and other Standards of this ordinance, the more Specific PUD Standard shall take precedence over any similar or conflicting Standard of this ordinance.

- A. Minimum Acreage: No application for a PUD shall be considered for approval unless a minimum of two (2) acres of land is contained in any proposal.
- B. Contiguous Lands: No application for a PUD shall be considered for approval unless all land contained in any proposal is contiguous.
- C. Open Space Preservation: At least forty (40) percent of the total area of the property shall be dedicated to or reserved as usable common outdoor living space and open land. Open Space shall not include streets, driveways and parking areas. The preservation of Open Space, recreation areas and/or parks shall be in perpetuity.
- D. Total Number of Units: The total number of units approved for a project shall not exceed the number of residential units or commercial square footage allowed if the land were subdivided into Lots in accordance with the Zoning Regulations for the districts in which such land is located, except as defined in Increased Density (E) below.
- E. Increased Density: To create open lands, the Development Review Board may approve greater densities than those defined within the Districts of this ordinance.

Approval of density in excess of:

- 1. One Primary Use Dwelling per acre (Single Family, Two Family or Duplex, Multi-family, Mixed Use, or Seasonal), or
 - 2. One Primary Use Commercial Structure per two (2) acres shall be of a single design concept, with continuity and cohesiveness of appearance and consistent with the character of the town. Examples of this would be a single design concept for a condominium development or a “pocket community.”
- F. Building Setbacks:
- 1. Buildings abutting the perimeter of the PUD parcel shall have a setback of at least fifty feet (50) from the Lot line of the PUD.
 - 2. Side Yard Setback: all residential buildings abutting an interior street, private or public, within the PUD shall be set back twenty feet (20) from the street.
 - 3. If a side yard abuts a residentially zoned property or Use or a public or private street, a continuous natural or landscaped setback of twenty feet (20) is required between the commercial/industrial building and the residence. This setback shall not be Used for parking.
 - 4. Front Yard Setback: A building fronting on a street must be located a minimum of twenty feet (20) from the back of sidewalk, or back of curb if a sidewalk is not planned at the location.

5. **Rear Yard Setback:** If a rear yard of a commercial building abuts a commercial or industrial Use or zoning district, a minimum rear yard setback of ten feet (10) is required. If a rear yard abuts a residential Use or residentially zoned property, a rear yard setback of twenty feet (20) shall be provided. This setback shall not be Used for parking or drives and shall be landscaped.
- G. **Municipal Facility Burden:** The cumulative effect of a phased PUD shall not cause transportation networks, municipal facilities, educational facilities, or other public services to be unduly burdened.
- H. **Utilities:** All electric and telephone facilities, fire alarm conduits, street light wiring, and other wiring, conduits and similar facilities or utilities shall be placed underground by the developer for any development primarily for or occupied by dwellings. The Development Review Board or Sewer Commission may require easements necessary for the orderly extension of public utilities to future adjacent developments. These extensions shall be underground wherever possible.
- I. **Pedestrian Walkway Requirements:**
Sidewalks may be required within a PUD. In addition, the Development Review Board may require additional sidewalks in order to improve pedestrian access to buildings and protect pedestrian safety throughout the development. When requiring additional sidewalks, the Board shall consider the following criteria:
1. Number, location, types and Use(s) of buildings propose
 2. Amount of traffic generated by the proposed Use
- J. **Private Roads:**
Private Roads may be allowed within a PUD when specifically approved by the Development Review Board. Any new road, public or private, within a PUD shall conform to the Wilmington Town Highway Ordinance.

Section 732: Other Specific Standards

Except as otherwise noted below, Other Specific Conditional Uses must conform to all requirements of this Section as well as the Standards for Conditional Uses of Sections 710 thru 731 of this Article VII. In the case of any conflict between the Specific Standards of this Section and other standards of this ordinance, the more Specific Standard shall take precedence over any similar or conflicting standard of this ordinance.

- A. Affordable Housing: In all districts where allowed, a Structure or Structures may, as a Conditional Use, be converted or built for multi-family or residential Use for the purpose of providing affordable housing. Such affordable housing shall:
1. Demonstrate sufficient wastewater capacity.
 2. Be maintained as affordable units under the State Definition of Affordable Housing.
 3. Provide deeds of conveyance of any unit or units containing language/covenants/restrictions which preserve the affordability requirements of the property for a period of **no less than** twenty (20) years from the date of the Development Review Board written decision and approval of such conversion.
- B. Automotive Service Station and Repair Garage: Automotive Service Station and Repair Garage must obtain Conditional Use written decision and approval from the Development Review Board in all districts where allowed and may be allowed if the following can be met:
1. Lot size shall be at least one-half acre (1/2 acre).
 2. Lot frontage shall be at least one hundred fifty (150) feet.
 3. One (1) two-way access or one (1) point of ingress and one (1) point of egress shall be allowed. An additional driveway may be allowed if the property has frontage on two Town roads. Where appropriate the Development Review Board may require a landscape strip. Where there is one point of ingress and one point of egress a landscape strip should be considered along the length of the remaining frontage, beginning at a point adjacent to the driveway and continuing to the side property line, at a minimum of four (4) feet wide.
 4. All portions of canopies shall be located at least twenty (20) feet from the side and rear Lot lines and all canopy lighting shall be recessed to reduce glare.
 5. All canopies shall be of a solid color. Bright colors and designs on canopies are not allowed.
- C. Junked Vehicles:
1. Junk vehicles shall be screened by a Structure or natural vegetation and not visible from neighboring properties, public and private roads.
 2. Junkyards or Salvage Yards having more than (1) one junk vehicle, shall be hidden from all neighbors and public roads by Screening of Unaesthetic Features defined in Section 730 (E) of this ordinance.

D. Medical Marijuana Dispensaries: Pursuant to 18 V.S.A. § 4474(e)(c) a Marijuana Dispensary shall not be located within 1000 feet of the property line of a pre-existing public or private school, licensed or regulated day-care facility, house of worship, library, park, or other public municipal services facility.

E. Mobile Home Parks (Trailer Parks):

1. No more than one (1) mobile home/trailer shall be allowed on any parcel of land, unless said mobile homes/trailers are located in a mobile home/trailer park duly approved pursuant to the zoning ordinance.
2. A mobile home park shall be reviewed under the procedures and standards set forth in the Planned Unit Development Section of this ordinance.
3. The overall density of the Mobile Home Park shall in no case exceed the allowable density in the District where allowed.
4. Mobile Home Park (Trailer Park) shall comply with the Vermont Mobile Home Park Law [see 10 VSA Chapter 153]

F. Ponds/Water Impounds: Ponds/Water Impounds must obtain a zoning Permit from the Zoning Administrator. If not received with the submitted application, the Zoning Administrator may issue an initial Permit conditioned upon receipt of the following:

1. A Project Review Sheet from the State Permit Office.
2. Evidence of written compliance with regulations of any department indicated on the Project Review Sheet.

Upon receipt of these two items the Zoning Administrator may issue a final Permit.

The following state and federal requirements are not all-inclusive. The applicant is responsible for obtaining all needed state and federal Permits. For information on state Permitting requirements visit the Water Quality Division website at:

<http://www.anr.state.vt.us/dec/waterq/wqdhome.html>

- If the proposed dam or pond will impound or be capable of impounding 500,000 cubic feet or more of water, a Permit will be required under Title 10 V.S.A., Chapter 43 Dams.
- If the project necessitates any work in a stream, a stream alteration Permit or other approval may be required under Title 10 V.S.A., Chapter 41. Subchapter 2. Alteration of Streams.
- If the proposed dam or pond is located in or near a wetland, a representative of the Vermont Wetlands Office should be contacted.
- If the pond project has the potential to affect rare, threatened or endangered species of plants and animals or their habitat, you should contact the VT Dept of Fish and Wildlife.
- Approval is required by the Fish and Wildlife Commissioner for placing obstructions in streams that block passage of fish under Title 10 V.S.A., Chapter 111, § 4607.
- Persons contemplating the construction, alteration or removal of dams or

impoundments or construction wetlands are advised that approval may be required from the U. S. Army Corps of Engineers.

- Bodies of water of over 10 acres are subject to the Shoreland Protection Act.
- It is possible that other laws or programs could be involved, such as Act 250.

G. Quarry Operations - Extraction of Soil, Sand, Gravel & Earth Resources: Quarry operations - extraction of soil, sand, gravel and earth resources must obtain Conditional Use written decision and approval from the Development Review Board in all districts where allowed and may be allowed if the Development Review Board finds:

1. It will not have an undue adverse effect on the neighborhood or area, the scenic or natural beauty of the area, other aesthetic values, historic sites, pedestrian walkways, or rare and irreplaceable natural areas.
2. It will not cause unreasonable congestion
3. It will not cause burden, contamination, or compromise of existing water supplies.
4. It will not cause excessive Use of or unsafe conditions on highways, existing or proposed.
5. It will not cause undue soil erosion or result in an embankment with a slope steeper than one (1) foot vertical to two (2) feet horizontal upon completion of an area of work.
6. It will not undermine any adjacent areas.
7. A site Reclamation Plan shall be provided at time of application.
8. The site shall be maintained at all times in safe condition and shall be restored to a safe, attractive and useful condition consistent with the Reclamation Plan within 30 days of the termination of the Permit.
9. The hours of operation shall not exceed the hours of 7:00 am through 6:00 pm daily.
10. A Conditional Use Permit granted shall not be valid for more than five (5) years.

H. Recreational Vehicle Storage: Recreational vehicle(s)/travel trailer(s), tent(s) or boat(s) may be stored by a homeowner on their property but shall not be Used as living quarters for longer than 30 days per year and shall not be connected to any utility, including water and sewer.

I. Solar Projects: Pursuant to 24 V.S.A. § 4414(15) the Public Service Board shall enforce the requirements of this ordinance. No solar energy generation land development or facility shall be approved that is not in conformity with the following municipal requirements:

Setbacks: Ground mounted solar generating development shall meet a minimum setback of:

For development plans with a plant capacity of 15 – 150 kilowatts:

- 40 feet from any state or municipal highway, and
- 25 feet from each property boundary that is not a state or municipal highway,

or

For development plans exceeding 150 kilowatts:

- 100 feet from any state or municipal highway, and
- 50 feet from each property boundary that is not a state or municipal highway.

No setback is required for solar development with plant capacity of less than 15 kilowatts. For Screening and Buffer Area requirements see Section 730 (E) Screening and Buffer Areas for Ground Mounted Solar Arrays and Related Unaesthetic Features.

All solar installations on residential and commercial Structures shall provide for fire safety.

Solar ground installations are discouraged on agricultural lands, in scenic vistas and fields, or in other natural aesthetic settings that contribute to the rural and agricultural character of the town. Solar installations are encouraged in areas primarily Used for commercial development and on non-residential Structures.

J. Temporary Outdoor Retail:

Temporary Outdoor Retail operating less than or equal to four days per calendar year is Allowed without a zoning Permit.

Temporary Outdoor Retail of five (5) days or up to two (2) months per calendar year requires a zoning Permit from the Zoning Administrator.

Retail of greater than two (2) months is not considered temporary and requires the written decision and approval of the Development Review Board.

K. Wind Turbines: Large Commercial Wind Turbines are prohibited in the Town of Wilmington. Small wind turbines meeting the following criteria are Permitted:

- 1) Blades are less than or equal to 20 feet in diameter.
- 2) The tower is less than 85 feet above grade.
- 3) The tower is set back one and a half (1 ½) times its own height from all property lines.

Section 733 Senior/ADA-Compliant Housing/Adult Living Community Specific Standards

Senior ADA compliant development is designated as a conditional use in the following districts: Village district including Historic and Design review overlays, Commercial/Residential, and Resort Residential and must satisfy the standards of a Conditional Use as defined in Sections 710-730 above, with projects subject to review and approval of the Development Review Board. In addition to meeting the Standards of a Conditional Use, a Senior/ADA Compliant Housing/Adult Living Community Development must meet the Specific Standards that follow. In the case of any conflict between the Specific Standards of the Senior/ADA Compliant Housing/Adult Living Community Development and other Standards of this ordinance, the more Specific Senior/ADA Compliant Housing/Adult Living Community Development Standard shall take precedence over any similar or conflicting Standard of this ordinance.

- A. **Qualified occupants:** In a development approved for Senior/ADA Compliant Housing/Adult Living Community Development, the principal occupant of each dwelling unit must be sixty-two (62) years of age or up. All age restricted occupancy must be established in accordance with the federal Housing for Older Persons Act (HOPA) of 1995 and all other state and Federal Fair Housing regulations.

- B. Restriction on Alternative Use: Any lot developed or used for senior housing pursuant to receiving approval from the DRB for development as Senior/ADA Compliant Housing/Adult Living Community shall not thereafter be used for any purpose other than the provision of senior housing unless the alternative use satisfies all applicable land use regulations pertaining to the underlying zoning of the district in which the parcel is located.
- C. Senior/ADA Compliant Housing/Adult Living Community Developments may be designed and constructed as multi-story apartment buildings, duplexes, cottage-style living, and/or mixed-use buildings in a walkable, neighborhood-like setting. Developers must ensure that proposed Adult Living Communities are planned as a cohesive unit with a comprehensive site plan. The site plan standards referenced below shall govern the layout and design of the buildings in the community.
- D. Single family developments with up to five (5) units per acre are allowed. Possible development types include designs with zero-entry (no stairs to first floor) dwelling units with one or two bedrooms and an upstairs study in a one and a half (1 1/2) story cottage design.
- E. In the Village (outside the Historic Design Review District), Commercial/Residential, and Resort/Residential districts, larger multi-family or attached buildings are also allowed, with a density of up to twenty (20) units per acre. In developments proposing adaptive reuse of existing buildings, an additional five (5) units per acre are permissible with Development Review Board approval.
- F. Developments must provide a minimum of one (1) parking space per dwelling unit. Parking requirements may be adjusted downward to reflect proximity to public transit as well as access to bicycle and pedestrian facilities. Developments that propose fewer than one (1) parking spaces per dwelling unit must be approved by the Development Review Board. Parking spaces shall not be less than eight (8) feet wide by sixteen (16) feet deep or as approved by the Development Review Board. For developments containing accessory commercial uses, refer to the below Section 733 (K).
- G. Any development contemplating greater than a two-story elevation for age restricted residential uses will be required to provide internal elevators and all buildings greater than two stories used for residential purposes must include fire suppression systems.
- H. Development contemplating the assemblage of adjoining parcels is allowed, with Development Review Board approval.
- I. Residential-Scale: Attached or detached dwellings no greater than two (2) stories allowing up to five (5) dwelling units per acre. Prescribed setbacks for the zoning district where the development is proposed shall be honored in the designs contemplated. The dwelling will be designed as zero-entry access doorways and ADA-compliant amenities within. Internal elevators will be required for second-floor access in addition to a code compliant stairway.
- J. Institutional-Scale: Development is encouraged to provide a common entry point to the property for public/private access. Scale of building between one and three floors. Up to twenty (20) dwelling units per acre allowed with Development Review Board approval.

In developments proposing adaptive reuse of existing buildings, an additional five (5) units per acre are permissible with Development Review Board approval.

- K. Within the Commercial/Residential and Village districts, developments may provide for some accessory commercial uses on the first floor of residential buildings, which are accessible to residents and the public alike. Uses open to the public shall be located on the first floor and shall have an exterior entrance. Mixed-use occupancies that offer services/support for seniors are encouraged. Refer to Article VII, Section 730 (D) for additional parking requirements for commercial uses.
- L. Site Plan: The applicant shall submit a site plan, drawn to scale, which demonstrates compliance with the specific Building Design Standards as outlined in items A-H above, as well as all applicable General Standards set out in Article VII, Sections 700-723 and the Site Plan and Design Guidelines in Appendix 1.

ARTICLE X GENERAL DEFINITIONS

Definitions for Sections VI Flood Hazard District and Section IX Telecommunication are included within each of their respective sections. The following definitions apply to all other Sections of this Zoning Ordinance.

All words used in these Regulations shall carry their customary meanings. Words used in the present tense include the future, and the singular includes the plural. Reference for terms undefined is *Black's Law Dictionary*, and if the term is not found, Webster's *New College Dictionary*. The word "shall" is mandatory; "occupied" or "Uses" or "uses" shall be considered as though followed by "or intended, arranged or designed to be Used or occupied"; "person" includes individual, partnership, association, cooperative, corporation, company, organization or any governmental body.

Accessory Apartment: An apartment created within, attached or detached, which is subordinate to an owner-occupied single-family dwelling where property can demonstrate sufficient wastewater capacity. [See 24 V.S.A. §4412(1)(E)]

Accessory Structure: Any assembly of materials for occupancy or Use, attached or detached, which is subordinate to and which Use is incidental and accessory to the Use of the principal building on the same Lot.

Accessory Agricultural Uses: Customary on-farm Uses not requiring a Permit that are directly related and subordinate to the Agricultural operations. Such activities need not be subordinate to the Agricultural operation in terms of revenue, but shall be subordinate in overall land Use (e.g., land area, Structures utilized). Including, but not limited to: farm tours, trails for non-motorized recreation, composting, u-pick operations, product tasting, retail sales of products produced on the farm (including products that are produced and then processed on the farm, for example, livestock), retail sales of a limited number of Agricultural products not produced on the farm as long as such sales are clearly subordinate to retail sales of on-farm products.

Accessory Use: A Use subordinate to and incidental to the principal Use of land or building.

Acre: A measure of land area containing 43,560 square feet.

ADA Compliant Housing — Housing intended for occupancy by disabled individuals, available for lease or sale, and advertised as conforming to the standards set out in the "2010 ADA Standards for Accessible Design." Examples include zero-entry (no step or rise to entry) entrance doors, ramps for entry, door widths adequate to accommodate wheelchair, grab bars for bath and shower, stair lift or elevator to second floor and above, and more. For more complete description see

<https://www.hud.gov/sites/dfiles/FHEO/documents/1991FH%20Accessibility%20Guidelines.pdf>

.

Administrative Officer: Zoning Administrator

Adult Living Community — A multi-unit housing development in which all units are available for sale or lease. The principal occupant of each dwelling unit must be sixty-two (62) years of age or up, consistent with the Federal Housing for Older Persons Act (HOPA) of 1995 and all other state and federal fair housing standards and requirements.

Affordable Housing Development: A housing development in which at least 20% or a minimum of 5 units, whichever is greater, are affordable housing units as defined by 24 V.S.A. § 4303 (1). Affordable units shall be subject to covenants or restrictions that preserve their affordability for a minimum of 20 years from the date of their first sale or lease. [See 24 V.S.A. §§ 4303(2) and 4412(1)]

Agricultural (Farm) Structure: A Structure for an Agricultural Use or Accessory Agricultural Use licensed or Permitted by the State of Vermont under 10 VA 1021(f) and 1259(f) and 6 V.S.A. 4810 and meeting the criteria outlined in 24 VSA 4413 (d) (1). Agricultural Farm Structures do not need a Permit.

Agricultural (Farm) Structure Notification: The submission by the farm property owner of a plot plan showing property lines, all Structures on the Lot, and the setbacks and dimensions of the proposed Structures. [See 24 V.S.A. § 4413(d)(2)]

Agriculture (Agricultural): Land or Structures Used for the growing or harvesting of crops; raising of livestock; operation of orchards, including maple sugar orchards; the sale of Agricultural produce and forest products on the premises where raised; the processing or storage of products raised on the premises, as licensed and Permitted by the Commissioner of Agriculture, Food and Markets and the Use of Agricultural Structures and the storage of Agricultural equipment incidental to the above. Includes Forest Management. [See 24 V.S.A. § 4413(d)]

Agritourism: operations taking place on a farm that include activities that may not be directly related to the Agricultural Use. Such activities need not be subordinate to the Agricultural operation in terms of revenue, but shall be subordinate in terms of overall land Use (e.g., land area, Structures utilized). Activities must fall within one or more of the following categories:

- On-site processing, storage, sampling and tasting of crops or farm products including livestock not principally produced on the farm.
- Retail sales of crops or farm products not principally produced on the farm.
- Retail sales of non-farm products related to the farm and/or what is produced on the farm. Such retail sales of non-farm products must be clearly subordinate to the farming operation and/or other integrated Uses.
- Education, cultural, recreation programming – e.g., classes, day camp, corn maze, petting zoo, etc.
- Event hosting as long as such events are clearly subordinate to the farming operation – e.g., wedding venue, dinner/dance venue, theater production, etc.
- Farm Café - A restaurant with indoor seating for no more than 40 people, and no more than 1,000 square feet of outdoor seating that meets the following criteria:

1. Is subordinate to an Agricultural operation.
2. One of the principal objectives is the Use of products produced on the farm.
3. Is located on a parcel of at least 15 acres that contains one or more of the farm operation's principal Structures. This Use need not be subordinate to the Agricultural operation in terms of revenue, but shall be subordinate in terms of overall land Use (e.g., land area, Structures utilized). Includes dining on the premises (indoor and/or outdoor), take out dining, and delivery, but excludes drive-through service.

Airport terminal facility: A facility/Structure at an airport where passengers transfer between ground transportation and the facilities that allow them to board and disembark from aircraft.

Airport Hanger: Structure for the storage of aircraft.

Alteration: External structural change, rearrangement, change in location, or addition to a building, other than repairs to the building.

Appeal: An application to a higher authority where it is alleged that an error or mistake has occurred in an order, requirement, decision, or determination made by the Zoning Administrator or the Development Review Board. Variances are a type of appeal. A complaint is a form of appeal.

Appropriate Municipal Panel (AMP): The Development Review Board. [See 24 V.S.A. §§ 4303(3) and 4460]

Automotive Service Station and Repair Garage: Land or Structures Used for either or both the sale of petroleum products, motor fuel, oil or other fuel for the propulsion of motor vehicles and the maintenance, servicing, repairing or painting of vehicles.

Automotive Services: Establishments primarily engaged in furnishing automotive rental, leasing, washing or installation of accessories (such as tires, windows and stereos), and other similar activities. Retail establishments engaged in the sale of automotive accessories are not included.

Average Grade: The proposed finished elevation of the land around the Structure measured as an average of the highest and lowest points.

Bank: A business, with or without a drive-up window, for the custody, loan, or exchange of money; for the extension of credit; and for facilitating the transmission of funds. ATMs within another business are not considered to be a bank.

Bar or Lounge: A room or establishment where the sale and consumption of alcoholic beverages are the primary activity.

Basement: Any area of the building having its floor elevation below grade level on all sides.

Basement, walk-out: An area of the building having its floor elevation below grade level on one to three sides.

Base Lodge Facilities: A building(s) Used for recreational support services.

Boundary Line Adjustment: Altering the location of a line or lines that mark the common edge of two contiguous properties.

Buffer Area: A space between two or more other area to prevent incompatible Uses from coming into contact.

Buildable Site Area: The buildable site area is the area of the site that may be altered, disturbed, or re-graded for development purposes. The buildable site area could contain buildings, roads, parking areas, sewage systems, and stormwater management facilities. The buildable site area shall not contain required open space, recreation, or natural resource protection areas.

Building: see Structure

Bus Shelter: An enclosure or canopy intended for bus passenger protection.

Business and/or Commerce: The purchase, sale, exchange or other transaction involving the handling or disposition of any article, substance or commodity for profit or livelihood, or the ownership or management of office buildings, office, recreation enterprises or the maintenance and Use of offices or professions and trades rendering service.

Camp, Dwelling: See Dwelling, Seasonal.

Camp, Recreational: A building or group of associated buildings containing facilities for occupancy and/or Use on a short term basis and having an overseeing entity managing the building(s) and providing services to the occupants of the facility for the purpose of providing sports, educational, developmental or recreational services. Included are sports camps, club camps, educational camps and vacation camps.

Campground / Recreational Vehicle Park: Temporary or permanent buildings, recreational vehicles/travel trailers, tents, or other Structures established or maintained as a temporary living quarter, occupied for recreation, religious, education, or vacation purposes.

Canopy: A roof-like Structure providing partial protection from the weather, with a maximum drip edge of six (6") inches. The canopy has no permanent foundation. However, a canopy Used over an automotive service station may be permanently affixed to a cement or macadam surface.

Cemetery: Property Used for interring the dead.

Change of Use: A Change of Use occurs when a Use within a Structure or property changes to another Use of the Structure or property. Changes in Use where the new Use is substantially similar to the prior Use will not be considered a Change in Use for the purposes of this Zoning Ordinance. Any Change in Use that is not substantial similar to the prior Use, even if within the same category of use (such as a Real Estate Service Business changing to a Hair Dressing Service

Business) must obtain any written decision and approval and/or permit as defined in this ordinance.

Child Care Facilities: [See 24 V.S.A. § 4412(5)]

A. Family Child Care Home: A state registered or licensed family child care home serving no more than six (6) full-time children and four (4) part-time children, as defined in 24 V.S.A. § 4412(5) and 33 V.S.A. § 4902(3).

B. Child Care Facility: A state registered or licensed center-based program as defined and regulated by the Child Care Services Division of the Vermont Agency of Human Services, as defined in 24 V.S.A. § 4412(5) and 33 V.S.A. § 4902(2).

Community Facility: A Structure or Use as defined in Section 448 of this ordinance.

Conditional Use: In any district, a Use that is allowed only by written decision and approval of the Development Review Board.

Construction: The assembly or building of a Structure.

Cultural Facility: See Entertainment/Cultural Facility

Customer Entry Door: A door used primarily for exterior ingress and egress for customers to access a business space.

Density: Density is a measure of the number of dwelling units per unit of area.

Development/Developed: See Land Development.

Disabled — an individual will be considered as disabled should he or she meet the definition of a person with a disability pursuant to 9 V.S.A. § 4501(2).

District: A geographic unit established by the provisions of Article II of this ordinance.

Dripline: The vertical line from the outermost edge of a roof or eave extending to the ground.

Dwelling Unit: A building or a portion of a building occupied or intended to be occupied for residential purposes, containing cooking, sleeping and sanitary facilities that constitute a separate independent housekeeping establishment.

Dwelling, Multiple-Family: A building containing separate dwelling units for three (3) or more families having separate or joint entrances, services, or facilities.

Dwelling, One-Family: A detached building designated for or occupied solely as a dwelling by one family.

Dwelling, Seasonal: A dwelling unit which is not a primary residence and is occupied on a part time or seasonal basis, not to exceed four (4) months per year. Seasonal dwellings shall have no indoor plumbing and must meet all other standards for development in the district. However, inside composting, incinerating, and other non-plumbed toilets are allowed.

Dwelling, Two-Family/Duplex: A building containing separate dwelling units for two (2) families, either side by side or top and bottom; each dwelling unit designated for occupancy as a residence for one family.

Educational or Institutional Facility: A public, parochial, or private institution that provides educational instruction to students.

Entertainment/Cultural Facility: A museum, art gallery, theater, concert hall, community center or other establishment offering programs, performances, or exhibits of cultural, educational, historical or scientific interest.

Excavation: The movement of soil or earth to create roads, dams, retaining walls, foundations, drainage, canals or berms.

Extraction of Earth Resources/Quarrying: The removal of earth, soil, sand or other materials in excess of 200 cubic yards per site, per year.

Family: One (1) or more persons occupying a single dwelling unit and living as a single household unit.

Family Child Care Home: See Child Care Facilities

F.I.A.: Federal Insurance Administrator.

Forest Management: See **Silviculture**. [See 24 V.S.A. § 4413(d)]

Food Stand: An establishment that serves food and beverages to the public for take-out and/or outdoor consumption.

Formula Business: Retail stores, restaurants, hotels or other establishments that are required by contract or other arrangements to adopt standardized services, décor, methods of operation, architecture or other features that make it virtually identical to businesses elsewhere.

Frontage: The length of a Lot bordering on and parallel with a public or private road(s) or right(s) of way.

Golf Course: Substantially undeveloped land, including amenities such as landscaping, irrigation systems, paths and golf greens and tees, which may be Used for golfing or golfing practice by the public or by members and guests of a private club. A golf course may include a clubhouse, restaurant, bar/lounge and shelters as Accessory Uses.

Group Home, 1-8 Residents: A state licensed or registered residential care home or group home, serving not more than eight (8) persons who are developmentally disabled or physically handicapped, shall be considered by right to constitute an allowed single-family residential Use of property, except that no such home shall be so considered if it is located within one thousand (1,000) feet of another existing and allowed such home. [See 24 V.S.A. § 4412(1)(G)]

Group Home, more than 8 residents: A Group Home serving more than 8 residents.

Health Care Facility: An institution providing health care services and medical or surgical care, primarily to out-patients.

Home Business: See Article IV Section 462 for detailed definition.

Home Industry: See Article IV Section 462 for detailed definition.

Home Occupation: See Article IV Section 462 for detailed definition.

Impervious Surface: A surface that does not allow infiltration of rain into soil, including paved and graveled surfaces.

Improvement: A change or addition to the property, usually increasing the value thereof.

Industry: A type of Manufacturing (See Manufacturing)

Junkyard (or Salvage Yard): Land or Structure Used for the collection, storage, or sale of waste paper, rags, scrap metal or discarded material, or for the collecting, wrecking, dismantling, storage, salvaging and sale of machinery, parts or vehicles. A Junkyard shall also be considered to be any property which has situated on it two (2) or more un-housed Junked Vehicles, as defined herein.

Junked Vehicle: Any vehicle that is both (1) without a valid vehicle registration in any state, and (2) unable to be started and operated as the vehicle is intended to operate.

Kennel: Commercial operation for the breeding or boarding of dogs or cats.

Lake and Ponds: Lakes and ponds are natural or artificial bodies of water that retain water year-round. Artificial bodies of water may be created by dams, or result from excavation using machinery.

Land Development/Developed Land: The construction, reconstruction, conversion, Structural alteration, relocation, or enlargement of any building or other Structure; the demolition, destruction, or razing of a Structure, whether intentional or unintentional; any change in the Use of any building or other Structure, Land, or Use; the Subdivision of a parcel into two (2) or more parcels; any mining, landfill, or excavation that increases peak off-site flow; any water impoundment such as lakes and ponds. [See 24 V.S.A. §§ 4303(10) and 4449]

Landfill: Land that is built up from deposits of solid materials in layers covered by soil.

Landscaping: Modification of the land by grading, clearing or decorative planting.

Lodging \leq two (2) guest rooms: The rental of bedrooms for overnight accommodations where the operator lives on site.

Lodging $>$ two (2) guest rooms: The rental of bedrooms for overnight accommodations. Meals may be provided to the general public.

Lot: A measured parcel of land having fixed boundaries.

Lot Area: The Lot area is the area contained within the property lines of the individual parcels of land.

Lot Coverage: The total ground floor area of all Structures on a Lot. Lot coverage may be expressed as a percentage of the total Lot area.

Lot Development/Developed Lot: See Land Development/Developed Land

Maintenance: Performing the routine actions which keep a Structure or property in good condition.

Maintenance Facility: A facility Used for maintenance, repair or storage of machinery or property associated with a commercial activity.

Manufactured Home: see Mobile Home

Manufacturing: An operation Used for packaging, processing, fabricating, assembling, treating, processing, and similar operations performed on any materials allowed by the terms of this Regulation.

Medical Marijuana Dispensary: A nonprofit entity registered under 18 V.S.A. § 4474(e) which acquires, processes, cultivates, manufactures, transfers, transports, supplies, sells, or dispenses marijuana, marijuana-infused products, and marijuana-related supplies or educational materials for or to a registered patient.

Mining: The extraction of materials from the earth. See also: Extraction of Earth Resources/Quarrying.

Mini-Storage Facility: A purpose-built building or group of buildings divided into separate compartments Used to meet the temporary storage needs of small businesses, apartment dwellers and other residential Users and may include refrigerated facilities.

Mixed Use: Any combination of Permitted or Conditional Commercial and Residential Uses allowed in the district.

Mobile Home: A dwelling unit that is substantially assembled in a manufacturing plant and designed to be transported to the home site on its own chassis. (Also referred to as a Manufactured Home.) Recreational vehicles shall not be considered to be manufactured homes and shall not be allowed as a permanent dwelling.

Mobile Home Park: A parcel of land under single or common ownership or control, which contains, or is designed, laid out or adopted to accommodate two (2) or more mobile homes.

Multi-Business Center: A group of businesses sharing a common building or buildings, and a common parking area.

Municipal Transfer Station: An area where solid waste is disposed of, prepared, or stored for transfer in a controlled, managed manner, owned and operated, or under contract by the Town of Wilmington, and which may contain a recycling facility. [See 24 V.S.A. § 4413(a)(5)]

Municipal Utility or Safety Related Facility: All buildings, Structures, or other protected enclosures for providing services traditionally provided by local government, including administrative offices, water and sewer operations, roads, parks, schools, parking and police and fire protection. [See 24 V.S.A. § 4413(a)(1)]

Must: “Must” means that any requirement stated herein is mandatory.

Nonconforming Structure, Lot and/or Use: A Structure, part of a Structure, a Lot (or parcel), and/or a Use that does not comply with the present ordinance, but which was created or established legally in conformance with the ordinance in effect at the time it was created or established. [See 24 V.S.A. §§ 4303(13 - 16) and 4412(7)] This includes:

1. Structures, Lots and/or Uses improperly authorized as a result of error by the Zoning Administrator.
2. All Structures, parts of Structures, Lots and/or Uses existing prior to January 26, 1968, when the first Wilmington zoning ordinance was adopted.

Nonconformity: A Nonconforming Structure, Lot and/or Use as defined above.

Nursing Home/Assisted Living Facility: An extended or intermediate care facility licensed or approved to provide full-time convalescent or chronic care to individuals who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves.

Occupied: “Occupied” or “Used” shall confer the intention for Use or occupancy.

Office: A Structure or part of a Structure, Used primarily for conducting the affairs of one (1) or more businesses, professions, services, studios or governmental agencies.

Open Space: Land or space not occupied by a building or other roofed Structure.

Open Space Ratio: The open space ratio is a measure of the intensity of land Use. It is calculated by dividing the total amount of open space within the development by the base site area.

Parking Space: Refers only to off-street space Used for the temporary location of one licensed motor vehicle, which is at least ten (10) feet wide and eighteen (18) feet long, not including the access driveway and having direct access to a street or alley.

Parking Lot: An open, firm-surfaced area, other than street or public way, to be Used for parking by employees, visitors, and/or patrons of any government office, public accommodations, business, commercial, or industrial establishment, or any other business open to the general public.

Permitted Use: In any district, a Use that is allowed only through issuance of a Permit by the Zoning Administrator.

Person: An individual, a corporation, a partnership, an association and any other incorporated or unincorporated organization or group. [See 24 V.S.A. § 4303(17)]

Place of Worship: The Use of a building or grounds primarily intended for the conducting of organized religious services or activities. [See 24 V.S.A. § 4413(a)(3)]

Planned Unit Development: One or more Lots, tracts, or parcels of land to be developed as a single entity, the plan for which may propose any authorized combination of density or intensity transfers or increases, as well as the mixing of land Uses. This plan, as authorized, may deviate from bylaw requirements that are otherwise applicable to the area in which it is located with respect to Lot size, bulk, or type of dwelling or building, Use, density, intensity, Lot coverage, parking, required common open space, or other standards. [See 24 V.S.A. §§ 4303(19) and 4417]

Plot Plan: A plan or map of an individual property that is to scale and shows all boundary lines and Lot line distances, road frontage, driveways, curb cuts, fences and stone walls. A plot plan must locate and identify roads and brooks, easements and rights-of-ways, and must locate all existing buildings/Structures with dimensions and shows setback dimensions from property lines.

Premises: A piece of land or real estate including the buildings thereon.

Primary Use: The principal Use on a property.

Premises: A tract of land, including any buildings or portion of a building thereon.

Principal Building: The Structure on the Lot containing the Primary approved Use or Uses.

Private Club: A Structure and related facilities owned or operated by a corporation, association, or group of individuals established for the fraternal, social, education, recreational or cultural enrichment of its members.

Private Road: For the purposes of this ordinance, any thoroughfare or road of less and or equal to .2 miles, owned and maintained by a private individual, organization, or company rather than by a government.

Property Line: The line dividing two pieces of property. For the purpose of determining conformity with dimensional requirements of this zoning ordinance, for any property with a right-of-way the property line will be measured to the right-of-way. Right-of-way lands will not count in dimensional calculations.

Public Road: For the purposes of this ordinance, a Public Road is:

- 1) any thoroughfare, road, or highway of any length, maintained or owned by the state, town, or other municipal corporation, and
- 2) any thoroughfare, road, or highway of greater than .2 miles, whether or not maintained or owned by a private individual, organization, or company.

Public Road shall mean the entire width of the right-of-way. Where no width is defined, right-of-way shall be considered to be 25 feet from the centerline on each side.

PUD: See Planned Unit Development

Recreation Facility, Outdoor: Land and/or Structures Used for outdoor recreational activities that require alteration or maintenance of the land, such as: developed parks and playing fields, playgrounds, hunting preserves, ski and snowmobile centers and associated trails, mountain bike centers and associated trails, tennis courts, swimming pools, ice rinks, etc. Such activities may include minor supporting Structures such as benches, bridges, backstops, dugouts, warming huts, etc. Such activities may include larger supporting Structures (e.g., customer reception, rental equipment, restrooms, locker rooms, clubhouses, etc.) as long as such Structures indeed support the outdoor recreation activity, and do not constitute an indoor recreational facility.

Recreation, Indoor: A recreational activity conducted wholly within a Structure.

Recreation, Outdoor: A recreational activity conducted wholly or partially outdoors. Specifically included in this Use are outdoor recreational activities that require no substantial alteration or maintenance of the land, such as: undeveloped green space or park land, primitive hiking, cross-country ski, ATV, snowmobile, mountain bike or sleigh trail, VT Association of Snow Travelers (VAST) trail, etc. Outdoor recreational activities that are incidental or accessory to a Primary Residential Use, and Used primarily by the residents of the property shall also constitute allowed Accessory Use, and shall not be considered Outdoor Recreational Facilities – e.g., a backyard badminton or volleyball court, horseshoe pit, etc.

Recreational Vehicle: Any motor home, vehicle or trailer, including travel trailers, campers, motor homes or similar vehicles, which are intended to be Used as sleeping or camping for short periods of time. Recreational vehicles shall not mean a manufactured, prefabricated, modular or similar Structure, which is intended for Use as a dwelling unit.

Remodel: To renovate.

Renovation: The process of restoring or improving a Structure.

Repair: To mend or restore to good condition.

Restaurant: An establishment, the primary function of which is to serve food and beverages to the public within a building.

Restoration: Work performed on a building in order to return it to a previous state.

Retail Business: A business delivering goods, or providing services to the general public.

Right-of-Way: A legal right of passage over another's land.

Salvage Yard: see Junkyard

Sawmill: A facility where timber may be processed into building materials, not including the processing of timber for Use on the same Lot by the owner or resident of that Lot. See Wood Processing Operation.

Senior Housing — housing designed with mobility accommodations consistent with ADA standards and/or designed for occupancy where the principal occupant is sixty-two (62) years of age or up, consistent with the Federal Housing for Older Persons Act (HOPA) of 1995 and all other state and federal fair housing standards and requirements.

School: see Educational or Institutional Center

Secondary Use: Any Use other than the Primary Use.

Service Business: A business primarily engaged in providing assistance (as opposed to products) to individuals, business, government, or other enterprises. Examples include, but are not limited to: hair salon, caterer, appliance repair shop, real estate agency, laundromat, tailor, pet grooming business, etc. May also include incidental retail sales as a minor portion of the business; for example, as a Cosmetologist may sell shampoo.

Setback: The distance between the nearest portion of a building on a Lot and the public or private road or a property line and extending the full width of the Lot. In no case shall the dripline of a building extend onto an adjoining property.

Setback Area: The space on a Lot required to be left open and unoccupied by buildings or Structures, either by the front, side or rear yard requirements of this by-law. Distance shall be measured perpendicularly from the edge of any public or private road or property line to the nearest portion of the Structure, and shall extend the full width of the Lot.

Setback, Front: A setback measured from the property line abutting a public or private road. Corner Lots may choose a single "front."

Shall: “Shall” means that any requirement stated herein is mandatory.

Should: Something that is expected or recommended.

Sign: Any Structure, display, device or representation, either temporary or permanent, which is designed or Used to advertise or call attention to or direct persons to any business, association, profession, commodity, product, institution, service, entertainment, person, place, thing or activity of any kind whatsoever, and is intended to be visible from a public road. A sign shall include window signs, as defined herein, with the exception noted in the definition of window signs. Types of signs include:

Awning - A type of wall sign that is attached to an awning, canopy, or other structural protective cover over a door, entrance, window or other outdoor service area.

Banners and Posters - A temporary sign of lightweight fabric, vinyl, cardboard, or other material.

Flush Mounted - A sign affixed to and mounted parallel to or painted on the face of the building or Structure.

Freestanding (Pole, Pedestal, Post, Flag, Plaza) - A sign supported by Structures or supports in or upon the ground and independent of support from any building.

Hanging: A sign attached to a building or Structure, other than Flush Mounted, generally two sided, supported by a Structure other than the face of the building,

Header: A sign appearing directly above a plaza sign, identifying the name of the plaza complex.

Panel: Smaller signs attached to a plaza sign, representing individual businesses.

Structure Mounted: A sign attached to or painted on a Structure, including Flush Mounted and Hanging.

Window Signs: Any sign affixed to a window or door. Displays of merchandise shall not be considered window signs.

Sign – Graphics: The pictorial information displayed on a sign, including logos, designs or other visual representations.

Sign – Internal Illumination: Any sign where an internal light source shines through a transparent or semitransparent sign face to illuminate the sign’s message. Neon and LED illumination are considered forms of internal illumination.

Sign - Off Premises: A sign which directs attention to a business, profession, commodity, service, or entertainment that is not carried on, sold, or offered on the same premises on which the sign is located.

Silviculture: The developing, caring for or cultivating of forests, or the management and harvesting of timber. (See Forest Management) [See also 24 V.S.A. § 4413(d)(3)]

Site Area: All land within the tract as defined in the deed. This area shall be computed from an actual site survey rather than from a deed description.

Slaughterhouse, Agricultural: A facility on a farm licensed and Permitted as an Agricultural Use or an Accessory Agricultural Use under 10 VA 1021(f) and 1259(f) and 6 V.S.A. 4810 where animals are killed and/or butchered and a majority of the animals are raised on the premises. An Agricultural Slaughterhouse is an Accessory Agricultural Use.

Slaughterhouse, Commercial: Any facility where animals are killed and/or butchered not meeting the definition of Slaughterhouse, Agricultural or Slaughterhouse, Custom Processor under this ordinance.

Slaughterhouse, Custom Processor: Any person who maintains an establishment licensed by the Vermont Agency of Agriculture, Food, and Markets, for the purpose of processing livestock, meat, meat food product, poultry, or poultry product exclusively for Use in the household of the owner of the commodity, be him/her and members of his/her household, and his/her nonpaying guests and employees. The meat from a custom processed animal cannot be sold and must be identified as “NOT FOR SALE”.

Snowmaking Facility: Any installation for snowmaking to include pump house, valve stations, maintenance building, or snowmaking pond/reservoir, snow guns, compressors and hoses.

Start of Construction: Includes substantial improvement, and 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. 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/foundation or the erection of temporary forms.

Steep Slopes: Areas where the average slope is 15 percent or greater.

Storage Facility: Property or Structures Used for the storage of materials, vehicles, machinery or other goods in the conduct of business or for financial gain except as defined as Mini-Storage Facility or Warehouse. Re-use of existing Structures is encouraged.

Street: A Public Road.

Street Line: The line dividing the Public Road and a Lot. Where the width of a Public Road is not established or cannot be determined, the street line shall be considered to be twenty-five feet from the center of the travelled way of the public road.

Structural Alteration: Work performed on a building that changes its size, area, height or other dimension.

Structure, Large: Any fence, building or assembly of materials for occupancy or Use with a footprint greater than 150 square feet or over ten (10) feet in height. All Large Structures are subject to setbacks and do require a Permit. Signs and their supporting Structures are not considered a Large Structure. (See Structure Height)

Structure, Small: Any fence, building or assembly of materials for any Use with a footprint less than or equal to 150 square feet and ten (10) feet or less in height. Small Structures are not subject to setbacks defined in Article II. Small Structures, including fences, have a zero (0) setback. Small Structures, except for fences exceeding six feet six inches in height, do not require a Permit. (See Structure Height)

Structure Height: see Article IV

Subdivision of Land: A tract or tracts of land which have been partitioned or divided for any purpose.

Temporary Outdoor Retail: Outdoor retail business operating for not more than two (2) months per calendar year.

Tower: A tower shall be any uninhabitable Structure over 50' in height with an aspect ratio of 4:1 or greater installed at grade level or attached to any location of a building (excluding radio and/or television antennas under 50' above grade). See Windmill.

Tower Height: The height of a Tower shall include the highest point of the fixed Tower to the lowest point of Structure (excluding fan blades, for example).

Transportation Center: A place where goods and/or people transfer between modes of travel; a terminating point where goods are transferred from a truck to a storage area or to other trucks, or are picked up by other forms of transportation. Includes facilities for vehicle maintenance, parking and waiting rooms.

Utility Facility: All buildings, Structures, or other protected enclosures for the producing, transmitting, or distributing of communications, power, electricity, light, heat, gas, oil, crude products, water, steam, waste or any other similar commodity.

Warehouse: All buildings, Structures, or other protected enclosures used for storage of articles of value, with or without compensation. See Mini-Storage and Storage Facility.

Wetlands: Wetlands are those areas that are inundated or saturated by surface or groundwater, as determined by the State of Vermont. [See 24 V.S.A. § 4303(32)]

Wholesale Business: A business selling or delivering goods to retailers; to industrial, commercial, institutional, or professional business users; or to other wholesalers.

Wildlife Refuge: A parcel of land set aside by transfer of development rights to provide a safe place for wildlife.

Windmill: A machine that converts the kinetic energy in the wind into a usable form.

Woodlands: A woodland is one-quarter acre or more of wooded land where the largest trees measure at least 6 inches diameter at 4.5 feet from the ground. The woodland shall be measured from the dripline of the outer trees. Woodlands are also a grove of trees forming one canopy where 10 or more trees measure at least 10 inches diameter at 4.5 feet.