

E. **Appeals.** Appeals from a decision made by the DRB under this section shall be pursuant to 24 V.S.A. § 4471.

Dated at Braintree, Vermont this _____ day of _____, 2007

Jocelyn Stohl, Chair

Walt Palmer

George Gray

2. The hardship was not created by the applicant;
3. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable resources, or be detrimental to the public welfare; and
4. The variance, if authorized will represent the minimum that will afford relief and will represent the least deviation possible from the Zoning Ordinance and from the Town Plan.

C. **Waiver - Dimensional.** When filing an application pursuant to the appeal procedures set forth in Sections 4465 and 4471 of the Act for a variance from the provisions of the Zoning Ordinance as required under section 4469 of the Act, an appellant may request that the DRB, in the alternative, grant a dimensional waiver. Such waivers shall be in conformance with the purposes of the Zoning Ordinance and the Town Plan. The DRB shall grant a dimensional waiver and render a decision in favor of the appellant if the DRB finds:

that the structure conforms to one or more of the following in that it:

1. provides for mitigation through design, screening or other reasonable remedy; or
2. provides for disability accessibility, fire safety, and other requirements of law; or
3. provides for energy conservation and renewable energy structures; or
4. cannot be reasonably accommodated within the dimensional standards of the Zoning Ordinance; and

that if authorized, the waiver will represent the minimum waiver that will afford relief and the least deviation possible from the required standards of the Zoning Ordinance and the Town Plan

D. **Conditions.** In rendering a decision in favor of an appellant under this section, the DRB may attach such conditions to a variance or a dimensional waiver as it may consider necessary and appropriate under the circumstances to implement the purposes of the Zoning Ordinance and the Town Plan.

of a bylaw for a structure that is not primarily a renewable energy resource structure as required by Section 4469(a) of the Act under appeal procedure sections 4465 or 4471 of the Act. The DRB shall grant a variance and render a decision in favor of the appellant if *all* of the following facts are found, and the findings are specified in its written decision:

1. There are unique circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not to circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located;
2. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations and that the authorization of a variance is necessary to enable the reasonable use of the property;
3. The unnecessary hardship has not been created by the appellant;
4. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare; and
5. The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from the Zoning Ordinance and from the Town Plan.

B. Primarily a Renewable Energy Resource. The DRB shall hear and decide an appeal for a request for a variance from the provisions of a bylaw for a structure that is primarily a renewable energy resource structure as required by Section 4469(b) of the Act under appeal procedure sections 4465 or 4471 of the Act. The DRD shall grant a variance and render a decision in favor of the appellant if *all* of the following facts are found, and the findings are specified in its written decision:

1. It is unusually difficult or unduly expensive for the applicant to build a suitable renewable energy resource structure in conformance with the Zoning Ordinance;

B. Specific Standards. In granting an approval, the DRB shall further find that the proposed project conforms to the following prescribed specific standards so as not to result in an undue adverse affect on any of the general standards set forth in subsection 6.12 A.:

1. **Conservation and Development.** The DRB shall determine that the proposed project satisfies the standards set forth in 10 V.S.A. § 6086 Issuance of permit; conditions and criteria.

2. **Planned Residential/Unit Developments.** The DRB, as a condition of approval, may require increased setbacks and buffers, or reduced lot coverage or densities of development to avoid or mitigate adverse impacts to adjoining properties or significant natural, cultural or scenic features in the vicinity of the conditional use site.

3. **Hazardous Materials.** The DRB, when reviewing conditional use applications for junk yards or any other activity seeking the storage of petroleum products or hazardous materials, shall determine that the following conditions shall attach to any approval: i). inspections of the premises may take place with 24 hours notice to the landowner; ii). the Zoning Administrator shall perform an annual inspection of the site and prepare a written report for the DRB; iii). the landowner shall provide a concise, professionally prepared plan for the storage and disposal of any and all hazardous material and waste which ensures contamination containment; iv). no exterior storage of hazardous materials or waste, junk, or junk vehicles within 100 feet of a surface water or wetland will be allowed; v). side and rear yard setbacks shall be no less than 100 feet; and vi). adequate screening shall be installed to prevent visibility of stored junk and vehicles from all roads and property lines.

C. Conditions, Safeguards and Mitigation. In granting a conditional use approval, the DRB may impose such additional reasonable conditions and safeguards and require such mitigation as it may deem necessary to protect the interests of the surrounding neighborhood and to implement the provisions of this zoning ordinance.

D. Appeals. Appeals from a decision made by the DRB under this section shall be pursuant to 24 V.S.A. § 4471.

4. **Section 6.15 Variance**

A. Not Primarily a Renewable Energy Resource. The DRB shall hear and decide an appeal for a request for a variance from the provisions

A. **General Standards.** In granting an approval, the DRB shall find that the proposed use shall not result in an undue adverse effect on any of the following:

1. **The capacity of existing or planned community facilities.** The DRB shall consider the demand resulting from the proposed development on the community facilities and services in relation to the available capacity of the facilities and services.
2. **The character of the area affected.** The DRB shall consider the character of the area affected as defined by the purpose(s) and standards of the district in which the proposed project is located as well as by the specifically stated policies and standards of the town plan.
3. **Traffic on roads and highways in the vicinity.** The DRB shall determine that the traffic generated by the proposed development shall not result in unreasonable traffic congestion or exceed the capacity of roads and intersections in the vicinity of the development. The DRB may request, at the expense of the applicant, the preparation of a traffic impact study to identify impacts and mitigation measures necessary to ensure road safety and efficiency and may require that mitigation measures be implemented.
4. **The Town Plan and all bylaws in effect.** The DRB shall determine that the proposed conditional use shall further the objectives and intent of the Town Plan, shall conform to the requirements and standards of the zoning district in which it is located and to the Town site plan review standards, and shall not create a nuisance, detriment, threat, hazard or other adverse effect.
5. **The utilization of renewable energy resources.** The DRB shall determine that the proposed development will not interfere with the sustainable use of renewable energy resources, including access to, direct use of, or future availability of such resources.

The DRB shall determine that an undue adverse effect will result if it finds, for instance, that the proposed project will contravene the fundamental purposes of the town plan for the zoning district in which the project is proposed, will exceed an accepted standard applied to the factors listed in 6.12 A. above, or the applicant has failed to take reasonable measures to mitigate the adverse effect.

demonstrated to the satisfaction of the DRB that any of the following conditions exist:

- a. Such conformance would impose an undue hardship on the use of the property; or
- b. A waiver from such dimensional conformance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be a nuisance or a detriment to the public welfare, and shall be consistent with the objectives and intent of the Town Plan; or
- c. The proposed alteration or addition is an improvement over the existing condition of the property. In making a determination that the proposed alteration or addition is an improvement, the DRB shall find that the proposed alteration or addition: i) results in enhancement of the value, beauty and utility of the property, or ii) enhances and extends the useful life of the property.

C. Abatement. Nothing in this section or other sections of this Zoning Ordinance shall be construed to restrict the authority of the Town of Braintree to abate public nuisances or to abate or remove public health risks or hazards.

D. Appeals. Appeals from a decision made by the DRB under this section shall be pursuant to 24 V.S.A. § 4471.

3. Section 6.12 Conditional Use

The bylaws for each established town zoning district list conditional uses which are allowed therein only upon the granting of Conditional Use Approval by the DRB and the subsequent issuance of a Zoning Permit by the Zoning Administrator. The purpose of this conditional use review is to ensure compliance with standards addressing the potential impacts of development on adjoining properties and town facilities and services to thereby avoid or mitigate adverse impacts of that development. Upon receipt of a completed application, the DRB shall conduct a legally noticed public hearing and grant conditional use approval if the DRB finds that the proposed use conforms to the general and specific standards prescribed for such uses in this Zoning Ordinance.

The DRB may extend the completion period for one (1) year upon good cause shown after notice and hearing.

B. Nonconforming Structure. Any structure, or portion thereof, legally in existence as of the effective date of these regulations which does not meet the requirements of these regulations shall be considered a nonconforming structure. A nonconforming structure may be occupied indefinitely, subject to the following limitations:

1. **Normal Maintenance and Repair.** A nonconforming structure may undergo normal maintenance and repair without a zoning permit, provided that such action does not increase the degree of nonconformance.

2. **Damaged Structures.** A nonconforming structure that has been damaged by any cause may be reconstructed with the issuance of a zoning permit either to its prior size and condition, to a smaller size and condition, or to a size and condition up to 50% larger than the original as long as any nonconformities are not increased and that no part of the new structure is closer to the traveled way than was the original, but only if such reconstruction is commenced within one (1) year from the date of the damages and completed within two (2) years of the date of the damages. If the nature of the damage or destruction is such that reconstruction within the foregoing time period would create a hardship, then the DRB may extend the permit period for such reconstruction one (1) year after notice and hearing.

3. **Alterations to nonconforming structures.** A nonconforming structure may be structurally enlarged, extended, expanded, modified or moved, with the issuance of a zoning permit, provided that the enlargement, extension, expansion, modification or relocation: i) does not increase the degree of nonconformance, ii) does not create a greater nuisance, detriment to the public health, safety or welfare than the original nonconforming structure, and iii) conforms to all other applicable requirements of these regulations.

4. **Alterations to nonconforming structures - Waiver.** When authorized as a conditional use by the DRB, a nonconforming structure may be extended, altered, enlarged or increased by an additional 50% in size of the existing structure, provided that site plan approval is obtained from the DRB as required. Any structural extension, alteration, enlargement, increase or addition must conform to the zone's dimensional requirements unless it is

1. the lots are conveyed in their preexisting, nonconforming configuration; and
2. on the effective date of these regulations, each lot had been developed with a water supply and wastewater disposal system; and
3. at the time of transfer, each water supply and wastewater disposal system is functioning in an acceptable manner; and
4. the instruments of conveyance create appropriate easements on each lot for replacement of one or more wastewater systems, potable water systems, or both, in case there is a failed system or failed supply as defined in 10 V.S.A. chapter 64.

C. **Subsequent System Failure.** If, subsequent to conveyance as authorized under subsection B above, a wastewater system fails, the owner shall be required to obtain from the Agency of Natural Resources, a wastewater permit or certification that the system has been modified or replaced and no longer constitutes a failed system.

2. **Section 6.8 Nonconforming Use and Nonconforming Structure**

A. **Nonconforming Use.** Any use of land, including use of a structure on the land, legally in existence as of the effective date of these regulations which does not meet the requirements of these regulations shall be considered a nonconforming use. A nonconforming use may be continued indefinitely subject to the following limitations;

1. **May Be Changed.** A nonconforming use may be changed to another nonconforming use with the approval of the DRB, subject to conditional use review under Section 6.12 and a determination by the DRB that the new use is less disruptive and more similar in character and impact with other uses in the district.
2. **May Not Be Changed.** A nonconforming use shall not be re-established if it has been changed to or replaced by a conforming use, or it has been discontinued or abandoned for a period of one year regardless of the intent to resume the nonconforming use as intent does not confer right.
3. **May Be Re-established.** A nonconforming use may be re-established within a structure or portion thereof which has been damaged or destroyed, only if repair or reconstruction of the structure is started within one (1) year of the date of such damage and is completed within two (2) years of the date of such damage.

- 1.7 **Nonconforming Use.** Means a use of land that does not conform to the current bylaws, but did conform to all applicable regulations prior to the enactment of the current bylaws, including a use improperly authorized as a result of error by the administrator.
- 1.8 **Nonconformity.** Means a nonconforming use, structure, lot, or parcel.
- 1.9 **Setback.** Means the required yard depth of open space free and clear of any structure or portion thereof, excluding signs, stone walls and fencing, measured from the surveyed center of a public or private highway or side or rear property boundary.
- 1.10 **Variance.** Means a requested departure or deviation from the strict application of the dimensional provisions of the regulation as granted, granted with conditions or denied by the DRB pursuant to provisions of and subject to standards imposed by § 6.15 of the Zoning Ordinance, which tracks 24 V.S.A. § 4469, and which is conveyed with the property.

II. ARTICLE VI – ADMINISTRATION, ENFORCEMENT, and APPEALS

Sections 5.1 Existing Small Lots, 6.7 Non-Conforming Uses, 6.8 Non-Complying Buildings, 6.12 Conditional Uses and 6.15 Zoning Board of Adjustment - Variances are repealed and replaced as follows:

1. Section 6.7 Nonconforming/Existing Small Lots.

A. Rights of Nonconforming Lots. Any lot that is legally subdivided, is in individual and separate and nonaffiliated ownership from surrounding properties, and was in existence on the date of enactment of any bylaw, including an interim bylaw, may be developed, upon obtaining the required permits, for the purposes permitted in the zoning district in which it is located, even though that lot no longer conforms to the minimum lot size requirements of the new bylaw or interim by law, and except where:

- 1. the lot is less than one-eighth acre in area; or
- 2. has a width or depth dimension of less than 40 feet.

B. Merger of Nonconforming Lots. If a nonconforming lot subsequently comes under common ownership with one or more contiguous lots, the lot shall be deemed merged with the contiguous lot(s), for the purpose of these regulations except that the lot shall not be deemed merged and may be separately conveyed if:

Having duly noticed and held the public hearing on these interim regulations required by 24 V.S.A. § 4415, the Selectboard hereby adopts these findings and amendments to the Town of Braintree Zoning Ordinance as adopted by Australian Ballot in 2003 to become effective immediately for a period of two years from this date after which time the Selectboard may extend the amendments for a one-year period in accordance with the procedures for adoption set forth in 24 V.S.A. § 4415.

I. ARTICLE VII - DEFINITIONS

The following definitions are added to **Section 7.2** of the Town of Braintree Zoning Ordinance.

- 1.1 **Conditional Use.** Means a use in a zoning district that may be allowed, pursuant to notice and hearing, only by approval of the DRB after consideration of general and specific standards to which each allowed use must conform.
- 1.2 **Degree of Nonconformance – Increase in.** Means any enlargement or structural alteration of a nonconformity which extends the footprint, height or volume of a structure within a required setback distance, above the maximum allowed height or otherwise in violation of the dimensional requirements of the zone.
- 1.3 **Development Review Board.** Means the land use regulation body of the Town government that shall exercise all the land development review functions for the Town pursuant to 24 V.S.A. § 4460 and shall be referred to as the DRB throughout this Zoning Ordinance.
- 1.4 **Dimensional waiver.** Means a waiver that reduces the dimensional requirements of a zoning district and which may be applied for when an applicant files a variance application, or a conditional use application concerning nonconformities.
- 1.5 **Nonconforming Lots or Parcels.** Means lots or parcels that do not conform to the density and specification standards of the current bylaws, but were in conformance with all applicable regulations prior to the enactment of the current bylaws, including a lot or parcel improperly authorized as a result of error by the administrator.
- 1.6 **Nonconforming Structure.** Means a structure or part of a structure that does not conform to the current bylaws, but was in conformance with all applicable regulations prior to the enactment of the current bylaws, including a structure improperly authorized as a result of error by the administrator.

ADOPTED – 10 April 2007
Interim Amendments to the Town of Braintree’s Zoning Ordinance
for the
Purpose of Immediately Addressing Identified Inconsistencies
Pursuant to 24 V.S.A. § 4415

These interim amendments are adopted at this time to address the clearly stated public finding at various 2006 Zoning Board of Adjustment hearings and at a January 16, 2007 informational Selectboard meeting, held specifically for the purpose of taking public comment on the matter, that the current and proper administration of certain indispensable sections of the Town Zoning Ordinance as adopted in 2003 produces results inconsistent with the public’s perception of reasonable land use policy for the Town of Braintree.

The Selectboard of the Town of Braintree hereby finds:

- that in 2004, the Vermont Legislature enacted Act 115, a comprehensive revision of Chapter 117 of Title 24 of the Vermont Statutes, Annotated, the enabling statute for land use planning and regulation by municipalities otherwise known as the Vermont Planning and Development Act (The Act);
- that as of September 1, 2011, all provisions of the existing statute will override existing, inconsistent local bylaws thereby requiring that local bylaws be amended by that date to come into state compliance;
- that its establishment in December 2006 of a Development Review Board to replace the Zoning Board of Adjustment requires redrafting of and amendments to the Town land use regulations, including the zoning ordinance and the subdivision regulations;
- that the Planning Commission process of redrafting the Town land use regulations to comply with the 2004 amendments to the state Planning and Development Act and with the changes required by the recent creation of a Development Review Board may conceivably take more than two years;
- that immediate amendment action, pursuant to the enabling legislation, is necessary to address the public finding that proper administration of the following indispensable sections of the Zoning Ordinance adopted in 2003 produces results inconsistent with the public’s perception of reasonable land use policy as envisioned for the Town of Braintree; and
- that interim adoption of these findings and changes, as provided by 24 V.S.A. § 4415, is appropriate because of the immediate need to address administration and policy inconsistencies in indispensable sections of the Zoning Ordinance and because the complete re-codification of the Town’s zoning, subdivision, and related bylaws may conceivably take more than two years.