

# **BRAINTREE ZONING ORDINANCE**

**Approved by Australian Ballot**

**Town Meeting, March 4, 2003**

**Professional assistance to the Town of Braintree provided by the  
Two Rivers-Ottauquechee Regional Commission  
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# **ARTICLE I - OVERVIEW**

## **1.1 TITLE**

The title of these regulations shall be known and cited as the TOWN OF BRAINTREE ZONING ORDINANCE.

## **1.2 ENACTMENT**

In accordance with the Vermont Planning and Development Act, hereinafter referred to as the "Act", 24 V.S.A., Chapter 117, Section 4401, there is hereby established a civil Zoning Ordinance for the Town of Braintree, Vermont, which consists of this text and an Official Zoning Map and the Flood Insurance Rate Maps.

## **1.3 EFFECTIVE DATE AND AMENDMENT**

This Ordinance, or any amendments thereto, shall become effective upon date of adoption by a vote of the Town by Australian Ballot at a regular or special Town Meeting.

Any amendment or revision to the provisions of this Ordinance shall be prepared in accordance with 24 V.S.A. Sections 4403 and 4404.

## **1.4 STATUS OF PRIOR REGULATIONS**

This Ordinance, upon date of adoption, shall replace in its entirety the Braintree Zoning Ordinance in effect prior to that date, however all persons previously appointed to the Zoning Board of Adjustment or Planning Commission shall continue to serve their terms.

## **1.5 INTENT**

It is the intent of this civil Ordinance to provide for orderly community growth and to further the purposes established in the Act, Section 4302.

## **1.6 VALIDITY AND SEVERABILITY**

If any section or provision of this Ordinance is held to be invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part held to be invalid.

## **1.7 INTERPRETATION**

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Whenever this Ordinance imposes a greater restriction upon the use of a structure or land than are required by any other statute, ordinance, rule, permit, easement or agreement, the provisions of this Ordinance shall control.

## ARTICLE II - PURPOSE

### 2.1 PURPOSE

It is the purpose of this Ordinance to encourage the preservation of the rural qualities that now give Braintree its unique and natural character while providing for orderly development in accordance with sound environmental policy. Furthermore, it is the intention of this Ordinance to control the appropriate density and rate of development based on the capacity of the land and the Braintree Town budget to support it.

## ARTICLE III – DISTRICT OBJECTIVES AND GUIDELINES

### 3.1 ESTABLISHMENT OF ZONING DISTRICTS AND MAP

For the purposes of this Ordinance, the following Districts are hereby established within the Town.

- a. Conservation District
- b. Rural District I
- c. Rural District II
- d. Floodplain District
- e. Village District
- f. Rural Scenic

The areas and boundaries of the Districts referenced above are delineated on a map that is hereby designated as the Official Zoning Map for the Town of Braintree. Immediately following adoption of this Ordinance, this Map shall be signed and dated by the Selectboard, and filed with the Town Clerk. This map shall be the final authority as to the current status of land and water areas. Such map shall remain at the Town Offices. Copies of this map and small-scale versions of this map shall be made available to the public, as necessary.

### 3.2 DESCRIPTION OF DISTRICTS

- a. **Conservation District:** Lands within the watershed of Mill Brook west of Hockman Hill Road except lands designated in the Rural Scenic District. An area 1000 feet from both sides of Thresher Road from the floodplain of the Third Branch of the White River to the junction of Woodchuck Hollow Road. A large area on the western side of Braintree from the Granville town boundary easterly to the Floodplain District, the West Braintree Village District and to 2000 feet from Riford Brook Road and Rochester Hollow Road.
- b. **Rural District I:** Includes all other land in the Town of Braintree not otherwise defined in this Section.
- c. **Rural District II:**
  - 1. 500 feet north and 1000 feet south of the center of Riford Brook Road (TH 46) from the junction of Vermont Route 12A to TH 64, except lands in the floodplain.

2. 500 feet north and all land south to the floodplain from the center of Vermont Route 12A from the Randolph Town Line to the first crossing of the Third Branch of the White River, except those areas within the Floodplain District.
  3. 500 feet from either side of the center of Duclos Road (TH 36) from the junction of Vermont Route 12A to the first crossing over Duclos Brook.
  4. 500 feet east, and all land to the floodplain west, of the center of Vermont Route 12 from the Randolph Town Line to the Junction of West Street.
- d. **Floodplain District:** The boundaries of the Special Flood Hazard Area as designated on the Official Flood Hazard Boundary Map for the Town of Braintree, dated May 8, 1979 and prepared by the Federal Insurance Administration
- e. **Village District:**
1. West Braintree: 1000 feet on the west side, and to the floodplain on the east side, of the center of Route 12A from the 12A bridge to the Batchellor Brook; thence 500 feet on the west side of the center of Vermont Route 12A north to the junction of Jonesville Road, and all land east of this portion of 12A to the Floodplain District.
  2. East Braintree:
    - 500 feet either side of the center of Vermont Route 12 from junction of West Street to the Brookfield Town Line, except those areas within the floodplain.
    - 500 feet either side of the center of Farnsworth Brook Road (TH 6) from the junction of Craig Hill Road (untraveled TH 54) to the junction of VT Route 12.
  3. Peth: 500 feet from the north side of the center of Peth Road (TH 22) from the Randolph Town Line to Brainstorm Road (TH 19).
- f. **Rural Scenic District:**
1. 1000 feet either side of the center of Braintree Hill Road (TH 3) north of the junction with Hockman Road, Rose Road, Allen Bent Road and then Thresher Road south to the junction with Woodchuck Hollow Road.
  2. 1000 feet either side of the center of Hockman Road (TH 6) from the junction of Braintree Hill Road (TH 3) to Sault Road.
  3. 1000 feet either side of the center of Braintree Hill Road (TH 3) from the junction of Hockman Road (TH 6) to the Randolph Town Line.
  4. 1000 feet either side of the center of Flint Road (TH 31) from the Randolph Town Line to the junction of TH 3.
  5. 1000 feet either side of the center of Murphy Road (TH 38) and Bowen Hill Road (TH 40).
  6. 1000 feet either side of the center of Peth Road from Brainstorm Road to Farnsworth Brook Road, except those lands in the Peth Village District.
  7. 1000 feet either side of the center of the Class 3 portion of Walker Road.
  8. 1000 feet either side of the center of Brainstorm Road from Peth Road to the junction of Jarvis Road.
  9. 1000 feet either side of the center of Jarvis Road and Clough Road.
  10. 1000 feet west, and all land east, of the center of LaBounty Road from the Randolph town line to Peth Road.

### **3.3 INTERPRETATION OF ZONING DISTRICT BOUNDARIES**

If uncertainty exists with respect to the boundary of any Zoning District, the Zoning Administrator first shall determine the boundary location. If the Administrator cannot make such a determination, or the applicant or other interested party is not satisfied with the decision or act, the matter may be appealed to the Zoning Board of Adjustment. To assist the Zoning Administrator or the Zoning Board of Adjustment in making a determination, the applicant or other parties may be required to provide information regarding property lines, road locations, shorelines, and existing land characteristics.

### **3.4 CONSERVATION DISTRICT - "CON"**

It is the goal of this Ordinance to provide for the conservation of certain natural areas that have been identified as relatively undisturbed, consisting of large tracts of quality timber and serving as home for a variety of wildlife. Such areas of the community are currently not serviced and lack such facilities as roads and utilities. Generally sub-soil and slope conditions within these areas impose great limitations on extensive development. In order to provide a fair level of community services within these areas, large amounts of public investment would be necessary.

These lands should be developed at very low densities because the physical limitations in these areas are so great and difficult to overcome. Only those land uses that will not adversely affect the environmental quality of these areas should be allowed. These areas are delineated on the official zoning map.

### **3.5 RURAL DISTRICT I - "RD-I"**

This area includes those lands which exhibit limitations for development based principally on physical criteria, such as steeper slopes, typically more shallow soils or poor drainage characteristics. Access and proximity to existing utility services is limited or non-existent in these areas.

Based upon the physical limitations of the land and the ability of Braintree to provide high levels of service at reasonable costs, particularly road maintenance, residential development should occur at low densities in these areas. Industrial and commercial uses are not permitted. Non-intensive land uses such as agriculture, forestry, low-density residential development, and outdoor recreation are allowed in this area. These areas are delineated on the official zoning map.

### **3.6 RURAL DISTRICT II - "RD-II"**

Much of the land in this District borders existing State and Town highways and generally features soil and slope conditions that will provide for easier installation of on-site wastewater facilities. Residential and other compatible and complementing uses are permitted in this area. This District is intended to house the majority of the community's permanent residents. These areas are delineated on the official zoning map.

### **3.7 FLOODPLAIN DISTRICT - "FLD"**

Adjacent to branches of the White River and its tributaries are lands subject to periodic flooding. Those lands are defined in the existing or subsequently revised "Flood Hazard Area Zoning Ordinance" available at the Town Clerk's office. Floodplains are unsuitable for development because of the high loss potential for life and property as well as the limited ability of septic systems to perform adequately during periods of high water. Only agriculture, recreation and open space uses are permitted in floodplains.

### **3.8 VILLAGE DISTRICT - "VIL"**

Braintree's three recognized village areas, West Braintree, Peth and East Braintree, are the only existing high concentration settlement areas in Braintree. In order to preserve the existing residential character of these areas and prohibit inappropriate development and rising municipal costs, a higher density standard has been established. Residential buildings or activities are the only permitted uses however many public and private uses are conditionally permitted. These areas are delineated on the official zoning map.

### **3.9 RURAL SCENIC DISTRICT - "RS"**

One of Braintree's most valuable resources is the exceptional scenic quality of some of its upland areas. The attractiveness of these areas is derived from and directly attributable to a variety of elements that make-up the land use patterns of the area. These factors, both natural and manmade, provide a rich visual experience for both residents and visitors in Braintree. Characteristics that comprise such scenic values include the mixed pattern of open spaces to wooded areas, the prominence of clear, unobstructed panoramic views of distant ridges and ravines and the non-intensive nature of the use of the land.

Another integral element comprising the scenic features of this area is the type of roads and roadsides throughout the area. These byways consist of narrow gravel roadways with roadsides of diverse and contrasting features. These backroad features, combined with sequence of openings and closings in the roadway canopy, provide an experience that is not obtainable in most areas.

Residential development in this area can only occur in a manner that serves to maintain or enhance the visual focus on important scenic features. This shall be accomplished through screening of aesthetically displeasing objects, the maintenance of visual diversity and contrast through the placement of structures which will not adversely modify the views to and from other areas. These areas are delineated on the official zoning map.

## **ARTICLE IV - ZONING DISTRICT REGULATIONS**

### **4.1 CONSERVATION DISTRICT - "CON"**

- a. **Permitted Uses:** The following uses may be permitted upon issuance of a Zoning Permit by the Zoning Administrator:

1. Seasonal shelters (i.e. camp)
  2. One family dwellings
  3. Accessory structures or uses
  4. Wildlife refuges
  5. Outdoor signs (see Section 5.18)
  6. Home occupations (see Section 5.12)
  7. Minor subdivision (see Section 5.19)
- b. **Conditional Uses:** The following uses are permitted uses upon granting Conditional Use Approval by the Zoning Board of Adjustment and issuance of a Zoning Permit by the Zoning Administrator:
1. Public and private utilities
  2. Public and private outdoor recreation
  3. Bed and breakfasts
  4. Home enterprises (see Section 5.13)
  5. Wireless communications facility (see Section 5.15)
  6. Special outdoor signs (see Section 5.20.4)
  7. Planned Residential Development (PRD) (see Section 5.16)
  8. Other uses upon the determination by the Board that such use is of the same general character to other uses in the District, is consistent with the purposes the District, and is compatible with adjoining land uses.
- c. **Land, Area and Structural Requirements:**
1. Lot area minimum - 25 acres
  2. Frontage or lot width minimum - 400 feet
  3. Front yard minimum - 70 feet
  4. Rear yard minimum - 200 feet
  5. Side yard minimum - 150 feet
  6. Lot depth minimum - 800 feet
  7. Coverage maximum - 1%
  8. Building height maximum - 35 feet with no limit for agricultural use.
  9. General regulations as set forth in Section V.

#### **4.2 RURAL DISTRICT I - "RD-I"**

- a. **Permitted Uses:** The following uses may be permitted upon the issuance of a Zoning Permit by the Zoning Administrator:
1. Seasonal shelters (i.e. camp)
  2. One family dwellings
  3. Two family dwellings
  4. Wildlife refuges
  5. Outdoor signs (see Section 5.20)
  6. Accessory structures or uses
  7. Home occupations (see Section 5.12)
  8. Minor subdivision (see Section 5.19)

- b. **Conditional Uses:** The following uses are permitted uses upon granting Conditional Use Approval by the Zoning Board of Adjustment and issuance of a Zoning Permit by the Zoning Administrator:
  - 1. Public and private utilities
  - 2. Public and private outdoor recreation
  - 3. Bed and breakfasts
  - 4. Quarrying, gravel and mineral extraction (see Section 5.14)
  - 5. Home enterprises (see Section 5.13)
  - 6. Public cemeteries
  - 7. Special outdoor signs (see Section 5.18.4)
  - 8. Wireless communications facilities (see Section 5.15)
  - 9. Junk yards (see Section 6.12)
  - 10. Planned Residential Development (PRD) (see Section 5.16)
  - 11. Other uses upon the determination by the Board that such use is of the same general character to other uses in the District, is consistent with the purposes the District, and is compatible with adjoining land uses
  
- c. **Land, Area and Structural Requirements:**
  - 1. Lot area minimum - 10 acres
  - 2. Frontage or lot width minimum - 400 feet
  - 3. Front yard minimum - 70 feet
  - 4. Rear yard minimum - 100 feet
  - 5. Side yard minimum - 20 feet
  - 6. Lot depth minimum - 300 feet
  - 7. Coverage maximum - 10%
  - 8. Building height maximum - 35 feet with no limit for agricultural use.
  - 9. General regulations as set forth in Section V hereof.

#### 4.3 RURAL DISTRICT II - "RD-II"

- a. **Permitted Uses:** The following uses may be permitted upon the issuance of a Zoning Permit by the Zoning Administrator:
  - 1. Seasonal shelters (i.e. camp)
  - 2. One family dwellings
  - 3. Two family dwellings
  - 4. Accessory structures or uses
  - 5. Outdoor signs (see Section 5.18)
  - 6. Home occupations (see Section 5.12)
  - 7. Minor subdivision (see Section 5.19)
  
- b. **Conditional Uses:** The following uses are permitted uses upon granting Conditional Use Approval by the Zoning Board of Adjustment and issuance of a Zoning Permit by the Zoning Administrator:
  - 1. Public and private utilities
  - 2. Public and private outdoor recreation
  - 3. Bed and breakfasts
  - 4. Multiple family dwellings

5. Public cemeteries
6. Quarrying, gravel, and mineral extraction (see Section 5.14)
7. Mobile home parks (see Section 5.10)
8. Medical clinics
9. Public or private schools
10. Retail stores
11. Religious institutions
12. Community centers or private clubs
13. Commercial uses
14. Light industries
15. Special outdoor signs (see Section 5.18.4)
16. Wireless communications facilities (see Section 5.15)
17. Home enterprises (see Section 5.13)
18. Junk yards (see Section 6.12)
19. Planned Residential Development (PRD) (see Section 5.16)
20. Other uses upon the determination by the Board that such use is of the same general character to other uses in the District, is consistent with the purposes the District, and is compatible with adjoining land uses

**c. Land, Area and Structural Requirements for Residential Uses:**

1. Lot area minimum - 2 acres
2. Frontage or lot width minimum - 150 feet
3. Front yard minimum - 70 feet
4. Rear yard minimum - 50 feet
5. Side yard minimum - 20 feet
6. Lot depth minimum - 200 feet
7. Coverage maximum - 20%
8. Building height maximum - 45 feet with no limit for agricultural use.
9. General regulations as set forth in Section V hereof.

**d. Land Area & Structural Requirements for Non-Residential Uses:**

1. Lot area minimum - 2 acres
2. Frontage or lot width minimum - 300 feet
3. Front yard minimum - 70 feet
4. Rear yard minimum - 50 feet
5. Side yard minimum - 50 feet
6. Lot depth minimum - 250 feet
7. Coverage maximum - 15%
8. Building height maximum - 45 feet with no limit for agricultural use.
9. General regulations as set forth in Section V hereof.

#### **4.4 FLOODPLAIN DISTRICT - "FLD"**

- a. **Permitted Uses:** The following uses may be permitted upon the issuance of a Zoning Permit by the Zoning Administrator:
  1. Wildlife refuges

2. Minor subdivision (see Section 5.19)
- b. **Conditional Uses:** The following uses are permitted uses upon granting Conditional Use Approval by the Zoning Board of Adjustment and the issuance of a Zoning Permit by the Zoning Administrator:
  1. Quarrying, gravel and mineral extraction (see Section 5.14)
  2. Public and private outdoor recreation
- c. **Land, Area and Structural Requirements:**
  1. Lot area minimum - 2 acres
  2. Frontage or lot width minimum - 300 feet
  3. Front yard minimum - 70 feet
  4. Rear yard minimum - 50 feet
  5. Side yard minimum - 50 feet
  6. Lot depth minimum - 250 feet
  7. Coverage maximum - 15%
  8. Building height maximum - 45 feet with no limit for agricultural use.
  9. General regulations as set forth in Section V hereof.

#### **4.4.1 STATUTORY AUTHORIZATION**

To effect the purposes of 10 V.S.A., Chapter 32, and in accord with the Vermont Planning and Development Act, 24 V.S.A., Chapter 117, Section 4412, there are hereby established regulations for areas of special flood hazard in the Town of Braintree, Vermont.

#### **4.4.2 PURPOSE**

It is the purpose of these regulations to promote the public health, safety, and general welfare, to prevent increases in flooding caused by the uncontrolled development of lands in areas of special flood hazard, and to minimize losses due to floods by:

- a. restricting or prohibiting uses that are dangerous to health, safety, or property in times of flood or cause excessive increase in flood heights or velocities;
- b. requiring that uses vulnerable to floods, including public facilities that serve such uses, shall be protected against flood damage at the time of initial construction; and
- c. protecting individuals from buying lands that are unsuited for their intended purposes because of flood hazard.

#### **4.4.3 LANDS TO WHICH THESE REGULATIONS APPLY**

These regulations shall apply to all lands in the Town of Braintree, Vermont designated as special flood hazard areas on the Town's Official Flood Hazard Area Map.

#### **4.4.4 OFFICIAL FLOOD HAZARD MAP**

The map entitled Flood Insurance Rate Map (FIRM), Town of Braintree, Vermont and any revisions thereto, shall be considered the Official Flood Hazard Area Map, together with all explanatory matter thereon and attached thereto, and is hereby adopted by reference and declared to be part of these regulations. Flood hazard areas have been digitized and are also shown on the Official Zoning Map, but in the case of any discrepancies, the FIRM shall be the map used.

#### **4.4.5 INTERPRETATION OF DISTRICT BOUNDARIES**

The Zoning Administrator shall determine the boundaries of any designated area of special flood hazard by scaling distances of the Official Flood Hazard Area Map. Appeals with respect to a boundary interpretation shall be made by filing a notice with the secretary of the Zoning Board of Adjustment within fifteen days of the decision or act.

#### **4.4.6 PERMIT REQUIREMENTS AND APPLICATION PROCEDURES**

Permits are required for all proposed new construction, substantial improvements, and land development, including the placement of manufactured homes, within all lands to which these regulations apply.

All zoning permit applications shall be submitted to the Zoning Administrator, on forms furnished by him/her, who shall determine, on application, whether or not the proposed development is located within the area of special flood hazard by the procedures established in Section 4.4.5 of these regulations. If the proposed use will be located in the areas of special flood hazard, the Zoning Administrator shall refer all applicants to the secretary of the Zoning Board of Adjustment.

#### **4.4.7 RECORDS**

The Zoning Administrator shall maintain a record of:

- a. the elevation, in relation to mean sea level, of the lowest habitable floor, including basement, of all new construction or substantial improvement of structures, within the designated special flood hazard areas, and whether or not such structures contain a basement;
- b. the elevation, in relation to mean sea level, to which such structures have been floodproofed;
- c. all floodproofing certifications required under this regulation.
- d. all variance actions, including justification for their issuance.

#### **4.4.8 ZONING BOARD OF ADJUSTMENT**

Upon receiving an application for a permit under these regulations, the Zoning Board of Adjustment shall, prior to holding a hearing and rendering a decision thereon, obtain from the applicant:

- a. base flood elevation data for all subdivisions and other proposed new developments;
- b. the elevation, in relation to mean sea level, of the lowest habitable floor, including basement, of all new construction or substantial improvement of structures;
- c. where floodproofing is used in lieu of elevation, the elevation, in regulation to mean sea level, to which any structure or substantial improvement has been floodproofed;
- d. certification from a registered professional engineer or architect that the floodproofed structure meets the floodproofing criteria of subsection 4.4.9 (B) 11 of these regulations; and
- e. a description of the extent to which any watercourse will be altered or relocated as a result of the proposed development.

Where available; i.e., Zones A1-A30, AE, and AH; the base flood elevations and floodway limits provided by the National Flood Insurance Program in the Flood Insurance Study and accompanying maps shall be used to administer the provisions of these regulations.

In areas where base flood elevations and floodway limits have not been provided, the Zoning Board of Adjustment shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a federal, state or other source, as criteria for approval of all development.

The Zoning Board of Adjustment shall notify adjacent communities and the Vermont Department of Environmental Conservation prior to approval of any alteration or relocation of a watercourse and shall submit copies of such notifications to the FIA Administrator.

#### **4.4.9 DEVELOPMENT STANDARDS**

As a condition of approval, the Zoning Board of Adjustment shall specifically require the following:

- A. Floodway Areas
  1. Development within the floodway is prohibited unless a registered professional engineer certifies that the proposed development will not result in any increase in flood levels during the occurrence of the base flood. No net fill may be placed in the floodplain. Where fill is used, an equal amount of material must be removed in order to maintain flood storage capacity.
  2. No new construction, substantial improvement, or other development (including fill) shall be permitted within zones A1-30 and AE on the town's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood

at any point within the town. This provision applies until a regulatory floodway is designated.

3. Junkyards and storage areas or facilities for floatable materials, chemicals, explosives, flammable liquids or other hazardous or toxic materials are prohibited within the floodway.

#### B. Fringe Areas

1. All structures shall be designed (i) to minimize flood damage to the proposed development and to public facilities and utilities, and (ii) to provide adequate drainage to reduce exposure to flood hazards.
2. Structures must be: (i) designed (or modified) and anchored to resist flotation, collapse, or lateral movement; (ii) be constructed with materials resistant to flood damage; (iii) be constructed by methods and practices that minimize flood damage; (iv) be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
3. The flood carrying capacity within any altered or relocated portion of a watercourse shall be maintained.
4. New and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters.
5. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
6. New and replacement manufactured homes shall be elevated on properly compacted fill such that the top of the fill (the pad) under the entire manufactured home is at least one-foot above the base flood elevation.
7. All subdivision proposals shall be reasonably safe from flooding and:
  - a. all public utilities and facilities serving subdivisions, such as sewer, gas, electrical, and water systems, be located and constructed to minimize or eliminate flood damage; and
  - b. adequate drainage be provided within subdivisions to reduce exposure to flood hazards.
8. The lowest floor, including basement, of all new buildings shall be at least one-foot above base flood elevation.

9. Existing buildings to be substantially improved for residential purposes shall be modified or elevated to meet the requirements of subsection 8 above.
10. Existing buildings to be substantially improved for non-residential purposes shall either (1) meet the requirements of subsection 9, or (2) be designed to be watertight below the base flood elevation with walls substantially impermeable and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A permit for a building proposed to be floodproofed shall not be issued until a registered professional engineer or architect has reviewed the structural design, specifications and plans, and has certified that the design and proposed methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection.
11. All new construction and substantial improvements with fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
12. Areas to be used for storage of floatable, hazardous or toxic materials shall be filled and graded to at least one foot above the base flood elevation.
13. Recreational vehicles placed on sites within zones A1-30, AH or AE shall either be (i) on site for fewer than 180 consecutive days, (ii) be fully licensed and ready for immediate use, or (iii) meet the same standards of elevation as described above in subsection 6.

The Zoning Board of Adjustment shall attach such additional conditions to the granting of a permit as are necessary to meet the purposes and flood hazard area management requirements of these zoning regulations.

#### **4.4.10 VARIANCES TO THE DEVELOPMENT STANDARDS**

Variations shall be granted by the Zoning Board of Adjustment only:

1. in accordance with the provisions of 24 V.S.A., Section 4468 and Section 4412(h) and in accordance with the criteria for granting variations found in 44 CFR, Section 60.6, of the National Flood Insurance Program regulations;
2. upon determination that during the base flood discharge the variance will not result in any increased flood levels; and
3. upon determination that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

#### **4.4.11 FEES**

The Board of Selectmen shall establish such additional fees as may be necessary for the filing of notices and the processing of hearings and action thereon for applications in this district. All such fees shall be paid to the secretary of the Zoning Board of Adjustment upon application for a conditional use permit under these regulations.

#### **4.4.12 DISCLAIMER OF LIABILITY**

These regulations do not imply that land outside the areas of special flood hazard or land use permitted within such districts will be free from flooding or flood damages. These regulations shall not create liability on the part of the Town of Braintree or any town official or employee thereof for any flood damages that result from reliance on this regulation or any administrative decision lawfully made thereunder.

#### **4.4.13 ANNUAL REPORT TO FIA**

The Zoning Administrator shall submit to the Administrator of the Federal Insurance Administration an Annual Report with respect to the administration and enforcement of these regulations. A copy of the Annual Report shall be submitted to the Vermont Department of Environmental Conservation.

### **4.5 VILLAGE DISTRICT - "VIL"**

- a. **Permitted Uses:** The following uses may be permitted upon the issuance of a Zoning Permit by the Zoning Administrator:
  1. One family dwellings
  2. Two family dwellings
  3. Accessory structures or uses
  4. Outdoor signs (see Section 5.18))
  5. Home occupations (see Section 5.12)
  6. Minor subdivision (see Section 5.19)

- b. **Conditional Uses:** The following uses are permitted upon granting Conditional Use Approval by the Zoning Board of Adjustment and the issuance of a Zoning Permit by the Zoning Administrator:
1. Retail stores
  2. Bed and breakfasts
  3. Multiple family dwellings
  4. Public cemeteries
  5. Parking facilities
  6. Medical clinic
  7. School
  8. Religious institutions
  9. Community centers
  10. Commercial uses
  11. Light industries
  12. Private clubs
  13. Home enterprises (see Section 5.13)
  14. Special outdoor signs (see Section 5.18.4)
  15. Junk yards (see Section 6.12)
  16. Planned Residential Development (PRD) (see Section 5.16)
  17. Other uses upon the determination by the Board that such use is of the same general character to other uses in the District, is consistent with the purposes the District, and is compatible with adjoining land uses
- c. **Land, Area and Structural Requirements for Residential Use:**
1. Lot area minimum - 20,000 square feet
  2. Frontage or lot width minimum - 100 feet
  3. Front yard minimum - 60 feet
  4. Rear yard minimum - 50 feet
  5. Side yard minimum - 20 feet
  6. Lot depth minimum - 100 feet
  7. Coverage maximum - 20%
  8. Building height maximum - 35 feet
  9. General regulations as set forth in Section V hereof.
- d. **Land Area & Structural Requirements for Non-Residential Use:**
1. Lot area minimum - 1 acre
  2. Frontage or lot width minimum - 200 feet
  3. Front yard minimum - 70 feet
  4. Rear yard minimum - 50 feet
  5. Side yard minimum - 20 feet
  6. Lot depth minimum - 200 feet
  7. Coverage maximum - 20%
  8. Building height maximum - 45 feet
  9. General regulations as set forth in Section V hereof.

#### **4.6 RURAL SCENIC DISTRICT - "RS"**

- a. **Permitted Uses:** The following uses may be permitted upon the issuance of a Zoning Permit by the Zoning Administrator:
  1. Seasonal shelters (i.e. camp)
  2. One family dwellings
  3. Two family dwellings
  4. Accessory structures or uses
  5. Wildlife refuges
  6. Outdoor signs (see Section 5.18.)
  7. Home occupations (see Section 5.12)
  8. Minor subdivision (see Section 5.19)
  
- b. **Conditional Uses:** The following uses are permitted uses upon granting Conditional Use Approval by the Zoning Board of Adjustment and issuance of a Zoning Permit by the Zoning Administrator:
  1. Public or private schools
  2. Bed and breakfasts
  3. Religious institutions
  4. Community centers
  5. Public cemeteries
  6. Public and private recreation
  7. Special outdoor signs (see Section 5.18.4)
  8. Home enterprises (see Section 5.13)
  9. Other uses upon the determination by the Board that such use is of the same general character to other uses in the District, is consistent with the purposes the District, and is compatible with adjoining land uses
  
- c. **Land, Area and Structural Requirements:**
  1. Lot area minimum - 10 acres
  2. Frontage or lot width minimum - 400 feet
  3. Front yard minimum - 100 feet
  4. Rear yard minimum - 50 feet
  5. Side yard minimum - 20 feet
  6. Lot depth minimum - 300 feet
  7. Coverage maximum - 10%
  8. Building height maximum - 30 feet with no limit for agricultural use.
  9. General regulations as set forth in Section V hereof.

## **ARTICLE V - GENERAL REGULATIONS**

### **5.1 EXISTING SMALL LOTS**

Any lot in individual, separate and non-affiliated ownership from surrounding properties in existence on the effective date of this Ordinance may be developed for purposes permitted in the District in which it is located, even though not conforming to minimum lot size requirements in these regulations, if such a lot is not less than one-eighth acre in area with a minimum width or depth dimension of forty feet. All other requirements must be met.

If such a lot subsequently comes under common ownership with one or more contiguous lots, the lot shall be deemed merged with the contiguous lot for the purposes of this Ordinance. However, such lot shall not be deemed merged and may be conveyed separately if:

- a. The lots are conveyed in their pre-existing, non-conforming configuration; and
- b. On the effective date of this Ordinance, each lot had been developed with a water supply and wastewater system; and
- c. At the time of transfer, each water supply and wastewater system is functioning in an acceptable manner; and
- d. Deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater disposal systems in case a wastewater system fails to function as defined under 24 V.S.A. (1) (A) (iv).

If subsequent to a separate conveyance, as authorized above, a wastewater system fails, the owner shall be required to obtain from the Agency of Natural Resources, a wastewater permit or a certification that the system has been modified or replaced with the result that it no longer constitutes a failed system.

### **5.2 REQUIRED FRONTAGE ON, OR ACCESS TO, PUBLIC ROADS**

No land development may be permitted on lots which do not either have frontage on a public road or, with the approval of the Planning Commission, access to such a road by a permanent easement or right-of-way at least 20 feet in width. Any new road or drive that accesses a Town highway or State highway will require an Access Permit from the Selectboard or the Agency of Transportation, respectively. Such permits must also conform to the Town and Region Plan in effect.

In the Planning Commission's review of a private road or right-of-way, the following shall be taken into consideration: adequacy of drainage and culvert placement, erosion control measures, emergency vehicle access, and site distances at public road intersections. If evidence leads the Commission to find that permanent access to a public road exist, it shall not withhold approval.

In situations where a lot is to be developed that does not have frontage on a public road, the front yard shall be measured from the centerline of the right-of-way or lot line whichever is closest to the structure or use.

### **5.3 LOTS IN TWO ZONING DISTRICTS**

If a lot lies in more than one district, each part of the lot shall be governed by the requirements of the district in which such part falls. At the option of the landowner, the lot may be governed wholly under the regulations of the more restrictive district.

### **5.4 LOT LINES**

Lot lines are lot boundaries described in a deed, survey or measured map only.

### **5.5 ACCESS AND SAFETY**

In reviewing a site plan, the Planning Commission may require changes or additions to yards, driveways, driveway entrances and exits, landscaping, and the location and height of buildings and enclosures to insure safety, to minimize traffic difficulties, and to safeguard adjacent properties.

### **5.6 TEMPORARY USES AND STRUCTURES**

The following temporary permits may be issued by the Zoning Administrator for a period not exceeding one year, conditioned upon written agreement by the owner to remove the structure or use upon expiration of the permit.

- a. For non-conforming uses incidental to a construction project.
- b. For temporary roadside stands for the sale of agricultural products raised on the property.

### **5.7 ABANDONMENT OF STRUCTURES**

Within six months after any building or structure has collapsed, been destroyed or demolished, the Zoning Board of Adjustment, following a warned public hearing and finding public safety and health threatened, may require the owner of the property to remove all structural materials from the site, fill to grade any remaining excavations and screen or landscape the property.

### **5.8 MINIMUM OFF-STREET PARKING REQUIREMENTS**

No land, building, or structure shall be used or substantially changed in use unless there is provided off street parking that meets the applicable minimum standard set forth below. All non-residential parking lots shall require Site Plan Approval from the Planning Commission prior to issuance of a Zoning Permit.

Required parking facilities shall be located on the same lot as the building or other use which they serve, but may be located elsewhere, subject to approval of the Planning Commission. In the case of mixed uses occupying the same building or lot, the total requirements for off-street parking areas shall be the sum of the standards for the various uses computed separately. All parking areas for commercial or industrial uses shall be landscaped or screened where highly visible from a public road or adjacent to a residential use or structure. Required spaces are:

- a. Residential - two parking spaces per dwelling unit.

- b. Places of public assembly, including but not limited to community centers and religious institutions, shall have one parking space for every three seats or rated capacity of the facility.
- c. Commercial uses shall have one parking space for every company owned business vehicle and employee, plus one parking space for every two hundred square feet of floor area.
- d. Industrial uses shall have one parking space for every company owned business vehicle and employee.
- e. Schools - one parking space for every six students of the rated capacity of the school.

## **5.9 ADEQUATE SEWAGE TREATMENT REQUIREMENT**

A Zoning Permit shall not be issued by the Zoning Administrator for land development involving the alteration, construction, or reconstruction of a building or structure intended for human occupancy unless the applicant can demonstrate that the physical conditions and design of the proposed system can safely handle on-site sewage. An applicant for a Zoning Permit whose land requires a State Subdivision Permit from the Vermont Agency of Natural Resources or a Sewage Permit from the Town shall obtain such permits and attach copies to the Zoning Application. Upon installation of a system, such permits, with an engineer's certification that they were built as specified and stating the number of bedrooms the system was designed for, shall be attached to the deed by the Town Clerk and serve to demonstrate that the planned system meets with the requirements of this section.

## **5.10 MOBILE HOME PARKS**

Mobile home parks may be created within the Rural II District only. All parks shall be established, maintained and administered according to the Agency of Environmental Conservation rules or regulations relating to mobile home parks. No person shall layout, develop, or operate a mobile home park without first having obtained Conditional Use Approval from the Zoning Board of Adjustment.

The following specific standards must be met before a mobile home park is approved:

- a. A minimum of 8,000 square feet of lot area shall be provided for each mobile home, including at least 5,000 square feet for each mobile home site plus at least 3,000 square feet for each mobile home in common open space, exclusive of roads. Such common space shall be accessible to all residents of the mobile home park.
- b. Site planning improvements shall provide for:
  - 1. facilities and amenities appropriate to the needs of the occupants.
  - 2. safe, comfortable and sanitary use by the occupants under all weather conditions.
  - 3. practical and efficient operation and maintenance of all facilities.
- c. All mobile homes shall be located outside of the 100-year floodplain.
- d. Plans for roads shall be of a width, grade, and gravel base suitable to enable safe access by Emergency and heavy service vehicles.
- e. Landscaping and screening plans shall be sufficient to enhance the residential character overall amenities for the residents of the park and neighboring properties.

### 5.11 MORE THAN ONE PRINCIPAL BUILDING PER LOT

With the exception of Planned Unit Developments, no more than two principal buildings may be placed on a lot unless such buildings and any buildings accessory to such principal buildings are positioned such that the lot is able to be subdivided into two separate and individual lots, both lots and their respective uses conforming to all applicable provisions of this Ordinance.

### 5.12 PROTECTION OF HOME OCCUPATIONS

Vermont law and this Ordinance provide the right of a resident to use a minor portion of the dwelling for an occupation which is customary in a residential area and does not change the character of the area. A Zoning Permit for a home occupation shall be granted by the Zoning Administrator upon meeting the following standards:

- a. The conduct of the home occupation is clearly secondary to the residential use of the premises;
- b. The home occupation is conducted by the resident at the residence and does not involve more than two full-time equivalent persons on the site other than the residents of the home;
- c. Automobile or truck traffic resulting from the occupation will not be at a volume substantially greater than would normally be anticipated for a residential use;
- d. The occupation is carried on wholly within a minor portion of the building (less than 50 % of total living area) or within an accessory building or structure; and
- e. Other than is incidental to a residential use, exterior storage of equipment or materials visible to the traveling public and exterior indicators of the home occupation or obvious variations from the residential character of the principal use shall not be permitted, excepting the permissible sign and temporary exterior displays of items for sale outside of the right-of-way during business hours.

### 5.13 HOME ENTERPRISES

- a. **Statement of Purpose.** The purpose of the home enterprise concept is to allow for the wise use of structures on residential properties and to provide owners the opportunity to pursue alternative entrepreneurial activities in a residential setting.
- b. **General Requirements.** Noted below are the general requirements for a home enterprise, additional requirements may be imposed during the permitting process. A home enterprise is a non-residential use requiring both Conditional Use Approval and Site Plan Approval prior to the issuance of a Zoning Permit. As part of the review of a project, attention shall be given to maintaining rural character and adjacent properties in the area. Applications will be denied if road conditions are considered too narrow or unsafe to accommodate additional traffic.
  1. The owner of the home business shall reside on the property.
  2. No more than five (5) on-premise employees who are not part of the owner's family are permitted.

3. Exterior signs, other than those permitted in the district, and exterior storage of materials shall not be permitted. Exterior displays of items for sale outside of the right-of-way is allowable, provided that they are covered during non-business hours and such items are not in place greater than sixty consecutive days.
4. Parking shall be placed to the rear of the structure, where feasible or to the side of the structure. Parking shall be provided outside the right-of-way and shall be adequately screened.
5. Objectionable noise, vibration, smoke, dust, electrical disturbance, odors, heat, or glare shall be prohibited.
6. Traffic shall not be generated in a greater volume or frequency than would be normally anticipated in the neighborhood so as to cause or increase unreasonable congestion or nuisance on roads, walkways, or accesses to neighboring properties.

#### **5.14 EXTRACTION OF SOIL, SAND OR GRAVEL**

The extraction of gravel, soil or rock, or a substantial change in activity of an existing operation involving the removal or transport of 40 or more cubic yards of material per year from the premises shall require Conditional Use Approval from the Zoning Board of Adjustment and Site Plan Approval from the Planning Commission.

In granting approval the Board or Commission shall find, in addition to other applicable requirements of this Ordinance, the following:

- a. Plans for the restoration of the disturbed portions of the site during and following the operations are sufficient to insure that safe, attractive, and useful conditions result;
- b. All surface drainage affected by the excavation is controlled to prevent soil erosion on roads, open area and neighboring properties;
- c. Plans for the operation of the facility are sufficient to insure that the operation will not adversely affect water quality, or create excessive dust, traffic, vibration, and noise at the site or areas in close proximity to the site; and
- d. The scale or intensity of the operation will not place an unreasonable demand on bridges, culverts, and roads leading to and from the project site or municipal services.

To insure that the rehabilitation of the site shall be properly managed, the Board, may require a performance bond or other form of surety be posted to cover the costs of restoration or that no more than a predetermined area of the site be exposed or in operation at any one time. However, bonding provisions shall not apply to quarrying or mining as these uses are specifically exempted per 24 V.S.A. Section 4407(8).

#### **5.15 WIRELESS COMMUNICATION FACILITIES**

##### **5.15.1 PERMIT REQUIRED**

No permit for the development of a wireless communication facility shall be granted by the Zoning Administrator without Conditional Use Approval from the Zoning Board of Adjustment. Prior to granting such approval, the Board shall make affirmative findings for

each of the following criteria in addition to the other applicable provisions set forth in these Regulations:

- a. **Yard Requirements** - Equipment, buildings, and other structures shall conform to the minimum front, side, and rear setbacks for the District in which they are located;
- b. **Height Limitations** - The height limit for equipment buildings or similar structures shall not exceed 35 feet. The height limit for antennae and towers in all Districts shall not exceed 90 feet above ground elevation at the base of the structure;
- c. **Lighting** - No lighting shall be permitted on towers, except as may be specifically required by FAA regulations or where deemed necessary by the Board. All tower lighting incidental to the tower shall be shielded to minimize glare. All ground lighting shall be directed downward towards the facility and not towards neighboring properties;
- d. **Bulk, Height, and Glare** - All towers shall be constructed in such a manner as to minimize height, mass, and guy wire supports for the intended use. Materials utilized for the exterior of any structure shall be of a type, style, and location so as to minimize glare and not result in an undue adverse impact from public vantage points and abutting properties;
- e. **Screening** - Screening shall be required at the perimeter of the site unless it can be demonstrated that natural foliage is adequate. A planted or natural vegetative screen shall be a minimum of ten (10) feet in depth with a minimum height of six (6) feet and shall have a potential to grow to a height of at least 35 feet at maturity. Existing on-site vegetation outside the site for the facility shall be preserved or improved. Disturbance to existing topography shall be minimized, unless in such districts it would result in less visual impact on the facility from surrounding properties and areas;
- f. **Co-location** - The principal of co-location shall be employed, where feasible, to minimize the number of wireless communication towers necessary to transmit or receive legally authorized signals. This shall impose a burden upon the applicant to demonstrate that there are no existing sites which are suitable to the applicants needs despite a due diligence search, and that if such facilities do exist, that they are either technically inadequate or that the owner, after a process of good faith negotiation, will not allow collocation. It shall be the burden of the applicant to perform a minimal analysis of technical feasibility. The applicant shall permit other wireless service providers to collocate on the proposed tower subject to reasonable terms and conditions. Notwithstanding, there shall be no affirmative obligation on the applicant to increase the height or width of the towers in order to accommodate the equipment or facilities of another user nor shall the applicant be required to engineer the tower to accommodate another potential user. The applicant shall provide evidence in writing on how it intends to comply with this requirement and to provide copies of any such proposed agreements;
- g. **Access Roads and Above Ground Utilities** - Where new wireless communication facilities require construction of or improvement to access roads, to the extent

practicable, roads shall follow contour of the land. Access roads, when consistent with the purposes of this section and economically feasible, shall be constructed or improved within existing forest or forest fringe areas and not in open fields. Utility or service lines shall be designed and located so as to minimize or prevent disruption to the scenic character or beauty of the area; and

- h. **Protection of Scenic Ridges and Hillsides** - Where, the Board, after consultation with the applicant, determines that a proposed wireless communication facility will likely be visible against the skyline from at least one vantage point on a State highway or Class II Town highway, or at least two vantage points on a Class III town highway no less than 1000 feet apart, the applicant shall prepare a report identifying the duration and frequency for which the tower would be visible to a passing motorist in feet and the distance to the proposed facility from the vantage points. The Board may require the report to include the elevation of the ground level of the facility site, the average elevation of vegetation within 100 feet of the facility within the affected viewshed, the slope of the facility site, the vertical height of the facility, appropriate design measures and recommendations to minimize any impact on scenic quality.

To assist the Board in its review of a likely visual impact of proposed facility under this sub-section, the Board may require the applicant to fly or raise a three-foot diameter balloon at the maximum height of the proposed facility at a location within fifty (50) horizontal feet of the center of the proposed facility. The applicants shall provide at least seven (7) days written notice to the Board the date and time of the test. The applicant shall provide to the Board photographs of the balloon test taken from at least four vantage points previously designated by the Board.

Upon review of the applicant's report, supporting materials, testimony from the parties, and inspections from the designated vantage points, the Board shall find that the proposed wireless communication facility shall not have an undue adverse visual impact on the scenic or natural beauty of the land proposed to be developed as viewed from public highway within the Town.

Where a tower would break or cross the skyline when viewed from the identified vantage points, the Board may designate an alternative location for the tower to be evaluated by the applicant. In consideration of this, the applicant may revise its application to include such a site, assuming it is available to the applicant and reasonably technically feasible to meet the applicant's broadcast objectives.

For the purposes of this sub-section, a wireless communication facility shall be presumed likely to be visible against the skyline when the facility is more than eight (8) inches wide or in diameter at the point where it intersects the tree line or forest canopy.

In determining whether or not a tower would have an undue adverse visual impact on the scenic or natural beauty of a ridge or hillside, the Board shall consider:

1. the period of time during which the proposed tower would be viewed by the traveling public on a public highway;
2. the frequency of the view of the proposed tower as experienced by the traveling public;
3. the degree to which the view of the tower is screened by existing vegetation, the topography of the land, and existing structures;
4. background features in the line of sight to the proposed tower that obscure the facility or make it more conspicuous;
5. the distance of the proposed tower from the viewing vantage point and the proportion of the facility that is visible above the skyline;
6. the number of vehicles traveling on a public highway or water at or near the critical vantage point;
7. the sensitivity or unique value of the particular view affected by the proposed tower;
8. significant disruption of a viewshed that provides context to a historic or scenic resource.

The Board shall have the authority to impose conditions consistent with the purpose of this Section in approving a proposed plan for the development of a wireless communication facility. A notice of decision with conditions shall be promptly recorded or filed with the Town by the Zoning Board of Adjustment or Zoning Administrator. It shall be the obligation of the permittees and subsequent assigns to remain in compliance with all conditions.

#### **5.15.2 APPLICATION REQUIREMENTS FOR WIRELESS FACILITIES**

As required under this Section, an application shall include at least the following information:

- a. Name and address of the record landowners and any duly appointed agents of the parties;
- b. Names and addresses of the record owners of all abutting property;
- c. A map or sketch on Mylar of the property proposed to be developed, professionally drawn to scale and with the area to be developed clearly indicated.
- d. A description of the proposed development;
- e. The location of the proposed structure on a USGS Topographic Map or Survey with 20' elevations or a GIS generated map compatible with VCGI standards;
- f. A utility and access road plan located on a USGS Topographic Map;
- g. Where the wireless communication facility is located on a parcel that is forested, the approximate average height of the existing vegetation within 100 feet of the tower base;
- h. A design or plan for all structures, buildings, or facilities proposed for the site;
- i. The proposed locations of all existing and proposed wireless service facilities in Braintree and within 20 miles of the proposed site for all licensed carriers seeking approval under this application;
- j. To the extent required by the National Environmental Policy Act (NEPA) and as administered by the FCC, an Environmental Assessment (EA) draft or final report outlining the probable impacts of the proposed facility on wildlife habitats, endangered species, historic and archeological resources, wetlands, and other resources;
- k. A cumulative radio frequency radiation study demonstrating compliance with FCC standards at the site;

- l. Existing wireless communication facility for any competitor providing functionally equivalent service to Braintree and the estimated coverage area; and
- m. The applicant shall provide construction sequence and time schedule for completion of each phase of the entire project to the Board.

**5.15.3 PROVISION FOR INDEPENDENT CONSULTANTS**

To assist the Board in its review of applications for Conditional Use Approval under this section, the Board may employ or contract with consultants selected by the Town and applicant, whose services shall be paid for by the applicant. Any or all final reports or documents prepared by the consultant shall be made available to the applicant and other parties to the proceeding.

**5.15.4 AMENDMENTS**

An amendment to a prior approved wireless communications facility may be considered by the Board and shall require Conditional Use Approval from the Board when any of the following are proposed:

- a. Change in the number of facilities permitted on the site;
- b. Changes in technology used for the facility; or
- c. Addition of any equipment or additional height not specified in the original application.

**5.15.5 FEES**

A schedule of fees for wireless communications facilities to cover project review, permitting, and monitoring costs shall be established by the Selectboard and may from time to time be amended.

**5.15.6 REMOVAL OF ABANDONED ANTENNAS AND TOWERS**

Any wireless communications facility that is not operated for a continuous period of twelve (12) months shall be considered abandoned and hazardous to the public health and safety, unless the owner of said tower provides proof to the contrary through quarterly inspections. The owner shall remove the abandoned structure within 90 days of receipt of a declaration of abandonment from the Board notifying the owner of such abandonment. A declaration of abandonment shall only be issued following a noticed public hearing conducted by the Board with notice to the last known owner/operator and occupants of the tower. If the abandoned tower is not removed within 90 days, the Town may bring action to have the tower removed. The Board as a condition to approval, may require the applicant to provide a performance bond, or similar form of surety payable to the Town at an amount sufficient to cover the full costs of removal of a tower antenna in the event that the facility is declared abandoned.

**5.15.7 CONSISTENCY WITH FEDERAL LAW**

These regulations are intended to be consistent with Section 704 of the 1996 Telecommunications Act. Accordingly, they shall not prohibit or have the effect of prohibiting the provision of personal wireless communications services; shall not unreasonably discriminate among providers of functionally equivalent services; and shall not regulate personal wireless services based on the environmental effects of radio frequency emissions to the extent that these facilities comply of the Federal Communications Commission Regulations concerning such emissions.

## 5.16 PLANNED RESIDENTIAL DEVELOPMENT (PRD)

### 5.16.1 GENERAL INTENT AND PURPOSE

The provisions for Planned Residential Development (PRD) set forth below are intended to permit the development of larger parcels of land in such a manner as will result in the most efficient, aesthetic, and desirable use of such parcels; encourage a more creative approach to the development of such parcels than would otherwise result under these Regulations; and to provide flexibility in the design and placement of buildings, open spaces, vehicular and pedestrian circulation and off-street parking areas so as to best utilize the features of the specific site.

In order to encourage innovation in design and layout and promote the efficient use of land, the Planning Commission may grant PRD approval for proposals subject to the standards and conditions set forth below.

### 5.16.2 PLANNED RESIDENTIAL DEVELOPMENT APPROVAL - STANDARDS AND CONDITIONS

In its review and approval of a proposed Planned Residential Development, the Planning Commission shall find in its written decision that the Project meets all of the following criteria and standards:

- a. The application submitted satisfies all the requirements for submission of a Planned Residential Development application as identified by the Planning Commission.
- b. The parcel size of the proposed project meets the minimum area requirements set forth below:

Conservation District	50 acres
Rural District I	20 acres
Rural District II	4 acres
Village District	1 acres

- c. The setback requirements, as determined for the project in its entirety, and for any and all buildings, structures, or lot lines within the project, comply with all applicable setback requirements.
- d. The total number of dwellings and other uses shall not exceed the number or densities that would be permitted in the Planning Commission's judgment if the involved land were subdivided into lots in conformance with the Regulations, except as under e).
- e. Density Bonus Available- Notwithstanding the above, in order to encourage the most appropriate and efficient use of the involved land, the total number of dwellings and other uses may be exceeded by up to twenty-five percent (25%), and up to 50% on affordable housing developments. In granting any such requested density increase, the Planning Commission shall find that:
  - The character and siting variations incorporated in the project consists of factors which make a substantial contribution to the general intent and purposes of the PRD provision.

- Such variation are appropriate based upon, but not limited to, the following project amenities: (i) siting, visual focal points, use of existing physical features such as topography, building orientation, variation in building groups such as clusters; (ii) design features, architectural styles, harmonious use of building materials, landscaping, and pedestrian ways; (iii) extent and location of open space reservation relative total project area, proposed plans for use and management of such area, and the degree of preservation of natural features for any unimproved areas, or (iv) meets an affordable housing objective or need for Braintree.
- f. The design and layout of the project preserves any recognized historic sites or structures and to the greatest extent feasible any natural features or resources of the site.
- g. Adequate conditions and technical plans exist to insure the safe treatment of sewage and the provisions of a safe supply of drinking water for the project.
- h. If the proposal involves a greater concentration of land uses within some section of the development than upon others, such greater concentration shall be offset by a lesser concentration in other section or sections or by an appropriate reservation of common open spaces on the remaining lands, which shall be recorded with the deeds of the parcels involved.
- i. To encourage maintenance or enhancement of forest resources, wildfire habitats, and critical resource areas, the project shall be designed to protect these areas from future development by use of protective covenants, conservation easements or similar methods.

### **5.16.3 PLANNED RESIDENTIAL DEVELOPMENT - GENERAL PROCEDURES**

The Planning Commission welcomes preliminary discussions about this development option. It invites prospective applicants to meet informally with the Commission to learn how their project might be structured and resources available to help plan a project.

- a. Upon receipt of an application, the Commission first shall ascertain if the application is complete.

- b. A request for Planned Residential Development Approval shall have at least one Public Hearing held by the Planning Commission within thirty days from the date of acceptance of the completed application. All procedures as set forth in 24 V.S.A. Section 4407 (3) shall apply also.
- c. Land development for which Approval has been granted shall not commence unless the Zoning Administrator has issued a Zoning Permit for any or all uses or structures incidental to the project.
- d. The Planning Commission may attach such reasonable conditions to its approval as it finds necessary to further the purposes of this Ordinance and 24 V.S.A. Chapter 117.
- e. The Planning Commission shall act to approve or disapproval a proposal by written decision within sixty (60) days from the date of the final public hearing.
- f. In the event that substantial construction on the parcel or land subdivision has not occurred within two years from approval, this approval shall have no further effect and any subsequent applications for Zoning Permits shall be considered untimely.

## **5.17 OUTDOOR LIGHTING**

As part of its review, the Planning Commission or the Zoning Board of Adjustment shall evaluate the effects of outdoor lighting on the site and neighboring properties. All lights shall be directed so light is directed downwards and not into the night sky. Lighting shall be directed towards the property. Lighting shall be placed to avoid glare or to create a traffic hazard. Lighting shall be at a level consistent with the character of the neighborhood. Any person seeking to increase or otherwise modify the level of outdoor lighting for a non-residential use shall first obtain a Zoning Permit.

## **5.18 OUTDOOR SIGNS**

### **5.18.1 SIGN PERMIT REQUIREMENT**

A Zoning Permit is required for erection of an outdoor sign. Applications shall be submitted to the Zoning Administrator and shall include such additional information as the Zoning Administrator requires.

### **5.18.2 SIGN STANDARDS**

No sign shall be permitted in the Town unless it is in conformance with the following standards:

- a. All signs must be well constructed and maintained in good repair and stable condition.
- b. For home occupations or home enterprises, one sign of not more than six (6) square feet in area is permitted on the premises.
- c. One temporary sign, not exceeding six (6) square feet in area, is permitted for advertising the sale, rental or improvement of the premises on which it is located.
- d. Professional and business office buildings are limited to two (2) signs of not more than twelve (12) square feet in area for each building, and name plates of not more than two (2) square feet for each separate office.
- e. The total area of the signs for each building is limited to the area computed by the ratio:

1. **Permitted Uses** - 1.5 square feet of sign area is allowed for every 1.0 linear feet of building frontage as measured from end to end across that portion of the building which faces a road or other public way. If a building either does not face a road or has public access from two roads, then the frontage will be measured across the face of the building which contains the main entrance.
2. **Conditional Uses** - Signs for Conditional Uses shall be sized so as to be consistent with the nature and purpose of the zone in which the use is located.

Notwithstanding the above ratio, the total area of all signs permitted for a principal commercial building shall not exceed one hundred (100) square feet.

No building may have more than one (1) freestanding sign. No freestanding sign may contain more than forty (40) square feet of sign area. No freestanding sign may be more than twenty (20) feet above average grade, nor less than ten (10) feet from any property line.

The total area of all building signs per building may not exceed sixty (60) square feet. No building sign may extend above the eaves of that part and side of the building to which the sign is attached. No projecting sign and supporting structure shall be less than eleven (11) feet above walking levels or project more than five (5) feet out from a building.

All signs shall be subject to the following additional conditions:

- a. No sign shall be permitted which prevents a clear and unobstructed view of official signs and approaching or merging traffic.
- b. No sign shall be permitted which appears to direct the movement of traffic or which interferes with, imitates or resembles any official traffic, directional or route sign, signal or device.
- c. No lighting of signs shall be permitted unless such lighting is shielded from the public to prevent glare or intensity that may cause a hazard.
- d. No sign shall contain any moving parts, nor contain or be illuminated internally by neon, flashing, moving or intermittent light.
- e. No sign shall contain any fluorescent type of paint or finish.
- f. No sign shall be allowed which is not on the premises of the activity served by the sign.

### **5.18.3 EXISTING SIGNS**

Nothing within this Ordinance shall require any change to signs existing prior to the effective date of this Zoning Ordinance. Any existing sign, which is removed because the sign no longer advertises the products or services of the establishment, may only be replaced by conforming sign or signs.

#### **5.18.4 SPECIAL SIGNS REQUIRING CONDITIONAL APPROVAL**

The following special signs may be permitted upon the granting of Conditional Approval by the Zoning Board of Adjustment:

When a cluster of buildings, or one building with multiple establishments, share a common vehicular entrance, one (1) sign, not to exceed a maximum of fifty (50) square feet, may be permitted, in addition to the regular sign area allowed. Two (2) signs, not to exceed a maximum total sign area of fifty (50) square feet may be allowed in addition to the regular sign area permitted if, upon site review, unique physical conditions prove them necessary.

The following shall be considered by the Zoning Board of Adjustment when determining whether or not an additional sign or signs will be allowed:

- a. Distance from the road
- b. Size of building
- c. Location and surroundings of the building
- d. Character and size of surrounding signs

#### **5.18.5 EXEMPT SIGNS**

The following signs shall be exempt from requiring a Building Permit or Conditional Use approval:

Signs erected, maintained or administered by the Town of Braintree or the State of Vermont under Title 10, Chapter 21, whether maintained at private or public expense;

Signs less than two (2) square feet in area, without advertising, displayed for the direction, instruction or convenience of the public, including signs which identify rest rooms, entrances and exits, hours and days of business, posted areas for "No Hunting" or "No Trespassing" or the like, provided such signs are on the premises of the activity served by such a sign.

### **5.19 DIVISION OF LOTS**

The division of any parcel existing on the date of adoption of this Ordinance into more than two parcels is classified as a subdivision and will require a Braintree Subdivision Permit under the separate Braintree Subdivision Regulations.

A minor subdivision is the subsequent division of a parcel existing on the date of the adoption of this Ordinance into just two parcels or an amendment, revision or modification to a recorded plat which creates no more than one additional lot within the bounds of the original parcel. Applicants for a minor subdivision shall file an application with the Zoning Administrator on forms available at the Town Office. An application for a minor subdivision shall be approved by the Zoning Administrator upon:

- a. Receipt of a completed application form with supporting documentation from the owner, including descriptions and locations of any existing or proposed rights-of-way, any

easements, reference to the Book and Page number from the Town Land Records of the parcel involved and a subdivision map; and

- b. determination that the proposed minor subdivision meets the applicable land, area, and structural standards and other applicable dimensional standards as set forth in this Ordinance.

Issuance of a Zoning Permit shall serve as evidence of compliance with this Ordinance. A minor subdivision map approved by the Zoning Administrator shall be submitted by the owner to the Town Clerk for recording within 90 days of approval. Failure to submit such a map within the prescribed period shall invalidate approval of the subdivision.

## **5.20 ACCESSORY APARTMENT**

A detached accessory apartment is permitted as part of a primary residence. Accessory apartments are limited to 1500 square feet or 50% of the living area of the primary residence, whichever is larger. In calculating minimum lot size, a detached apartment shall be considered a second family dwelling and shall not exceed the allowable zoning density for the District.

# **ARTICLE VI – ADMINISTRATION, ENFORCEMENT, AND APPEALS**

## **6.1 ZONING PERMIT**

Except as provided herein, no building or land development, construction, reconstruction, conversion, relocation or enlargement of any building or other structure, nor any mining, excavation or landfill, nor any change in the use of any building or other structure, or land, or extension of use of land, may commence unless a Zoning Permit shall have been duly issued by the Zoning Administrator. Zoning Permits are not required for interior alterations or renovations, provided the use of the building or structure remains substantially unchanged. Prospective applicants for Zoning Permits may obtain application materials from the Town Offices or Zoning Administrator during regular office hours.

All projects, as authorized by a Zoning Permit, shall be commenced within a period of one year, and completed within three years, unless construction has been delayed by litigation to secure other permits or approvals. Projects not commenced by the time of expiration of a Zoning Permit must reapply for a new permit and any other necessary approvals.

## **6.2 USES EXEMPT FROM THIS ORDINANCE**

The following uses are exempt under this Ordinance and, accordingly, Zoning Permits shall not be required for the following:

- a) Normal maintenance and repair of an existing building or structure that does not result in any change to the footprint or height of a building or structure, or change in use;
- b) Public auctions, garage sales, or yard sales not exceeding four (4) consecutive days or more than ten (10) days in a calendar year;
- c) Accepted agricultural and forestry practices, including construction of farm structures (see 6.4);
- d) Exempt or temporary signs;
- e) Public utility poles and fixtures;
- f) Fences or walls under five (5) feet high or less and outside the highway right-of-way;
- g) Satellite receiving dishes if attached to a building;
- h) Structures without water hook-ups, for temporary or intermittent occupancy such as tents or camper trailers or recreational vehicles shall either be on site for fewer than 180 consecutive days or be fully licensed and ready for immediate use,
- i) Fuel or propane storage tanks not used for commercial purposes;
- j) Small structures, but not including signs, less than thirty-two (32) cubic feet in volume;
- k) Shelters less than fifty (50) square feet in area and less than twelve (12) feet in height;
- l) Work incidental to the development of non-commercial trails;
- m) Removal of earth resources incidental to construction of a building, access to a lot, public road construction, or the operation of a cemetery.

### **6.3 INSPECTIONS**

The Zoning Administrator, being duly authorized to enforce this Ordinance, is empowered to enter upon land or any building for the purpose of assuring that any land development, as defined or approved, is in compliance with the requirements of this Ordinance and any Zoning Permit that may have been granted.

Prior to entry on private property, the Zoning Administrator shall obtain permission of the owner of record and any other involved party of interest.

### **6.4 AGRICULTURE AND FORESTRY – PERMIT NOT REQUIRED**

In accordance with State law (24 V.S.A. Section 4495), this Ordinance shall not restrict accepted agricultural practices (AAPs), or accepted silvicultural practices (AMPs), including the construction of farm structures, as such practices are defined by the Commissioner of Agriculture or Commissioner of Forests, Parks, and Recreation. No Zoning Permit for a farm building or structure is required, however notification of the intent to build to the Zoning Administrator is required. Notwithstanding the above, setback requirements for structures shall apply. Contact the Zoning Administrator for further information.

### **6.5 CONSTRUCTION APPROVED OR COMMENCED PRIOR TO ADOPTION OR AMENDMENT OF THIS ORDINANCE**

No Zoning Permit shall be required for any building upon which construction had begun or within which a use was lawfully established prior to the adoption or amendment to this Ordinance, provided such construction is completed within one (1) year from the date of such adoption or amendment. Nothing contained in this Ordinance shall require any change in plans or construction of a non-complying structure for which a Zoning Permit has been issued and which has been completed within one (1) year from the effective date of this Ordinance.

### **6.6 CERTIFICATE OF OCCUPANCY**

In order that there be a determination that all buildings hereafter altered, enlarged, moved or constructed and all uses of land and structures are in accordance with the provisions of the Zoning Permit authorizing such activity, a Certificate of Occupancy shall be required prior to the use or occupation of any land or building or part thereof (excepting accessory buildings or structures).

A Certificate of Occupancy shall be granted or denied within fourteen (14) days after written notice of completion is submitted by the applicant to the Zoning Administrator, and shall remain in effect as long as such building or use is in compliance with the standards and conditions authorized by the Zoning Permit. A Certificate of Occupancy shall be issued by the Zoning Administrator upon determination that the building or use authorized by the Zoning Permit is in substantial compliance with the standards and conditions of said permit, these Zoning Regulations and any applicable health regulations. The Applicant shall have the right to occupy said premises if the Zoning Administrator does not respond within the fourteen (14) day period.

But, this shall not be conclusive evidence that the premises comply with the provisions of these Regulations.

If the Zoning Administrator, after such final inspection, refuses to issue a Certificate of Occupancy, he or she shall state the reason for such in writing and immediately give notice by certified mail to the applicant at the address indicated on the application. Appeals from decisions of the Zoning Administrator shall be taken to the Board of Adjustment.

## **6.7 NON-CONFORMING USES**

The following provisions shall apply to all buildings and uses existing on the effective date of adoption of this Ordinance, which do not conform to the requirements set forth in this Ordinance, and to all buildings and uses that, in the future, do not conform by reason of any subsequent amendment to this Ordinance.

Any non-conforming use of structures or land, except those specified below, may be continued indefinitely, but:

- a. Shall not be moved, enlarged, altered, extended, reconstructed, or restored (except as provided below).
- b. Shall not be changed to another non-conforming use.
- c. Shall not be re-established if such use has been discontinued for a period of one year or has been changed to or replaced by a conforming use.
- d. Shall not be restored for other than a conforming use after damage from any cause unless the non-conforming use is reinstated within one year of such damage. If the restoration of such building is not completed within one year, the non-conforming use of such building shall be deemed to have been discontinued, unless such non-conforming use is carried on without interruption in an undamaged part of the building.

## **6.8 NON-COMPLYING BUILDINGS**

Nothing in this section shall be deemed to prevent normal cosmetic maintenance and superficial repair of a non-complying building provided that such action does not increase the degree of non-compliance.

Conditional Use Approval may be granted by the Board of Adjustment for the repair, relocation, replacement or enlargement of any structure within the Floodplain District provided that the following criteria are met:

- a. The Board finds that such structure is required for the continued economically feasible operation of such enterprise.
- b. The Board finds that such structure will not threaten the health, safety and welfare of the public or any other property owners.
- c. The Board finds that the repair, relocation, or enlargement of a nonconforming residential or non-residential structure will not increase flood levels

- d. The approval so granted shall state that the repaired, relocated, or enlarged nonconforming structure is located in a regulated flood hazard area and does not conform to the regulations pertaining thereto, may not be eligible for any flood insurance pertaining to regulated flood hazard areas, and will be maintained at the risk of the owner.
- e. A copy of such the approval shall be affixed to the copy of the deed of the concerned property on file in the Town Clerk's office.

## **6.9 ZONING ADMINISTRATOR**

The Zoning Administrator is hereby appointed to administer this Zoning Ordinance, as provided for in Section 4442 of the Act. The Zoning Administrator shall literally enforce the provisions of these Regulations and in so doing, shall inspect developments, maintain records and perform all other necessary tasks to carry out the provisions of this Ordinance. All matters involving discretion shall be referred to the Planning Commission or Zoning Board of Adjustment as appropriate.

In accordance with Sections 4464 - 4468 of the Act, an interested person may appeal the decision of the Zoning Administrator by filing notice of appeal to the Zoning Board of Adjustment. Such notice must be filed within 15 days of the date of the decision of the Zoning Administrator.

## **6.10 PLANNING COMMISSION**

There is hereby established a Planning Commission, which shall consist of not less than three, nor more than nine, members appointed by the Selectboard for a term of four years, except, upon acceptance of the Ordinance all existing members shall continue to serve their terms. Any appointment to fill a vacancy shall be for the unexpired term.

The Planning Commission shall have the authority to conduct those duties established for it under Section 4325 of the Act, including preparing draft zoning ordinances, town plans and a capital budget and program and any amendments thereto. The Planning Commission shall also be charged with the administration of the procedures allocated to it by these Zoning Regulations including Site Plan Review.

## **6.11 ZONING BOARD OF ADJUSTMENT (ZBA)**

There is hereby established a Zoning Board of Adjustment (ZBA), some or all of whose members should also be members of the Planning Commission. The Zoning Board of Adjustment shall consist of not less than three, nor more than nine, members appointed by the Selectboard for a term of three years, except, upon acceptance of the Ordinance all existing members shall continue to serve their terms. Any appointment to fill a vacancy shall be for the unexpired term.

The ZBA shall be charged with the proper interpretation of these Zoning Regulations and their consequent application within the municipality, and with the administration of the procedures allocated to it by these Zoning Regulations including the following:

- a. To hear and rule on appeals concerning any order, requirement, decision, or determination made by the Zoning Administrator in the administration and enforcement of these Zoning Regulations.
- b. To hear and grant or deny a request for a variance.
- c. To hear and approve or deny a request for a Conditional Use.

## **6.12 CONDITIONAL USES**

No Zoning Permit shall be issued by the Zoning Administrator for any use or structure which requires Conditional Use Approval under this Ordinance until the Zoning Board of Adjustment grants such approval. In considering its action, the Zoning Board of Adjustment shall make findings on general and specific standards, hold hearings and attach conditions, if any, as provided in Section 4407(2) of the Act. General standards to be considered are as follows:

The proposed conditional use shall not adversely effect:

- a. The capacity of existing or planned community facilities.
- b. The character of the area effected.
- c. Traffic on roads and highways in the vicinity.
- d. The provisions of this Ordinance.
- e. Utilization of renewable energy resources.

In addition, specific standards shall be used on any applications for junk yards and any other activity seeking conditional use approval that involves the storage of petroleum products or hazardous materials. These shall be at a minimum a condition of annual inspection by the Zoning Administrator with a written report to the ZBA, an agreement that other inspections may take place upon 24 hours notice to the landowner, and a plan for the storage and disposal of any hazardous material or waste so they do not contaminate air, soil or water. If any professional services are needed to prepare such a plan, this will be done at the applicant's expense. No exterior storage of such substances, junk, or junk vehicles will be allowed within 100 feet of a surface water or wetland, and side yard setbacks shall be increased to no less than 100 feet. Adequate screening shall be required to be installed and maintained at junk yards to prevent visibility of stored junk or vehicles from all roads and property lines.

The Zoning Board of Adjustment shall act to approve or disapprove any such requested Conditional Use within sixty (60) days after the date of its final public hearing held under this section. Failure to act within such a period shall be deemed approval.

## **6.13 CONDITIONAL USE APPROVAL APPLICATIONS**

An application for Conditional Use Approval shall include submission of the following plans and supporting documents to the Zoning Board of Adjustment, unless otherwise waived by the Chair of the Zoning Board of Adjustment.

- a. A map depicting the general location of the property within the Town and its relationship to existing public roads and highways.
- b. A proposed site plan, drawn to an appropriate scale, showing the location, height, spacing uses, and architectural relationships of all buildings, existing and proposed open spaces, landscaping, utility lines, streets, driveways, off-street parking and loading facilities, unique or manmade features and the physical conditions of the site.
- c. A statement and/or map sufficient to demonstrate the relationship of the proposed development to adjacent land uses, both existing and proposed.
- d. A statement including the uses of adjacent property, and the names and current addresses of all owners of land immediately adjacent to and directly across all public highways from the property at issue.
- e. A development schedule indicating the approximate dates when construction or stages of the project are expected to begin and be completed.
- f. Any application fees, as may be required.

Copies of application forms are available from the Zoning Administrator or at the Town Offices. Applicants are welcome to contact the Zoning Administrator or Zoning Board of Adjustment for information prior to filing an application.

#### **6.14 ZONING BOARD OF ADJUSTMENT - APPEALS**

Any interested person may appeal any decision or act taken by the Zoning Administrator by filing a notice of appeal with the secretary of the Zoning Board of Adjustment or with the Clerk of the municipality. If the appeal is made with respect to any decision or act of the Zoning Administrator, such notice of appeal must be filed within fifteen (15) days of the date of such decision or act, and a copy of the notice of appeal shall be filed with the Zoning Administrator.

Any notice of appeal shall be in writing and shall include the name and address of the appellant, a brief description of the property with respect to which the appeal is taken, a reference to the regulatory provisions applicable to that appeal, the relief requested by the appellant and the alleged grounds why such requested relief is believed appropriate under the circumstances.

The Zoning Board of Adjustment shall set a date and place for a public hearing of an appeal under this Ordinance, which shall be within sixty (60) days of the filing of the notice of such appeal. The Board shall give public notice of the hearing, and shall mail to the appellant a copy of such notice at least fifteen (15) days prior to the hearing date.

Any interested party who makes an appeal with respect to the property at issue shall appear and be heard in person or be represented by an agent or attorney at such hearing.

The Zoning Board of Adjustment shall render any decision, which shall include findings of fact, within forty-five (45) days after completing the hearing, in accordance with Section 4470 of the Act. If the Board fails to act within this period, it shall be deemed to have rendered a decision in favor of the appellant and granted the relief requested on the last day of such period.

The ZBA shall keep minutes of its proceedings, indicating the vote of each member upon each question or, if absent or failing to vote, indicating this, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the clerk of the municipality as a public record. All findings and actions of the Board shall be in writing and shall include the reasons for the action taken. Findings shall be detailed and in specific terms, discussing the cause of the decision, beyond such generalities as “in the interest of public safety, health and general welfare.” In every instance, a statement of the facts upon which such action is based shall appear in the decision.

### **6.15 ZONING BOARD OF ADJUSTMENT - VARIANCES**

On an appeal, wherein a variance from the provisions of the Zoning Regulations constitutes the relief requested by the appellant, the ZBA may grant such variances, and render a decision in favor of the appellant, if all the following facts are found by the ZBA and are specified in its decision:

- a. That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of this Zoning Ordinance.
- b. That as a result of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this Zoning Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- c. That such unnecessary hardship has not been created by the appellant.
- d. That the variance, if authorized, will not alter the essential character of the district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare.
- e. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible from this Zoning Ordinance.
- f. In rendering a decision in favor of an appellant, the Board may attach such conditions to a variance as it may consider necessary and appropriate under the circumstances to implement the purpose of this Ordinance and the Town Plan.

The issuance of a variance shall not relieve the appellant of the obligation to obtain a Zoning Permit and such permit shall only be issued if the proposed land development complies with all other applicable provisions, except as varied by the Zoning Board of Adjustment.

### **6.16 APPEALS FROM THE PLANNING COMMISSION OR BOARD OF ADJUSTMENT**

An interested person may appeal the decision of the Planning Commission or Zoning Board of Adjustment within 30 days of said decision to the Vermont Environmental Court in accordance with Sections 4471 and 4475 of the Act. In the event the Notice of Appeal is filed, any Zoning Permit shall not take effect until final adjudication of the appeal.

## 6.17 SITE PLAN APPROVAL

No Permit shall be issued by the Zoning Administrator for site development, except single and two family dwellings, seasonal shelters and accessory uses, until the Planning Commission grants Site Plan Approval.

The owner shall submit two sets of site plan maps and supporting data to the Planning Commission. This information shall be presented in drawn form and accompanied by written text as noted below.

- Description. Name and address of the owner of record and adjoining lands. Name and address of person or firm preparing the map. Scale of map, north point and date.
- Survey of the property showing existing features including at least 20' contours, structures, large trees, roads, utility easements, rights of way, land use and deed restrictions.
- Site plan showing proposed structure locations and land use areas; roads, driveways, traffic circulation, parking and loading spaces and pedestrian walks; landscape plans, including site grading, landscape design and screening.
- Construction sequence and time schedule for completion of each phase for buildings, parking spaces and landscaped areas of the entire project.

In considering its action, the Planning Commission shall review the application information required under Section 5.9, taking into consideration the following objectives:

- a. The maximum safety of vehicular and pedestrian circulation between the site and street network and adjacent traffic generators.
- b. The adequacy and safety of circulation, parking and loading facilities.
- c. Adequacy of landscaping, screening, and setbacks in regard to achieving maximum compatibility and protection of adjacent properties.
- d. The avoidance of glare.
- e. The adequacy of surface drainage facilities.
- f. The protection of the utilization of renewable resources and natural resources.
- g. The provision of municipal services.

The Planning Commission shall conform to the requirements of Section 4407 (5) of the Act before acting on any application and shall impose appropriate conditions and safeguards only with respect to the above objectives, such conditions to include, but not be limited to, the following:

- a. May limit the number and nature of access points to a site from adjacent public highways.
- b. May require fencing and/or plantings to screen outdoor lighting, outdoor storage areas and driveways, and parking from adjacent residential properties.
- c. May require installation of surface drainage facilities to mitigate and control the runoff from parking areas and hard surfaces.

- d. If a conditional use requires Site Plan Approval, the Planning Commission may coordinate its review process with the ZBA and arrange concurrent meetings with the applicant, if possible, within the specific limits for each review as established herein.

## **6.18 PUBLIC NOTICE**

Any public notice required for public hearing under this Ordinance shall be given by publication of the date, place, and purpose of such hearing in a newspaper of general circulation in Braintree, and the posting of a notice in one or more places within the Town not less than fifteen (15) days prior to the date of the public hearing.

## **6.19 REFERRAL TO STATE AGENCY**

In accordance with Section 4409(c) of the Act, no Permit for the development of land in certain locations shown below shall be issued by the Zoning Administrator prior to the expiration of a period of 30 days following the submission of a report to the state appropriate agency designated below, describing the proposed use, the location requested and an evaluation of the effect of such proposed use on the plan of the municipality and on the regional plan, if any:

- a. Department of Forests, Parks and Recreation. Any use in or within 1000 feet of any state owned or leased property under the jurisdiction of the department of forests, parks and recreation, but not including any state owned railroad corridor leased to the department for interim trail use. This provision does not apply within any incorporated village or city. Also, any of the following uses: ski areas with lifts or other equipment other than tows, with total capacity of more than 500 persons per hour; camps with accommodations for more than 50 persons; marinas with accommodations for 20 or more boats with lengths in excess of 20 feet; public beaches, or lands within 1,000 feet thereof; and Natural Areas as defined in section 2010 of Title 10.
- b. Department of Environmental Conservation. Any of the following uses or activities affecting ground or surface water resources: any use in an area designated as a flood plain or wetland; the damming of streams so as to form an impounding area of five acres or more for reservoir or recreational purposes or that creates an impoundment of more than 500,000 cubic feet; and drilling of wells deeper than 50 feet or with a potential yield greater than 25,000 gallons per day (except this shall not apply to a well drilled by the owner of a farm or residence for his own use, or the use of the farm).
- c. Department of Fish and Wildlife. Game lands and stream bank area owned or leased by the state.
- d. Vermont Transportation Board. Airports.
- e. Agency of Transportation. Any use within 500 feet of the intersection of any entrance or exit ramp providing access to any limited access highway.

## **6.20 CHANGE IN STATE STATUTES**

Any subsequent amendment to the enabling statute under which this ordinance was adopted, which effects a change in this Ordinance, shall have the effect of changing the provisions involved upon passage of the amendment.

## **6.21 VIOLATIONS AND ENFORCEMENT**

The commencement or continuation of any land development subject to regulation and not in conformance with the provisions of this Ordinance shall constitute a violation. All violations of this Ordinance shall be regulated as prescribed in Sections 4444 and 4445 of the Act.

Pursuant to the Act, no legal enforcement action may be brought by the Town under this Section unless the alleged offender has had at least seven (7) day written notice by Certified Mail that the violation exists, that the alleged offender has had an opportunity to cure the violation within seven (7) days and that the alleged offender will not be entitled to an additional warning for a violation occurring after the seven (7) days. Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of this Ordinance after the seven (7) day notice period or within the next succeeding twelve (12) months. The Zoning Administrator shall initiate the appropriate legal action in the name of the Town of Braintree to enforce the provisions of this Ordinance, but shall not incur costs without the approval of the Selectboard. In the prosecution of alleged offenders through the Environmental Court, the Zoning Administrator shall first consult with the Selectboard and legal counsel, as necessary.

The Town shall observe any limitations on enforcement proceedings relating to municipal permits and approvals as set forth in the Act (24 V.S.A. Section 4496). Any person who violates this Ordinance shall be fined not more than \$100 for each offense by the Court. In default of payment of the fine, such person shall pay double the amount of such fine. Each day that a violation is continued shall constitute a separate offense. All fines imposed by the Court and collected for violations shall be paid to the Town.

# **ARTICLE VII – DEFINITIONS**

## **7.1 TERMS AND USES**

For the purposes of this Ordinance, the meanings of words, terms, and phrases shall be interpreted as defined below and all other words shall be presumed to have their customary meanings. Any interpretation of words, phrases, or terms by the Zoning Administrator may be appealed to the Zoning Board of Adjustment under Section 6.14 for clarification. The Board shall base its interpretation on the following definitions, state statutes, the purposes of this Ordinance, and the need for reasonable and effective implementation of this Ordinance. The Board shall maintain a record of its rulings to ensure consistent and uniform application of the terms of this Ordinance.

## **7.2 SELECTED DEFINITIONS**

**ACCESSORY BUILDING** - A building customarily incidental and subordinate to the principal building and located on the same lot.

**ACCESSORY USE** - A use customarily incidental and subordinate to the principal use. .

**AFFILIATED OWNERSHIP** - Properties or buildings owned by the same individual or that individual in partnership with any other person or persons is considered affiliated ownership.

**AFFORDABLE HOUSING** – Housing that costs no more than 30% of median county income for the relevant household size.

**ANTENNA** – A device attached to a tower or similar structure for transmitting or receiving electromagnetic waves.

**AREA OF SHALLOW FLOODING** – means a designated AO or AH zone on a Town's Flood Insurance Rate Map (FIRM) with a one percent or greater chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

**AREA OF SPECIAL FLOOD HAZARD** – The land in the floodplain within a Town subject to a one percent or greater chance of flooding in a given year.

**BASE FLOOD** – The flood having a one percent chance of being equaled or exceeded in any given year.

**BASEMENT** – means any area of the building having its floor subgraded (below ground level) on all sides.

**BED AND BREAKFAST (TOURIST HOME)** - A building used as a dwelling unit and operated for public lodging, providing rooms and meals for lodging guests only.

**BUILDING** - Structure having a roof supported by columns or walls and intended for the shelter or enclosure of persons, animals or chattel.

**CLUB, PRIVATE** - A building or land use catering exclusively to club members and their guests for recreational purposes and not operated primarily for profit.

**COMMERCIAL STRUCTURE** - A structure used for commercial purposes.

**COMMERCIAL USE** - A use of land and buildings with direct access to a State highway for the provision of facilities, goods or services by a person to others in exchange for payment of a purchase price, fee contribution, donation or other object or service having value.

**COMMUNITY CENTER** - Includes public or private meeting hall, place of assembly, museum, art gallery, library, places of further education and church - all not operated primarily for profit.

**COVERAGE** - That percentage of the lot area covered by the building.

**DEVELOPMENT, LAND** – The division of a parcel into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining, excavation of landfill, and any change in the use of any building or other structure, or land or extension or use of land.

**DWELLING UNIT** - A building or part thereof used as living quarters for one family. The terms 'dwelling', 'one-family dwelling', 'two-family dwelling', 'dwelling group' shall not include a motel, hotel, bed and breakfast, tourist home or similar structure.

**DWELLING, ONE-FAMILY** - A building, including accessory buildings, used as living quarters by one family.

**DWELLING, TWO-FAMILY** - A building, including accessory buildings, used as living quarters by two families living independently of each other.

**DWELLING, MULTIPLE FAMILY** - A building, including accessory buildings, used as living quarters by three or more families living independently of each other.

**FAMILY** - One or more persons living on the same premises as a single housekeeping unit.

**FHBM** - The Flood Hazard Boundary Map means an official map of the Town, issued by the FIA, where the boundaries of the flood, mudslide (i.e., mudflow) related to erosion areas having special hazards have been designated as zones A, M and/or E.

**FIA** - Federal Insurance Administration.

**FIRM** – The Flood Insurance Rate Map, an official map of a community, on which the Administrator has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY** – means an examination, evaluation and determination of flood hazards and, if appropriate, corresponding water surface elevations. **Floodway**: means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**FLOODPROOFING** – Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

**FLOODWAY** - means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

**FRONTAGE** - That portion of a lot which is adjacent and parallel to a State highway, Town street, Town road or Town right- of-way. In the case of corner lots, it shall be that portion that has, or is proposed to, have access.

**FRONT YARD** - The distance from the centerline of the traveled road to the nearest portion of the building.

**HAZARDOUS WASTE** – Those substances defined as hazardous waste by the Agency of Natural Resources under Chapter 7 of the Vermont Environmental Protection Rules.

**HOME OCCUPATION** - Activities conducted within a dwelling or accessory building by the residents thereof, which is clearly secondary to the dwelling's use as living quarters and does not change the character thereof, excluding junk yards and any activity that generates hazardous waste.

**HOME ENTERPRISE** – A business use conducted by the resident of the home on the same lot which meets the standards set forth in Section 5.13 of this Ordinance, excluding junk yards and any activity that generates hazardous waste.

**HOSPITAL** - Includes a sanitarium, clinic, rest home, nursing home, convalescent home, home for the aged, and any other place of diagnosis or treatment of human ailments.

**JUNK YARD** - Any place of outdoor storage or deposit which is maintained, operated or used in connection with a business for storing, keeping, processing, buying or selling junk or scrap. In addition, the term means any place of outdoor storage or deposit, not in connection with a business, which is maintained or used for storing or keeping four or more junk motor vehicles. This does not mean a garage where wrecked or disabled motor vehicles are stored for less than 90 days for inspection or repairs.

**JUNK MOTOR VEHICLE** – Any discarded, dismantled, wrecked, scrapped or ruined motor vehicle, or parts thereof; an unregistered motor home not connected to water or sewer; or a vehicle, other than an on-premise utility vehicle, which is allowed to remain unregistered for 30 days from the date of discovery.

**LIGHT INDUSTRY** - A non-polluting industry with direct access to a State highway contained in less than 20,000 square feet involving the manufacture of goods and equipment for the purpose of sale or profit. The conversion into another form, storage or transportation of raw materials for the purpose of sale or profit or the storage or transportation of wholesale or retail goods on a large scale.

**LOT** - A single parcel of land, whether created by lease or deed, usually, but not necessarily always, occupied or to be occupied by a building and its accessory buildings. It must have the required open spaces, having not less than the minimum area, width and depth required for a lot in the district in which such land is situated, and having frontage on a road, or other means of access as may be determined by the Planning Commission to be adequate as a condition of the issuance of a building permit for building on such land.

**LOT AREA** - The total land area within the boundaries of a lot, exclusive of any land area designated for a public road as measured to the boundary of such right of way or easement.

**LOT DEPTH** - The distance from the centerline of the traveled portion of the Town road, state road or right-of-way; or from the shoreline if there is no land access, to the rear of the lot measured at right angles to the centerline of the road or right-of-way or of the shoreline.

**LOT LINE** – A line of record bounding one lot from an adjoining lot or from a Town or State highway right-of-way, rivers or railroad line.

**LOT WIDTH** – the smallest distance across the lot measured parallel to the frontage side of the lot.

**LOWEST FLOOR** - means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area, is not considered a building's lowest floor; provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements.

**MANUFACTURED HOME** - see Mobile Home

**MEAN SEA LEVEL** - means, for purposes of the National Flood Insurance Program, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a Town's Flood Insurance Rate Map are referenced.

**MINOR SUBDIVISION** – Any subsequent partitioning of a parcel existing on the date of adoption of this Ordinance, where the subdivision will result in two lots within the boundaries of the parcel, or an amendment, revision, or modification to a recorded plat, the result of which

creates an additional lot within the bounds of the original parcel that existed on the date of adoption. Further subdivision of any parcel previously subdivided after the date of adoption will require a subdivision permit under the Subdivision Regulations.

**MOBILE HOME** - A structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. It does not include recreational vehicles, travel trailers or a sectional prefabricated house.

**MOBILE HOME PARK** - Land, under single ownership, on which two or more mobile homes are parked and occupied for living purposes.

**NEW CONSTRUCTION** - Structures commenced on or after the effective date of this ordinance.

**NON-RESIDENTIAL USE** - All uses of buildings, structures or land except one-family dwellings, two-family dwellings, multiple family dwellings, home occupational uses and accessory structures to these uses.

**PARKING FACILITY** - Off street parking space used for the temporary location of one or more licensed motor vehicles which allows at least one space ten feet wide by twenty feet long for each vehicle, not including access driveways, and having direct access to a road or right of way. Handicapped parking spaces shall be at least twelve feet wide by twenty feet long.

**PLANNED RESIDENTIAL DEVELOPMENT** - A residential development consisting of multiple structures that generally meet the requirements of the zoning bylaw in a more flexible manner that is meant to minimize disturbance to agricultural, silvicultural or sensitive areas and to facilitate the economic provision of streets and utilities.

**PRINCIPAL BUILDING** - A dominant building or portion thereof, the use of which is fundamental and superior to any other use of the land or the lot.

**PRINCIPAL USE** - The use dominant on a lot, such use being fundamental and superior to any other use of the land or the lot.

**PUBLIC AND PRIVATE UTILITY** – A business establishment engaged in supplying on a regular basis the public or private persons with a common commodity such as telephone, electric, sewage, or water service.

**REAR YARD** - Distance between the rear lot line and the nearest portion of the building.

**RECREATION, PRIVATE OUTDOOR** - Includes a golf course, trap, skeet and archery range, swimming pool, skating rink, riding stable, park, beach, tennis court, recreation stadium, or skiing facilities operated either as a private club or for profit.

**RECREATION, PUBLIC OUTDOOR** - Includes a publicly owned and operated playground, play field, park, open space and swimming pool.

RELIGIOUS INSTITUTION - Includes a church, temple, parish house, convent, seminary or retreat house.

RETAIL STORE - Includes enclosed restaurant, cafe, shop and store for the sale of retail goods and services and shall exclude any drive-up service, free standing retail stand, gasoline service and motor vehicle service, new and used car sales and service, trailer and mobile home sales and service.

ROAD - Public way for vehicular traffic, which affords the principal means of access to properties. The word "road" shall mean the entire right of way.

SEASONAL SHELTER - Cabin, trailer, shelter or other accommodation suitable for seasonal or temporary living purposes.

SCHOOL - Includes parochial, private, public, and nursery school, day care, college, university, and accessory uses.

SIDE YARD - Distance between the principle building or accessory building and a side lot line.

SIGNS - Any outdoor structure, display, device or representation which is designed or used to advertise or call attention to any business, activity, place, person or thing. Display does not include the inventory of a business or storage of materials such as lumber, bricks, fencing and similar type materials. Representation shall include color, pictures, shapes and similar things associated with the building or business.

SIGN APPENDAGE - An appendage to a sign which is of a temporary nature or changes on a regular basis and which is incorporated into or under a permanent sign, and of compatible character and/or texture of material.

SIGN, AREA CALCULATION - The entire area within a circle, triangle, rectangle or parallelogram, enclosing the extreme limits of writing, representation, emblem or any figure of similar character, together with any frame, panel or other material or color forming a part of the display to differentiate such a sign from the background against which it is placed; excluding the necessary supports or uprights on which a sign is placed. Where a sign does not include a physical frame or panel, an imaginary frame or panel will be used. Where a sign has two or more faces or panels, the area of all faces or panels shall be included in determining the total area of the sign, except where the two faces or panels are placed back to back.

SIGN, BUILDING - A sign fastened to or applied on the outdoor wall or window of a building or structure in such a fashion that the wall becomes the supporting structure for, or forms the background surface of the sign and which does not project more than twelve (12) inches from such building or structure. This term does not include roof signs.

SIGN, FREESTANDING - A sign having its own supporting structure, independent of any building.

**SIGN, PROJECTING** - A sign that is wholly or partially dependent upon a building for support and which projects more than twelve (12) inches from such a building.

**SIGN, TEMPORARY** - A sign, not exceeding six (6) square feet in area, which is being used to advertise any of the following: the sale of property, vacancy, auction, candidate, public or civic event; or activities of a similar nature. Such a sign shall be removed within five (5) days of fulfilling its function.

**STRUCTURE** - An assembly of materials for occupancy or use, including, but not limited to, a building, mobile home or trailer, billboard, sign, wall or fence, except a wall or fence on an operating farm.

**SUBSTANTIAL DAMAGE** - means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT** - Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either, (a) before the improvement or repair is started, or (b) if the structure has been damaged, and is being restored, before the damage occurred. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

**WILDLIFE REFUGE** - A non-commercial use of land that provides protection and shelter for native wildlife.

**WIRELESS TELECOMMUNICATIONS FACILITY** – A support structure which is primarily for communication or broadcast purposes and which will extend vertically 20 feet or more, in order to transmit or receive communications signals for commercial industrial, municipal, county or state purposes. The construction or improvement of a road, trail, building, or structure incidental to a telecommunications facility. This definition does not include satellite receivers less than 2 feet diameter or amateur ham operator towers or antennae less than 40 feet in height.

**VANTAGE POINT** – A point located on a public highway in the Town of Braintree from which a proposed wireless communication facility will be visible.