

# Town of Benson Zoning Ordinance

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## **ARTICLE I - OVERVIEW**

### **1.1 TITLE**

The title of these regulations shall be known and cited as the TOWN OF BENSON ZONING AND SUBDIVISION BYLAW.

### **1.2 ENACTMENT**

In accordance with the Vermont Planning and Development Act (24 V.S.A., Chapter 117), hereinafter referred to as the "Act", there is hereby established a Zoning and Subdivision Bylaw for the Town of Benson, Vermont, which consists of this text and an Official Zoning Map and the latest Flood Insurance Rate Map.

### **1.3 EFFECTIVE DATE AND AMENDMENT**

This Bylaw or any amendments thereto, shall become effective upon date of adoption. Any amendment or revision to the provisions of this Bylaw shall be prepared in accordance with the Act.

### **1.4 STATUS OF PRIOR REGULATIONS**

The Town of Benson has existing regulations that regulate flood hazard areas which shall continue.

### **1.5 INTENT**

It is the intent of this Bylaw to implement the Town Plan, with emphasis on the following four goals:

- Preserve the rural character and scenic beauty of Benson;
- Preserve open space for current or future agricultural use of all types;
- Ensure that development does not either degrade the environment or exceed the current level of town services; and
- Preserve the historic character of the Village.

### **1.6 VALIDITY AND SEVERABILITY**

If any section or provision of this Bylaw is held to be invalid, such decision shall not affect the validity of the Bylaw 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 Bylaw shall be held to be minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Whenever this Bylaw imposes a greater restriction upon the use of a structure or land than are required by any other statute, bylaw, rule, permit, easement or agreement, the provisions of this Bylaw shall control.

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## **ARTICLE II – ZONING DISTRICTS**

### **2.1 ESTABLISHMENT OF ZONING DISTRICTS AND MAP**

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

Agricultural and Rural Residential  
Village  
Lake Shore  
Lake Champlain Shoreline  
Floodplain Overlay

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 Benson. Immediately following adoption of this Bylaw, this Map shall be signed and dated by the Selectboard, and filed with the Town Clerk. 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.

In the event of any question regarding the boundaries of any district, the Benson Planning Commission shall have the authority and power, after a public hearing, to make the final determination as to where such lines fall on the ground. Any landowner requesting such a determination shall be obligated to share the costs and expenses of the Planning Commission related to such determination.

Lots with land in both the Village District and the Agricultural and Rural Residential District will be considered two lots with the district boundary considered a property line except such lots with less than one acre of land in the Village District will be considered to be entirely within the Agricultural and Rural Residential District.

### **2.2 AGRICULTURAL AND RURAL RESIDENTIAL DISTRICT**

All lands and waters within the Town of Benson not in other districts are in the Agricultural and Rural Residential District.

### **2.3 VILLAGE DISTRICT**

All lands and waters within the shaded area of Exhibit A of the “Ordinance Regulating the Use of Sewers in the Town of Benson” also known as the Sewer District are in the Village District.

### **2.4 LAKE SHORE DISTRICT**

All lands and waters within 500 feet distant measured horizontally from the mean water level of Lake Sunrise, Sunset Lake, Perch Pond, Doughty Pond, Parsons Mill Pond, Glen Lake, Mud Pond, Bullhead Pond, Beaver Meadow, and Root Pond are in the Lake Shore District.

### **2.5 LAKE CHAMPLAIN SHORELINE DISTRICT**

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All lands and waters within 500 feet distant measured horizontally from the mean water level of Lake Champlain are in the Lake Champlain Shoreline District.

## **2.6 FLOODPLAIN OVERLAY DISTRICT**

This district encompasses all lands shown as the A zone (flood fringe and floodways) on the latest Flood Insurance Rate Map (FIRM) for the Town of Benson. This map, together with all explanatory matter thereon and attached thereto, is hereby adopted by reference and declared to be part of these regulations. In addition to the requirements of these regulations, any land development within the A zone on the town's Flood Insurance Rate Map is also regulated under a separate freestanding Flood Hazard Area Zoning Bylaw.

## **ARTICLE III - GENERAL STANDARDS THAT APPLY TO ALL NEW DEVELOPMENT IN ALL DISTRICTS**

### **3.1 GENERAL STANDARDS FOR ALL NEW DEVELOPMENT**

All new development (except as limited by section 4413 of the Act) within the Town following the date of adoption of this bylaw must conform to the following:

1. All structures are limited to 40 feet in height, except agricultural structures, telecommunications towers or antennae and windmills. Telecommunications towers or antennae and windmills require conditional use approval unless otherwise specified in this Bylaw or exempted by law.
2. All principal structures shall have at least 2 parking spaces outside the right-of-way. Multi-unit buildings shall have 2 spaces per unit.
3. Development, including structures, utilities and roads, shall be encouraged to be sited at the edge of fields or in forested areas so as to preserve open lands. Development shall not significantly reduce the agricultural or forestry potential, where such exists, of the lot or inhibit agricultural use of adjoining land or the surrounding area. Deviating from such placement will only be allowed after demonstrating that no other suitable locations exist for such uses or structures on the property.
4. Only one principal use or one principal structure is allowed per lot if the lot is a result of the maximum permissible subdivision under the density rule in 3.3 and 3.4. Otherwise, the maximum number of principal structures or principal uses is that which would be permissible under such subdivision.
5. All accesses onto a Town highway, or changes to an existing access, require an access permit from the Selectboard.

### **3.2 PROHIBITED DEVELOPMENT**

All development that is not listed as allowed, permitted, or potentially allowed to be permitted following a process such as Conditional Use Approval or Variance, is prohibited. The following development is prohibited:

1. Mobile Home Parks in the Village District
2. Multiple Unit Dwellings in all Districts except the Village District
3. Multiple Unit Dwellings of more than four units

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## **3.3 MINIMUM SETBACKS AND DIMENSIONS IN ALL DISTRICTS EXCEPT THE VILLAGE DISTRICT**

1. The front setback of structures shall be no closer to the center-line of the road than 80 feet, except lesser distances may be allowed by waiver from the Zoning Board of Adjustment (ZBA) under the conditional use approval process after consultation with the Selectboard to ensure traffic safety.
2. The minimum side and rear yard setbacks shall be 50 feet.
3. All structures, except those that must by their nature (i.e. bridges, docks, etc) be located closer, must be set back at least 75 feet from the top of the bank of the Hubbardton River and the shore line of Lake Champlain and the Lakes and Ponds in the Lake Shore District.
4. The minimum lot width shall be 200 feet.
5. The minimum lot size is 2 acres per principal structure or use.
6. The minimum density is 20 acres per principal structure or use on all lots in existence on the date of adoption, except: a) for all undeveloped lots less than 4 acres on such date, one such structure is allowed, and b) on all lots with at least 4 acres on such date, but less than 40 acres, two (existing and future) such structures are allowed.
7. The minimum access density to Route 22A is 750 feet of road frontage for all lots in existence on the date of this adoption, except: (a) for all lots with less than 750 feet of road frontage one access to 22A is allowed and (b) all lots with at least 750 feet of frontage on such date and less than 1500 feet of frontage, two (existing and future) such accesses are allowed. This access restriction does not apply to access for agricultural purposes.

## **3.4 MINIMUM SETBACKS AND DIMENSIONS IN THE VILLAGE DISTRICT**

1. The front setback of structures shall be no closer to the center-line of the road than 65 feet, except lesser distances may be allowed by waiver from the Zoning Board of Adjustment (ZBA) under the conditional use approval process after consultation with the Selectboard to ensure traffic safety.
2. The minimum side and rear yard setbacks shall be 40 feet.
4. The minimum lot width shall be 150 feet.
5. The minimum lot size is 1 acre per principal structure or use.
6. The minimum density is 3 acres per principal structure or use on all lots in existence on the date of adoption, except: a) for all undeveloped lots less than 2 acres on such date, one such structure is allowed, and b) on all lots with at least 2 acres on such date, but less than 6 acres, two (existing and future) such structures are allowed.

## **ARTICLE IV – ALLOWED DEVELOPMENT (NO ZONING PERMIT REQUIRED)**

### **4.1 ALLOWED DEVELOPMENT**

The following kinds of development are allowed and do not require any zoning or subdivision permit:

1. Interior remodeling.
2. Exterior remodeling and additions that meet all setback requirements of 3.3 and 3.4, the general standards of 3.1 and applicable subdivision permit requirements.
3. A maximum of three (existing and new) motor homes, campers and travel trailers provided that they are placed in compliance with setbacks and conform to all applicable Town ordinances. Temporary habitation of any unit or combination of units shall not exceed six consecutive months.

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4. A maximum of three (existing and new) box trailers, storage containers, and other trailers used for storage which are parked in compliance with setbacks.
5. Replacement of an existing conforming and/or non-conforming structure destroyed by fire or other disaster provided that it is placed on the same footprint, does not increase in height, and that reconstruction begins within five years of the date of destruction.
6. Farm structures (as defined under Title 24) and the conducting of accepted agricultural practices (AAPs), or accepted management practices (AMPs) for silviculture, including the construction of farm structures, as such practices are defined by the Secretary of Agriculture or Commissioner of Forests, Parks, and Recreation, respectively under subsections 1021(f) and 1259(f) of Title 10 and section 4810 of Title 6. However any person intending to build a farm structure shall notify the Zoning Administrator and shall abide by the setbacks in that district, or as approved by the Secretary of Agriculture.
7. Home Occupation, as defined in the Definitions section, in an existing dwelling and also in compliance with the standards of sections 3.1 and 6.1.
8. Construction of accessory structures that meet the setbacks in section 3.3, 3.4, and any applicable subdivision permit requirements and with footprints of 900 square feet or less and not exceeding 20 feet in height.
9. Public utility power generating plants and transmission facilities regulated under 30 VSA, section 248.
10. Accessory dwelling unit within a single family dwelling unit.

## **ARTICLE V – DEVELOPMENT REQUIRING ONLY A PERMIT ISSUED BY THE ZONING ADMINISTRATOR**

### **5.1 PERMITTED USES**

1. New single or two-unit dwellings and secondary dwellings meeting all the definitions for such and the criteria in Sections 3.1, 3.3, 3.4 and any applicable subdivision permit requirements.
2. Accessory structures greater than allowed in Section 4.1 and meeting all the criteria in Sections 3.1, 3.3, 3.4 and any applicable subdivision permit requirements.
3. State licensed or registered residential care or group home for not more than 8 persons who have a handicap or disability, per Title 24, section 4412.
4. State licensed or registered child care home or facility serving no more than 6 full-time and 4 part-time children, per Title 24, section 4412.
5. Seasonal shelter
6. Accessory dwelling unit within an accessory structure.
7. Ponds less than 500,000 cubic feet
8. Building additions or modifications requiring waiver reductions of dimensional requirements to allow for disability accessibility, fire safety, and other requirements of law.

All other uses except those previously specified as allowed or prohibited require conditional use approval.

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## ARTICLE VI – CONDITIONAL USES, GENERAL AND SPECIFIC STANDARDS

All structures and uses that are not specifically prohibited, allowed or permitted, require a Conditional Use Approval by the Zoning Board of Adjustment prior to the issuance of a Zoning Permit by the Zoning Administrator including the six uses listed under Title 24, section 4413(a). No development, including preparatory site work, construction of utilities or roads shall begin until a Zoning Permit has been issued. See Article III for General Standards and Article VIII for the administrative process. Minimum setbacks and dimensions specified in Article III may be increased by the ZBA for development requiring conditional use approval and the 40 foot height limitation may be modified.

### 6.1 GENERAL STANDARDS FOR ALL USES IN CONDITIONAL USE APPROVAL

All development needing Conditional Use Approval must meet the following standards (except as limited by section 4413 of the Act), which may be incorporated as permit conditions.

1. Noise: Persistent discernable noise, except that customary and incidental to residences and farms, beyond the property line is not permitted from 8 PM until 7 AM, or on weekends. From 7 AM to 8 PM, such noise shall be limited to 70 decibels (DbA) at the property line. In the case of uncertainty by the ZBA of future or existing noise, the applicant shall hire a qualified engineer at their expense who must certify that the sound levels will be met.
2. Dust/smoke and Odor: No visible dust/smoke or discernable objectionable odor beyond the property line is permitted, excepting as is incidental and customary to residences, farms or permitted burning.
3. Vibration: Continuing vibration which is readily discernable without instruments on adjacent property is prohibited.
4. Emergency access: Development must be designed to allow access by Emergency Services.
5. Character: All conditional uses must demonstrate that the proposed use can be performed without an undue adverse effect on the quality of life or the character and setting of the surrounding neighborhood and the Town, and specific policies and standards of the town plan.
6. Mass and scale: Non-residential structures and multi-unit residential buildings will be evaluated as to their mass and scale to ensure that they resemble the general size, style, and shape of other structures in town.
7. Landscaping: Landscaping, screening or the retention of vegetation may be required of new development, or any expansion of conforming and nonconforming uses, to lessen its visual effect from public roads.
8. Mobile Home Parks: In addition to complying with the provisions of all applicable state statutes, Mobile Home Parks in the Town of Benson shall meet the following requirements.
  - a. The park shall be located on a site graded to insure adequate drainage of surface water, sub-surface water, sewage and freedom from stagnant pools.
  - b. A minimum of 10,000 square feet shall be provided for each mobile home space.
  - c. Each mobile home park or trailer park shall have at least 10 acres.
  - d. A minimum of thirty (30) feet shall be left open between mobile homes.
  - f. All spaces shall abut upon a roadway of 33 feet.
  - g. Roadways shall be well drained, and at least eighteen feet in width shall be graveled, hard surfaced or paved, and maintained in good condition throughout the year.

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- h. Appropriate underground utility service shall be provided for each mobile home by the owner of the park.
- i. Provision shall be made for proper and adequate trash and garbage collection and disposal. All trash and garbage cans shall be concealed at all times in a properly allotted space.
- j. Each park shall be enclosed by a properly kept fence or planted densely with bushes or trees.
- k. Each mobile home shall install skirting to cover all open space under said mobile home. This siding shall be so installed so as not to warp or sag and shall be properly painted if a metal siding is not used.
- l. No additions shall be built on mobile homes unless they are the manufactured type such as carports, fold out rooms or patio covers.
- m. No mobile home shall be located closer than 100 feet from the property line or the center line of a public highway.

9. Stormwater and erosion control: Appropriate drainage must control stormwater run-off, prevent erosion and protect neighboring land and roads from undue impacts. No increase in off-site stormwater runoff in terms of volume or peak discharge, nor any discharge of any hazardous substances is allowed.

10. The ZBA may also require studies at the applicant's expense if needed to adequately review technical issues.

11. If any overlay district has stricter standards than this list, than the most restrictive standards will apply.

12. Development may not have an undue adverse effect on the capacity of existing or planned community facilities.

## **6.2 SPECIFIC CONDITIONAL USE STANDARDS FOR BUSINESSES**

All new businesses that do not meet the definition of home occupation or a protected agricultural or silvicultural practice need a Conditional Use Approval and Zoning Permit. Expansion or change in use of any existing business shall also require Conditional Use Approval and Zoning Permit. Parking, traffic and circulation, signs, exterior storage and the size and scale of the proposed business compared to businesses currently operating in Benson in addition to the requirements of 3.1, 3.3, 3.4, and 6.1 will be major review considerations of the ZBA. Businesses must state projected number of customers, deliveries, and employees.

Title 10, Chapter 151, 6001(3) (A) (iii) allows the Town to give jurisdiction to the environmental board under Act 250 for the construction of improvements for commercial or industrial purposes on a tract or tracts of land, owned or controlled by a person, involving more than one acre of land within a municipality that has adopted permanent Zoning and Subdivision laws. This jurisdiction will apply when the select board takes such action in accordance with Chapter 59 of Title 24. Following such action by the select board businesses requiring a zoning permit and Act 250 review will generally obtain the zoning permit prior to Act 250 review.

## **ARTICLE VII - SUBDIVISION**

All division of land, except as specified in this section, requires a subdivision plat approval by the Planning Commission prior to sale or transfer. Correction or modification of a boundary line that does

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not create an additional lot may be reviewed and approved by the Zoning Administrator. Combination of existing lots into a single lot does not require subdivision approval.

## **7.1 STANDARDS FOR ALL SUBDIVISION**

Since most subdivisions are created to accommodate anticipated development, the review process to obtain a permit seeks to ensure an appropriate relationship between building sites, access considerations, site topography, and proposed property lines. Additionally, Benson's scenic beauty depends on maintaining its traditional settlement patterns of sparsely settled hills, open space and a more densely settled Village; subdivision review and approval seeks to guide future development in this direction through thoughtful planning for building sites and the encouragement of "cluster development" techniques to ensure the continued existence of larger unsettled expanses.

Even though plat approval may show proposed building sites, new structures that require permits under Articles V and VI still require a separate review and building permit.

## **7.2 DEVELOPABILITY**

All new lots, regardless of developability, must meet the dimensional and access requirements. The Planning Commission may refuse to allow the creation of a lot upon a finding that it would not meet the necessary minimums for development or the standards specific to both the district in which it is located and its use.

If an applicant desires to create a lot, but has no specific development plans, then the Planning Commission may issue a subdivision permit providing that:

- 1) The Selectboard agrees that a feasible access exists to the property and
- 2) That subdivision permit contains a condition that any future development will require an amendment to the permit and the potential extent of such development has been specified per section 8.8.1.

## **7.3 ACCESS**

No lot may be created that does not have a 50 foot direct access onto a public road or access to such by a private right-of-way. Access roads and driveways shall not interfere with public safety, and should not result in excessive curb cuts or storm water runoff. All roads and bridges shall be able to accommodate emergency vehicles in terms of width, grade and load. To these ends, the Planning Commission may impose conditions regarding combination of access locations and configuration, private road layouts and design. Where access to a lot is through a right-of-way, the minimum deeded width of the ROW shall be 50 feet. Lots with frontage on Route 22A must meet the access requirements for 22A access or through permit conditions to be filed with the deed or plat restrict access to 22A from the lot.

## **7.4 EFFECT ON AGRICULTURE OR SILVICULTURE**

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Subdivisions shall not significantly reduce the agricultural or forestry potential of the original lot or inhibit agricultural use of adjoining land or the surrounding area. Subdivisions must be made in such a way as to preserve lands with agricultural or productive forest potential to the maximum extent feasible.

## **7.5 MINIMIZING IMPACTS**

The Planning Commission may require plans showing how subsequent structures, roads, common land, utilities, septic systems, etc., could be located and constructed to protect the natural environment, prevent damage to neighboring property, and minimize any undue adverse effect on Benson's scenic beauty. Consideration may include, but is not limited to: general topography and natural drainage, depth to the water table, and distance from subject property lines to structures on abutting properties.

## **7.6 LOT SIZE, DIMENSIONS AND DENSITY**

All subdivisions must comply with the minimum lot size, dimensions and density requirements in sections 3.3 and 3.4. When lots smaller than the density required for the district are created, the Planning Commission shall require that undeveloped land used in the calculation of density be preserved in that state through permit conditions to be filed with the deed and plat.

## **ARTICLE VIII: ADMINISTRATION**

### **8.1 ZONING ADMINISTRATOR**

A Zoning Administrator is hereby appointed to administer this Zoning Bylaw, as provided for in 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 Bylaw. The Zoning Administrator should provide an applicant with forms required to obtain any municipal permit or other municipal authorization relating to the regulation by the Town of land development. If other municipal permits or authorizations are required, the Zoning Administrator should coordinate a unified effort on behalf of the municipality in administering the development review programs. The Zoning Administrator should also inform any person applying for municipal permits or authorizations that the person should contact the regional permit specialist employed by the agency of natural resources in order to assure timely action on any related state permits; nevertheless, the applicant retains the obligation to identify, apply for, and obtain relevant state permits.

All matters involving discretion shall be referred to the Planning Commission or Zoning Board of Adjustment as appropriate.

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In accordance with Sections 4465 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.

## **8.2 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. 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 bylaws, 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 and Subdivision Regulations.

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

There is hereby established a Zoning Board of Adjustment (ZBA), some or all of whose members may 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. Any appointment to fill a vacancy shall be for the unexpired term.

The ZBA shall be charged with the proper interpretation of this bylaw, including the following:

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

## **8.4 ZONING PERMIT**

No land development or change in use, unless specifically exempted in this Bylaw, may be commenced within the area affected by this bylaw without a Zoning Permit being issued by the Zoning Administrator, unless the development has been specifically exempted by state or federal law, or elsewhere in this Bylaw from requiring a permit. No zoning permit may be issued by the Zoning Administrator, except in conformance with this bylaw.

### **8.4.1 ZONING PERMIT APPLICATION**

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Applications for zoning permits shall be made to the Zoning Administrator on forms approved by the Planning Commission. In addition to the information requested on the form, the Zoning Administrator may require additional information, surveys, site plans, or drawings, to document that the proposed development is in compliance with the bylaw. A fee schedule for applications shall be set by the Selectboard.

When Conditional Use Approval is necessary before acting on a permit, a separate application for such approval will need to be filed with the Zoning Administrator as specified in 8.6 below.

## **8.4.2 COMPLETED PERMIT APPLICATION**

An application for a zoning permit will not be acted upon until it is considered complete by the Zoning Administrator. For an application to be complete, it must include a signed application form, all required information, any necessary approvals (septic permit, access permit, conditional use approval, flood hazard area zoning permit, etc) and the required application fee. When an application involves a use in the Floodplain Overlay District, an application will not be deemed complete until the Agency of Natural Resources provides comments or the 30 day comment period in 8.4.3 expires.

When additional information is requested from the applicant by the Zoning Administrator in order to consider the permit application complete and such information is not presented within 60 days following a written request from the Zoning Administrator, the application will be deemed rejected.

## **8.4.3 REFERRAL TO STATE AGENCY PRIOR TO ISSUANCE**

In accordance with section 4424 of the Act, any permit for the development of land within the flood hazard area shall be submitted to the state floodplain manager in the Agency of Natural Resources. This is required under the Flood Hazard Area Zoning Bylaw. No permit will be issued under provisions of this bylaw for development requiring a permit under the Flood Hazard Area Zoning Bylaw until the permit requirements of that bylaw have been met.

## **8.4.4 APPROVAL OR DENIAL OF PERMIT**

Within 30 days of the completion of an application, and all necessary approvals, the Zoning Administrator shall either issue or deny the zoning permit.

If the permit is denied, the Zoning Administrator shall notify the applicant in writing, stating the reasons for denial, and the procedure for appeal. If the Zoning Administrator fails to act within 30 days, a permit shall be deemed issued on the 31st day.

## **8.4.5 EFFECTIVE DATE OF ZONING PERMIT**

Zoning Permits shall not take effect until 15 days after issuance by the Zoning Administrator, or in the event that a notice of appeal is properly filed in accordance with the Act, such permit shall not take effect until final adjudication of said appeal.

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Each permit or notice of permit issued under this section shall contain a statement of the period of time within which an appeal may be taken.

Within three days following the issuance of a permit, the Zoning Administrator shall:

- a) deliver a copy of the permit to the listers of the municipality,
- b) post a copy of the permit at the Town Office until the time for appeal in has passed; and
- c) post a copy of the notice of permit on a form prescribed by the Planning Commission within view from the public right-of-way most nearly adjacent to the subject property.

After the 15-day appeal period has closed, but within 30 days after a zoning permit has been issued, the Zoning Administrator shall deliver the original or a legible copy of the notice of permit to the Town Clerk for recording in the town's land records on a form and in a manner as provided in section 1154 of the Act; who shall then also file a copy of the effective zoning permit, along with any necessary approvals, conditions, maps or drawings in the Town Office where all municipal land use permits shall be kept.

The Town Clerk may charge the applicant for the cost of the recording fees as required by law.

## **8.4.6 APPEAL OF ZONING ADMINISTRATOR'S ACTIONS OR ZONING PERMIT**

An interested person as defined §4465 of the Act may appeal any decision or act taken by the Zoning Administrator by filing a notice of appeal with the secretary of the ZBA, or with the Town Clerk if no such secretary has been elected. This notice of appeal must be filed within 15 days of the date of that decision or act, and a copy of the notice of appeal shall be filed with the Zoning Administrator.

The ZBA shall conduct a hearing of the appeal, as provided in §4465-68 of the Act. The ZBA shall render its decision within 45 days after completing the final hearing. The decision shall include findings of fact setting forth its basis. Failure to render a decision within the 45 days noted above will result in an automatic granting of the appeal. Copies of the decision will be promptly mailed to the applicant and appellant by certified mail, and by first class mail to every person or body appearing and having been heard at the hearing(s), and also filed with the Zoning Administrator and the Town Clerk.

Appeals of ZBA decisions must be made to the Environmental Court in accord with section 4471 of the Act.

## **8.4.7 EXPIRATION OF ZONING PERMIT**

A zoning permit shall expire three years after the date it was issued by the Zoning Administrator, unless the development or use authorized by its issuance has been substantially completed.

## **8.5 DEVELOPMENT PRIOR TO ADOPTION**

This Bylaw has no effect on the continuation of uses or structures predating the adoption of this bylaw that were in compliance with previous regulations. Expansion or alteration to these structures or uses requires a new Zoning Permit, except as provided in section 4.1.

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## **8.5.1 DEVELOPMENT IN PROGRESS**

No Zoning Permit shall be required for any building upon which construction had lawfully begun or within which a use was lawfully established prior to the adoption or amendment to this Bylaw, provided such construction is substantially completed for its intended use within two (2) years from the date of such adoption or amendment to this Bylaw.

Nothing contained in this Bylaw shall require any change in plans or construction of a non-conforming structure for which a Zoning Permit has been issued, but construction has not begun, provided that such structure is substantially complete within 2 years from the effective date of this Bylaw.

## **8.5.2 UNDEVELOPED PRE-EXISTING LOTS**

Any lot in existence on the effective date of this Bylaw 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 and depth dimension of forty feet. All other requirements must be met.

## **8.5.3 CONTINUATION OF USE OF NON-CONFORMING STRUCTURE OR NON-CONFORMING USE**

Any valid non-conforming use or non-conforming structure that was in compliance at the time it began may be continued indefinitely without change. Nothing in this section shall be deemed to prevent normal cosmetic maintenance and superficial repair of a non-conforming structure provided that such action does not increase the degree of non-conformity. When there is a question as to whether a use or structure was pre-existing, the burden of proof shall be on the landowner.

## **8.5.4 CHANGES TO NON-CONFORMING STRUCTURE OR NONCONFORMING USE**

As provided for in the Act, any expansion, extension, enlargement, or relocation of a non-conforming structure or any alteration, expansion, relocation, or change in a non-conforming land use must be approved by the ZBA, and is subject to this Bylaw. Such changes may only be allowed when they are required for the continued economic use of the property and when the ZBA finds that the overall degree of non-conformity will not increase. When there is a question as to what is the current level or degree of use, the burden of proof shall be on the landowner to prove that such use was in compliance when it was established.

## **8.5.5 DISCONTINUANCE AND ABANDONMENT**

If a non-conforming use is discontinued, or any structure abandoned, for a period of 24 consecutive months, it shall be deemed discontinued or abandoned. A discontinued use shall not resume nor an abandoned structure be used, except subject to the provisions of this Bylaw as if it was a new development. Where the Zoning Administrator determines that discontinuance or abandonment has taken place, the burden of proof shall be on the owner to prove otherwise.

## **8.5.6 PRE-EXISTING VIOLATIONS**

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Adoption of this bylaw has no effect on uses or structures that were or are in violation of current or previous Benson ordinances.

## **8.6 CONDITIONAL USE APPROVAL**

Development requiring Conditional Use Approval must receive such approval before a zoning permit may be granted. As its name implies, Conditional Use Approval will entail written conditions on development in order to achieve certain goals. The ZBA shall prepare written findings of fact with each decision setting forth reasons for approval, approval with Conditions, or denial, addressing each of the standards relevant to the proposed development. Such conditions shall be attached to the zoning permit for the properties seeking approval. General and specific standards to be used in this process are found in Articles III and VI.

### **8.6.1 APPLICATION FOR CONDITIONAL USE APPROVAL**

Applications for Conditional Use Approval must be made to the Zoning Administrator who shall receive applications for these approvals and transmit them to the Zoning Board of Adjustment for action. Applications shall be accompanied by such materials as determined by the ZBA, and fees determined by the Selectboard. The Zoning Board of Adjustment shall deem when an application is complete. When additional information is requested from the applicant in order to consider the permit application complete and such information is not presented within 60 days, the application will be deemed rejected.

### **8.6.2 HEARING FOR CONDITIONAL USE APPROVAL**

At least one public hearing is required prior to approval of a conditional use. See section 8.9 for proper notice.

### **8.6.3 PROVISION FOR INDEPENDENT CONSULTANTS**

To assist the ZBA in its review of technical issues in applications under this section, it may, after consultation with the applicant, retain consultants and require the applicant to pay the reasonable cost of their services. Any or all final reports or documents prepared by the consultant shall be made available to the applicant and other parties to the proceeding and are public documents.

### **8.6.4 APPROVAL OR DENIAL**

The ZBA must grant or deny the application for conditional use approval within 45 days of the final hearing or approval will be automatically given on the 46<sup>th</sup> day. Copies of the decision will be promptly mailed to the applicant by certified mail, and by first class mail to every person or body appearing and having been heard at the hearing(s), and also filed with the Zoning Administrator and the Town Clerk.

### **8.6.5 EXPIRATION OF APPROVAL FOR CONDITIONAL USE APPROVAL**

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Any conditional use approval granted under this Bylaw shall expire two (2) years from the date of the written decision granting such approval unless a zoning permit has been issued by the Zoning Administrator for the approved project.

## **8.6.6 APPEAL FOR CONDITIONAL USE APPROVAL**

The approval or denial of a conditional use approval by the ZBA may be appealed to the Environmental Court in a manner as specified in section 4471 of the Act.

## **8.7 VARIANCES AND WAIVERS**

### **8.7.1 APPEAL FOR VARIANCE**

Except as specified in §4469(b) of the Act for renewable energy structures, variances may only be granted by the ZBA upon a written finding that ALL of the following facts are true:

- 1) 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 unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of this bylaw in the neighborhood or district in which the property is located.
- 2) That because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.
- 3) That the unnecessary hardship has not been created by the appellant.
- 4) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.
- 5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

In rendering a decision in favor of an appellant under this section, the ZBA may attach such conditions to such variance as it may consider necessary and appropriate under the circumstances to implement the purposes of the Act and the Town Plan. The ZBA must grant or deny the variance within 45 days of the final hearing or approval will be automatically given on the 46<sup>th</sup> day. Copies of the decision will be promptly mailed to the applicant by certified mail, and by first class mail to every person or body appearing and having been heard at the hearing(s), and also filed with the Zoning Administrator and the Town Clerk.

### **8.7.2 QUALIFYING FOR A WAIVER**

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Waivers may be granted for a permitted use by the Zoning Administrator to reduce dimensional requirements as needed to allow for disability accessibility, fire safety, and other requirements of law.

Waivers may be considered by the Zoning Board of Adjustment for a Conditional Uses to reduce dimensional requirements, but not density requirements, if the proposed development meets any of the following criteria:

1. The proposed development conforms to the existing development patterns of the immediate neighborhood.
2. The proposed development will more effectively preserve open land or scenic vistas.
3. The proposed development will provide for energy conservation and renewable energy structures.
4. Meeting the dimensional requirements will create an undue hardship on the applicant and the hardship was not created by the applicant.

## **8.7.3 STANDARDS FOR GRANTING WAIVERS**

The Zoning Board of Adjustment May grant a conditional use waiver if the Board finds that the proposed development meets ALL the following standards:

1. The proposed development shall not reduce the dimensional requirements by more than the minimum amount necessary.
2. The proposed development does not alter the essential character of the neighborhood or district in which the property is located.
3. The proposed development does not substantially or permanently impair the appropriate use or development of adjacent property.
4. The proposed development does not reduce access to renewable energy resources.
5. The proposed development shall not be detrimental to the public welfare including the safety and maintenance of the Town's highways.

## **8.7.4 EXPIRATION OF VARIANCE OR WAIVER**

Any variance or waiver approval granted under this Bylaw shall expire two (2) years from the date of the written decision granting such approval unless a zoning permit has been issued by the Zoning Administrator for the approved project.

## **8.7.5 APPEAL OF VARIANCE OR WAIVER**

The approval or denial of a variance or waiver by the ZBA may be appealed to the Environmental Court in a manner as specified in section 4471 of the Act. The approval or denial of a waiver by the Zoning Administrator may be appealed to the ZBA.

## **8.8 SUBDIVISION APPROVAL**

### **8.8.1 APPLICATION FOR SUBDIVISION APPROVAL**

Applications for a subdivision shall be submitted to the Zoning Administrator for presentation to the Planning Commission, and shall include an engineer's plat or an accurate scaled drawing of the proposed subdivision in sufficient detail to determine compliance with this ordinance. The landowner

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should discuss the subdivision plans with the Planning Commission at a Commission meeting prior to submitting an application for a subdivision permit. The location of the proposed development envelope shall be shown on the drawing. A survey, prepared by a licensed surveyor, will be required when the subject lot is 20 acres or less. Subdivision applications shall also include any conditions from prior permits that apply to the land being subdivided, as well as clearly identify what amount of development permissible under the density rule in 3.3 or 3.4 is attached to each new parcel.

## **8.8.2 HEARING FOR SUBDIVISION APPROVAL**

At least one public hearing is required prior to approval of a subdivision plat. See section 8.9 for proper notice.

## **8.8.3 APPROVAL OR DENIAL OF SUBDIVISION APPROVAL**

The Planning Commission must grant or deny the application for a subdivision approval within 45 days of the final hearing or approval will be automatically given on the 46<sup>th</sup> day. Copies of the decision will be promptly mailed to the applicant by certified mail, and by first class mail to every person or body appearing and having been heard at the hearing(s), and also filed with the Zoning Administrator and the Town Clerk.

## **8.8.4 EXPIRATION OF SUBDIVISION APPROVAL**

Any subdivision approval shall expire one year after the date of the written decision granting such approval, unless a mylar version of the approved plat has been recorded in the Benson Town land records, with an endorsement by the Planning Commission which reads as follows: "This subdivision was duly approved as conditioned by the Benson Planning Commission in its decision dated on Month, Date, Year, and meets the requirements of the Benson Zoning and Subdivision Bylaw. Signed \_\_\_\_\_ (Chairman or Vice-Chairman of the Benson Planning Commission.)"

## **8.8.5 APPEAL OF SUBDIVISION APPROVAL**

The approval or denial of a subdivision approval by the Planning Commission may be appealed to the Environmental Court in a manner as specified in section 4471 of the Act.

## **8.9 NOTICE OF PUBLIC HEARINGS**

At least one warned public hearing shall be required for conditional use approval, variances, Zoning Administrator appeals, and final plat review for subdivisions as required by section 4464 of the Act. Notice for a warned public hearing shall be given not less than 15 days prior to the date of the public hearing by all the following:

(A) Publication in a newspaper of general circulation in the Town of the date, place, and purpose of the hearing; and that participation in the hearing is a prerequisite to the right to take any subsequent appeal.

(B) Posting of the same information in three or more public places within the municipality, including the Town Office, and when required within view from the public right-of-way most nearly adjacent to the property for which an application is made. Such outdoors posting shall be of a form as prescribed

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by the Zoning Board of Adjustment, and if within the town right-of-way shall be posted no closer than 7 feet to the traveled surface. Posting on private property outside the right-of way requires landowner permission.

(C) Written notification by first class mail to the applicant and to owners of all properties adjoining the property subject to development, without regard to any public right-of-way. The notification shall include a description of the proposed project and shall be accompanied by information that clearly informs the recipient where additional information may be obtained, and that participation in the hearing is a prerequisite to the right to take any subsequent appeal.

D) Written notification to any relevant neighboring town's clerk, as described in C above, if the proposed subdivision is within 500 feet of that town.

A record of such notice is required, whether undertaken by the Zoning Administrator or the applicant, and shall include a copy of the newspaper notice and a signed certification as to the postings. Proof of the mailings may be either by certified mail, return receipt requested, written notice hand-delivered, or a sworn certificate of service of first class mailing. Costs for all notices will be paid by the applicant.

If additional hearings are needed for additional information, the first hearing may be recessed to a later date and time specified at the first hearing without requiring new notice.

## **8.10 VIOLATIONS AND ENFORCEMENT**

### **8.10.1 VIOLATIONS**

The commencement or continuation of any land development, subdivision or land use which is not in conformance with any provision of this Bylaw shall constitute a violation.

### **8.10.2 NOTICE OF VIOLATION**

Pursuant to §4451 of 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) days written notice by Certified Mail from the Zoning Administrator. The seven-day warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days. A copy of the warning shall be sent to the Chairs of the Selectboard, Planning Commission, and ZBA and placed in that property's permit file.

Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of this bylaw after the seven (7) day notice period and within the next succeeding twelve (12) months.

### **8.10.3 ENFORCEMENT AND FINES**

The Zoning Administrator shall initiate the appropriate legal action in the name of the Town of Benson to enforce the provisions of this Bylaw, 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

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observe any limitations on enforcement proceedings relating to municipal permits and approvals as set forth in the Act.

Any person who violates this Bylaw shall be fined not more \$100 for each offense. Each day that a violation is continued shall constitute a separate offense. In default of payment of the fine, such person shall pay double the amount of such fine. All fines imposed by the Court and collected for violations shall be paid to the Town.

## **ARTICLE IX: DEFINITIONS**

Unless otherwise specifically provided, or unless otherwise clearly required by the context, the words and phrases used herein shall have the meanings indicated below when used in this Bylaw:

- Words, phrases, and terms neither defined herein nor elsewhere in this Bylaw shall have their usual and customary meanings except where the context clearly indicates a different meaning.
- Any interpretation by the Zoning Administrator may be appealed to the Zoning Board of Adjustment. In such cases, the Board shall base its ruling upon the following definitions, State statute, and the need for reasonable and effective implementation of this Bylaw.
- The words and terms used, defined, interpreted or further described in Article IX shall be construed as follows:
  - The particular controls the general;
  - The present tense includes the future tense;
  - Words used in the singular number include the plural, and words used in the plural number include the singular, unless the context clearly indicates the contrary;
  - The phrase "used for" includes "arranged for," "designed for," "intended for," "maintained for," and "occupied for;"
  - The words "shall," "must" and "will" are mandatory; the word "may" is permissive.
  - The word "person" includes a firm, association, organization, partnership, trust, company or corporation, as well as an individual.
  - The word "structure" includes "building."
  - The word "lot" includes "parcel."

For the purposes of this Bylaw, 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 decisions or rulings by the Planning Commission or ZBA that provide further definition shall be maintained as a record to ensure consistent and uniform application of the terms of this Bylaw.

**ABANDONED** – A residential building is defined as abandoned if it is uninhabitable for over one year, unless there were legal circumstances that prevented it from being renovated. Other buildings meant for use will be deemed abandoned if lacking any major structural element customary to that building type, such as a roof, windows, water supply, etc. for more than a year, unless there were legal circumstances that prevented it from being renovated.

**ACCESSORY DWELLING UNIT** - An accessory dwelling unit means an efficiency or one-bedroom apartment that is clearly subordinate to a single-family dwelling; and is either within that dwelling, attached, or in a separate but appurtenant building; and has facilities and provisions for independent

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living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:

- (i) The property has sufficient permitted wastewater capacity.
- (ii) The unit does not exceed 40 percent of the total habitable floor area of the single-family dwelling.
- (iii) Applicable setback, coverage, and parking requirements specified in the bylaws are met.

Accessory dwelling units are not counted in the density requirements.

**ACCESSORY STRUCTURE/USE** - A building customarily incidental and subordinate to the principal building, not suitable for habitation and located on the same lot. A use customarily incidental and subordinate to the principal use.

**Act** – The Vermont Municipal and Regional Planning and Development Act (24V.S.A., Chapter 117)

**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.

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

**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.

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

**BUILDING HEIGHT** – The vertical distance from the building footprint’s average (highest + lowest/2) postconstruction grade to the highest point on the finished building’s roof.

**CENTERLINE** – The centerline of a road shall be the marked centerline if present, and the center of the traveled way if unmarked.

**CHANGE IN USE** – Any alteration in the scale, intensity, type of activity, hours of operation, or physical setting of a use. Examples include, but are not limited to, change from a lumber mill to a lumber retail operation, addition of seating to a restaurant, additional exterior storage of materials, increase in number of employees, etc.

**COMMERCIAL** – see non-residential.

**CONTIGUOUS LAND** – Adjacent parcels of land even if the parcels are separated by a highway right of way.

**DENSITY (Principal Structure or Principal Use)** – Number of acres required for each principal structure or use (existing or to be developed) on lots in existence on the date of adoption.

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**DENSITY (Access)** – Number of feet of road frontage on 22A required for each access (existing or to be developed) to 22A for all lots in existence on the date of adoption.

**DEVELOPMENT** – 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 or fill, the construction of a road or utility, and any change in the use of any building or other structure, or land or extension or use of land.

**DEVELOPMENT ENVELOPE** – A specific area on a lot within which structures are to be located.

**DISCONTINUED** – A use shall be deemed discontinued if it is changed to any other use for any period of time, ceases operation for more than 2 consecutive years (unless it can be shown to the satisfaction of the Planning Commission there are efforts to resume use), or the building that houses the use is abandoned for more than one year..

**EXCAVATION** – The removal of earthen or stone material by machinery.

**FARM STRUCTURE** - A building, enclosure, or fence for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with accepted agricultural or farming practices, including a silo, as “farming” is defined in subdivision 6001(22) of Title 10, but excluding a dwelling for human habitation.

**FENCE** – Except as is incidental to an accepted agricultural practice, any structure or earth berm over 6 feet in height which has the effect of creating a barrier to visibility or access.

**FILL** – Earthen or stone material placed on the ground over 20 yards in amount.

**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.

**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.

**FOOTPRINT** - That surface area covered by a building, including areas covered by porches or decks.

**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 SETBACK** - The shortest distance from the centerline of the traveled road to the nearest portion of the building. If the applicant can prove that the physical centerline is not the same as that of the right-of-way, then the centerline of the right-of way-may be used.

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

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**HOME OCCUPATION** – Commercial activities conducted within less than 50% of the floor area of a dwelling or accessory building, which is clearly secondary to the dwelling's use as living quarters, is customary in residential areas and does not have an undue adverse effect on the character of the neighborhood. Adherence to the standards in sections 3.1 and 6.1(1-3) is required. The operator of the business must reside on the premises and only up to two other employees are allowed. Parking spaces for employees are required, and at least two additional spaces are required if the business caters to the public. Permanent outdoor storage or display is prohibited. Signs may be no larger than 6 square feet and may not be internally or externally lit.

**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. All lots created after the date of adoption of this bylaw must have the required minimum area, dimensions and access. Where a lot is divided by a town highway or the Hubbardton River, it shall be deemed to be separate lots for the purposes of this bylaw if the resulting lots meet the minimum dimensions as described in section 8.5.2. A deed may describe one or more lots. Multiple lots described in a single deed remain separate lots provided they are described as having separate and distinct boundaries and any subsequent deed describing the lot does not eliminate the separate and distinct boundaries.

**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, measured at right angles to the centerline, from the centerline of the traveled portion of the Town road, state road or right-of-way to the closest point of the rear lot line.

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

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

**MANUFACTURED HOME** - see Mobile Home for definition of mobile home. There are no specific requirements applicable only to modular housing or prefabricated housing.

**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.

**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 or contiguous land, under single ownership, on which three or more mobile homes are parked and occupied for living purposes. Mobile Home Park does not mean any parcel of land under ownership of an agricultural employer who may provide up to four mobile homes used by full time workers or employees of the agricultural employer as a benefit or condition of employment or land used solely on a seasonal basis for vacation or recreational homes.

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**MULTIPLE UNIT DWELLING** - A building designed for occupancy by two, three, or four families living independently of each other in individual dwelling units.

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

**NONCONFORMING LOTS** - Lots or parcels that do not conform to the present bylaws covering dimensional requirements but were in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a lot or parcel improperly authorized as a result of error by the administrative officer.

**NONCONFORMING STRUCTURE** - A structure or part of a structure that does not conform to the present bylaws but was in conformance with all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a structure improperly authorized as a result of error by the administrative officer.

**NONCONFORMING USE** - Any use of land that does not conform to the present bylaws but did conform to all applicable laws, ordinances, and regulations prior to the enactment of the present bylaws, including a use improperly authorized as a result of error by the administrative officer.

**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.

**OPEN LANDS** - Meadow, pasture, cropland or other land that is free of substantial woody vegetation and at least 5 acres in size.

**OPEN SPACE** – Undeveloped lands.

**ORIGINAL** – As it existed on the date of adoption of this bylaw.

**PARKING** - Parking spaces outside of the right-of-way 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.

**PRINCIPAL STRUCTURE** - A dominant building, the use of which is fundamental and superior to any other use of the land or the lot. This includes single and multifamily dwellings. Secondary and accessory dwellings separate from the principal structure are not included in the density calculations.

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

**REAR YARD SETBACK**- The shortest distance between the rear lot line and the nearest portion of any structure on that lot.

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**ROAD** - Public or private way for vehicular traffic, which affords the principal means of access to properties.

**SEASONAL SHELTER** - Cabin, trailer, shelter or other accommodation suitable for seasonal or temporary living purposes with no internal plumbing except for a sink. Seasonal shelters cannot be converted to a dwelling unit without a Zoning Permit and Conditional Use Approval.

**SECONDARY DWELLING UNIT**– A single dwelling unit within a separate structure or a part of an accessory structure with a footprint no greater than 2,000 square feet and on a lot of 4 acres or more that already has a primary dwelling unit.

Secondary dwellings may be sold independently of the primary dwelling only if they and the primary fully comply with this Bylaw, including that each must have a minimum of 2 acres of land deeded with them, and each must comply with the density requirements. Secondary dwellings that do not fully comply with this bylaw cannot be sold separately from the primary residence, and do not count in the density requirements. No primary residence may have more than one secondary dwelling unit associated with it. A dwelling with a footprint exceeding 2000 square feet is considered a primary dwelling unit, and must be subdivided from the original lot and must fully comply with all density, subdivision and other provisions of this bylaw.

**SETBACK** – The minimal horizontal distance an item, such as a structure, needs to be from a lot line.

**SIDE YARD SETBACK** – The shortest distance between any structure and a side lot line.

**SIGNS** - Any outdoor structure, display, device or representation, freestanding or attached to a structure, 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, AREA CALCULATION** - The entire area within 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 any one visible faces or panels shall be included in determining the total area of the sign, except on two-sided signs.

**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.

**SINGLE DWELLING UNIT** - A private residential building or part thereof with living quarters for one household, including provisions and facilities for food preparation, sleeping and sanitation. There shall be no regulatory distinction made between modular, mobile or site built homes.

# Town of Benson Zoning Ordinance

**STRUCTURE** - An above grade assembly of materials for occupancy or use, including, but not limited to, a building, accessory structure, mobile home or trailer, wall or fence (except a wall or fence on an operating farm, or a fence mutually created or maintained on a lot line).

**TREE** – Any woody plant greater than 2 inches at 5 feet from the ground (dbh).

**UNDUE ADVERSE EFFECT** – A negative effect which is offensive, shocking, out of character, or significantly diminishing to the relevant resource.

**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.

**ZONING ADMINISTRATOR** – This term shall also include the Acting Zoning Administrator, when acting in their capacity if such is appointed in accordance with statute..

**ZONING BOARD OF ADJUSTMENT (ZBA)** – If the town changes to a system with a Development Review Board, then this term shall also mean Development Review Board.

Adopted: \_\_\_\_\_

Posted & Published: \_\_\_\_\_

**EFFECTIVE DATE:** \_\_\_\_\_

Chairman: \_\_\_\_\_

Selectboard:

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\_\_\_\_\_  
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