

Town of Westfield **Zoning Bylaw**

Adopted January 13, 2010

TOWN OF WESTFIELD, VERMONT
ZONING BYLAW

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ARTICLE 1: ENACTMENT AND INTENT

§101: Enactment

In accordance with the Vermont Municipal and Regional Planning and Development Act, 24 VSA, Chapter 117, §4401, there is hereby established this Zoning Bylaw for the Town of Westfield which is set forth in the text and map that constitute this bylaw. This bylaw shall be known and cited as the "Town of Westfield Zoning Bylaw."

§102: Intent

It is the intent of this Zoning Bylaw to provide for orderly community growth, to further the purposes established in 24 VSA, §4302 and to implement the Town Plan.

ARTICLE 2: ESTABLISHMENT OF DISTRICTS AND DISTRICT REGULATIONS

§201: Establishment of Zoning Districts and District Boundaries

The Town of Westfield is hereby divided into the following Zoning Districts as shown on the Town Zoning Map and defined herein:

VILLAGE DISTRICTS

District Boundaries: Four points define the boundaries: Route 100 North from the Town Garage to Route 100 South, house #146; School Street to house #38; and North Hill Road to Bessett Road. The district extends as a 400 foot buffer in each direction from the centerlines of Route 100 and North Hill Road.

RECREATIONAL-RESIDENTIAL DISTRICTS

District Boundaries: The northwest corner of Town following a buffer of 1500 feet south from the centerline of Route 242, west to the border of Montgomery and north to the border of Jay. The area known as Alpine Haven in the northwest section of town and north of Route 242 is entirely within this district (see map) . Also in the northeastern portion of Town as a buffer following Route 100 North and North Hill Road. The boundary of North Hill Road will extend 200 feet from the centerline of the road both eastward and westward, beginning from the village district boundary (Bessette Road) and ending at the border of Jay. The boundary of Route 100 North will extend 200 feet from the centerline of the road both northward and southward, beginning from the village district boundary (Town Garage) and ending at the border of Troy.

RURAL-AGRICULTURAL DISTRICTS

District Boundaries: All other land in the Town including the areas of Buck Hill, Route 58, the remainder of the Kennison Road and the Loop Road that are not already in the Recreation-Residential district, Route 100 South from the border of the Village district (house #1465, VT Rte 100) and all other land in-between.

§202: Zoning Map and Interpretation of District Boundaries

District boundaries shown within the lines of roads, streams and transportation rights-of-ways shall be deemed to follow the center-lines. The abandonment of roads shall not affect the location of district boundaries. When the Administrative Officer cannot definitely determine the location of a district boundary by such center lines, by the scale or dimensions stated on the zoning map, or by the fact that it clearly coincides with a property line, he or she shall refuse action, and the Planning Commission shall interpret the location of the district boundary with reference to the scale of the zoning map and the purposes set forth in all relevant provisions of this bylaw.

§203: Application of Regulations

The application of these regulations is subject to 24 VSA, Chapter 117. Except as hereinafter provided, no building or structure shall be erected, moved, altered or extended, and no land, building or structure or part thereof, shall be occupied or used unless in conformity with the regulations herein specified for the district in which it is located. Any use not permitted by this bylaw shall be deemed prohibited.

§204: Zoning Districts

The district tables for the zoning districts established in §201 appear on the next three pages. These tables set forth the list of permitted and conditional uses as well as the minimum lot area and dimensional requirements for development in each of the districts.

204.01 Village District

Objective: To maintain the current character of the Village of Westfield as well as to provide for future development.

Permitted Uses:

- | | |
|-----------------------------|---------------------------------|
| 1. Accessory use/structure | 6. Forestry ¹ |
| 2. Agriculture ¹ | 7. Home occupation |
| 3. Dwelling, accessory | 8. Public facility ⁴ |
| 4. Dwelling, one family | 9. Religious uses ⁴ |
| 5. Dwelling, two family | 10. School ⁴ |

Conditional Uses:

- | | |
|------------------------------|---|
| 1. Bank | 12. Group home ⁵ |
| 2. Cemetery | 13. Personal wireless telecommunications facilities |
| 3. Child care | 14. Professional offices |
| 4. Community center | 15. Restaurant/bakery |
| 5. Dwelling, multiple family | 16. Retail sales/service |
| 6. Essential services | 17. Self storage units |
| 7. Fuel distribution | 18. Temporary structures/uses |
| 8. Funeral home | 19. Wind energy conversion systems |
| 9. Gas station | |
| 10. Light manufacturing | |
| 11. Mobile home parks | |

Minimum Lot Area and Dimensional Requirements

Lot area (acres) ² :	0.5
Lot frontage (feet):	100
Lot depth (feet):	100
Front yard (feet):	50
Side yards (feet):	20
Rear yard (feet):	30
Building height maximum for accessory uses (feet) ³ :	15
Building height maximum for all other structures (feet) ³ :	35

¹ See §323: Agriculture and Forestry

² Acre is defined as 43,560 square feet

³ See §329: Structures Exempt from Maximum Height Requirements

⁴ These uses may be exempt from zoning regulation under 24 VSA, §4413

⁵ This use may be considered a permitted use in accordance with 24 VSA, §4412 (G).

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204.02 Recreation-Residential District

Objective: To provide an area within the Town of Westfield to allow for the development of residential and recreational land uses while maintaining the rural character of these areas.

Permitted Uses:

- | | |
|------------------------------|--------------------------------|
| 1. Accessory use/structure | 6. Dwelling, two family |
| 2. Agriculture ¹ | 7. Forestry ¹ |
| 3. Commercial accommodations | 8. Home occupation |
| 4. Dwelling, accessory | 9. Religious uses ⁴ |
| 5. Dwelling, one family | |

Conditional Uses:

- | | |
|--|------------------------------------|
| 1. Camp ground | 9. Professional offices |
| 2. Child care | 10. Public assembly ⁴ |
| 3. Club, private | 11. Restaurant/bakery |
| 4. Dwelling, multiple family | 12. Retail sales/service |
| 5. Earth resource removal | 13. Temporary structures/uses |
| 6. Light manufacturing | 14. Wind energy conversion systems |
| 7. Outdoor recreation | |
| 8. Personal wireless telecommunications facilities | |

Minimum Lot Area and Dimensional Requirements

Lot area (acres) ² :	1
Lot frontage (feet):	150
Lot depth (feet):	150
Front yard (feet):	50
Side yards (feet):	20
Rear yard (feet):	30
Building height maximum for accessory uses (feet) ³ :	15
Building height maximum for all other structures (feet) ³ :	35

¹ See §323: Agriculture and Forestry

² Acre is defined as 43,560 square feet

³ See §329: Structures Exempt from Maximum Height Requirements

⁴ These uses may be exempt from zoning regulation under 24 VSA, §4413

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204.03 Rural-Agricultural District

Objective: To provide for the continuation and expansion of Westfield's farms.

Permitted Uses:

- | | |
|------------------------------|---------------------------------|
| 1. Accessory use/structure | 6. Dwelling, two family |
| 2. Agriculture ¹ | 7. Dwelling, multiple family |
| 3. Commercial accommodations | 8. Forestry ¹ |
| 4. Dwelling, accessory | 9. Home occupation |
| 5. Dwelling, one family | 10. Religious uses ⁴ |

Conditional Uses:

- | | |
|--|-----------------------------------|
| 1. Camp ground | 6. Self storage units |
| 2. Child care | 7. Temporary structures/uses |
| 3. Earth resource removal | 8. Mobile Home Park |
| 4. Light manufacturing | 9. Wind energy conversion systems |
| 5. Personal wireless telecommunications facilities | |

Minimum Lot Area and Dimensional Requirements

Lot area (acres) ² :	2
Lot frontage (feet):	150
Lot depth (feet):	150
Front yard (feet):	50
Side yards (feet):	20
Rear yard (feet):	30
Building height maximum for accessory uses (feet) ³ :	15
Building height maximum for all other structures (feet) ³ :	35

¹ See §323: Agriculture and Forestry

² Acre is defined as 43,560 square feet

³ See §329: Structures Exempt from Maximum Height Requirements

⁴ These uses may be exempt from zoning regulation under 24 VSA, §4413

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§205: Limitations on Municipal Bylaws

In accordance with 24 V.S.A. § 4413:

205.01 The following uses may be regulated only with respect to location, size, height, building bulk, yards, courts, setbacks, density of buildings, off-street parking, loading facilities, traffic, noise, lighting, landscaping, and screening requirements, and only to the extent that regulations do not have the effect of interfering with the intended functional use:

- (1) State- or community-owned and operated institutions and facilities.
- (2) Public and private schools and other educational institutions certified by the state Department of Education.
- (3) Churches and other places of worship, convents, and parish houses.
- (4) Public and private hospitals.
- (5) Regional solid waste management facilities certified under 10 V.S.A. Chapter 159.
- (6) Hazardous waste management facilities for which a notice of intent to construct has been received under 10 V.S.A. § 6606a.

205.02 This bylaw shall not regulate public utility power generating plants and transmission facilities regulated under 30 V.S.A. § 248.

205.03 Except as otherwise provided by 24 V.S.A. § 4413 and by 10 V.S.A. § 1976, any bylaw enacted with respect to any land development that is subject to regulation under state statutes, the more stringent or restrictive regulation applicable shall apply.

205.04 This bylaw shall be subject to the restrictions created under section 2295 of this title, with respect to the limits on municipal power to regulate hunting, fishing, trapping, and other activities specified under that section.

205.05 In accordance with 24 V.S.A. §4446, This bylaw may exempt “any land development determined to impose no impact or merely a de minimus impact on the surrounding area and the overall pattern of land development.” The following activities do not require application for a zoning permit:

- Normal maintenance and repair of an existing structure which do not result in expansion or a change of use.
- Interior alterations or repairs to a structure which do not result in expansion or a change in use.
- Minor grading and excavation associated with road and driveway maintenance (e.g., including culvert replacement and resurfacing), and lawn and yard maintenance (e.g., for gardening or landscaping), or which is otherwise incidental to an approved use. This specifically does not include extraction and quarrying activities regulated under Section 313.
- Dog houses or chicken coops.

§206: Other Land Use and Relevant Regulations

State and federal government may regulate certain aspects of land use; compliance with this zoning bylaw in no way implies compliance with such state or federal regulations. Such regulations include, but are not limited to: on-lot sewage systems and outdoor furnaces, regulated by the Agency of Natural Resources; underground storage tanks, regulated by the Department of Environmental Conservation; and setback of farm structures, regulated by the Secretary of Agriculture, Food and Markets.

ARTICLE 3: GENERAL REGULATIONS

§301: Existing Small Lots

- 301.01 Any lot that is legally subdivided, is in individual and separate and nonaffiliated ownership from surrounding properties, and is in existence on the effective date of this zoning bylaw may be developed for the purposes permitted in the district in which it is located, even though such small lot does not conform to the minimum lot size requirements of this bylaw, if such lot is not less than one-eighth acre in area or has a minimum width or depth dimension of less than forty feet.
- 301.02 If an existing small lot subsequently comes under common ownership with one or more contiguous lots, the existing small lot shall be deemed merged with the contiguous lot. However, an existing small lot shall not be deemed merged and may be separately conveyed if all the following apply:
- A. The lots are conveyed in their preexisting, nonconforming configuration.
 - B. On the effective date of this bylaw, each lot was developed with a water supply and wastewater disposal system.
 - C. At the time of transfer, each water supply and wastewater system is functioning in an acceptable manner.
 - D. The deeds of conveyance create appropriate easements on the existing small lots being conveyed for the replacement of one or more wastewater systems, potable water systems, or both, in the event there is a failed system or failed supply as defined in 10 VSA chapter 64.

§302: Required Frontage on or Access to Public Roads

Land development may be permitted on lots which do not have frontage on a public road provided that access through a permanent easement or right-of-way has been approved by the Planning Commission in accordance with the following standards:

- 302.01 The width of the right-of-way providing access to the land locked parcel shall be at least 50 feet in width.
- 302.02 The private right-of-way shall intersect the public right-of-way as nearly as possible at a 90 degree angle, but in no case less than 60 degrees, and provide a clear line of site of at least 300 feet in each direction along the public road.
- 302.03 The grade of the private right-of-way shall not exceed 5% within 50 feet of the traveled portion of the public right-of-way.
- 302.04 A culvert with a minimum diameter of 12 inches shall be installed when deemed necessary by the Town Road Commissioner or Forman where the access meets the public road. When deemed necessary a larger culvert may be required. At least 12 inches of fill shall be placed over the culvert.

- 302.05 All access drives fronting upon a paved road shall have a paved apron of at least 2 feet from the edge of the traveled portion of the right-of-way.
- 302.06 All access drives shall be at least 150 feet from any intersection involving two or more public streets.
- 302.07 Prior to the construction of a driveway, a public highway access permit shall be obtained as required by 19 VSA, § 1111(b).

§303: Protection of Home Occupations

No bylaw may infringe upon the right of any resident to use a minor portion of a dwelling unit for an occupation that is customary in residential areas and that does not have an undue adverse effect upon the character of the residential area in which the dwelling is located.

§304: Lots in Two Zoning Districts

Where a district boundary line divides a lot of record at the time such line is adopted, the regulations for the less restricted part of such lot shall extend not more than thirty (30) feet into the more restricted part, provided the lot has frontage on a street in the less restricted district.

§305: Structures on Lots

There shall be only one (1) principal building on a lot.

§306: Reduction of Lot Area

No lot shall be so reduced in area that the area, yards, lot width, frontage, coverage or other requirements of this bylaw shall be smaller than herein prescribed for each district. The provisions of this section shall not apply when part of a lot is taken for public purpose.

§307: Required Area or Yards

Space required by this bylaw to satisfy area, yard, or other open space requirements in relation to one building shall not be counted as part of a required open space for any other building.

§308: New and Abandoned Structures

- 308.01 All new structures, construction of which is commenced after the effective date of this Zoning Bylaw, must be completed within twenty-four (24) months from the issuance of a permit hereunder.
- 308.02 Within one year after a building or structure has been destroyed, demolished or abandoned, all structural materials shall be removed from the site, and the excavation thus remaining shall be covered over or filled to the normal grade by the owner.

§309: Junkyards

Junkyards, junky yards, and the storage of junk motor vehicle shall be prohibited in the Town of Westfield.

§310: Off-Street Loading Space Requirements

For every building hereafter erected, altered, extended, or changed in use for the purpose of business, trade or industry, there shall be provided one (1) paved off-street loading space for every ten thousand (10,000) square feet of floor space.

§311: Off-Street Parking Space Requirements

Off-street parking shall be provided as follows: 2 spaces per single dwelling unit; 1 space per accessory dwelling unit; and 1.5 spaces per unit of a multi-unit dwelling. Off-street parking for all other permitted uses must be approved under Site Plan Review; and off-street parking for all other conditionally permitted uses under Conditional Use Review.

§312: Signs

No signs shall be permitted in any district except as specifically permitted herein.

312.01 The following signs are permitted when located on the immediate property:

- A. One (1) professional or home occupation sign, not exceeding four (4) square feet.
- B. One (1) temporary real estate sign, not exceeding six (6) square feet.
- C. Signs identifying any permitted non-residential use.
- D. Signs necessary for public welfare.

312.02 The following signs shall not be permitted in any district:

- A. Flashing, oscillating or revolving signs.
- B. Roof signs.
- C. Free standing signs in excess of twenty (20) feet high.
- D. Signs which impair public safety.

312.03 Wall, Projecting, Ground and Roof Signs

- A. Every wall sign shall:
 - 1. Not exceed the highest point of the building's roof.
 - 2. Not exceed thirty-two (32) square feet in area.
- B. Every projecting sign shall:
 - 1. Not extend within a highway right-of-way.
 - 2. Not extend horizontally more than four (4) feet from the building wall.
 - 3. Not be less than ten (10) feet above the surface of a public walking area.
 - 4. Not exceed twenty (20) square feet in area.
- C. Every ground sign shall:
 - 1. Not exceed twenty (20) feet in height above the finished grade.
 - 2. Be set back at least five (5) feet from the edge of the right-of-way, and at least ten (10) feet from any other lot line.
 - 3. Not exceed twenty (20) square feet in area.

312.04 Computation of permissible sign area. When computing the total permissible sign area for any use:

- A. Existing signs shall be included.
- B. A business may have more than one (1) sign, however, the total area of all of the signs on any given property shall not exceed seventy-five (75) square feet.
- C. Signs consisting of free standing letters, numerals, or other devices shall include any intervening space between them.

312.05 Traffic hazard, safety and obstruction. Every sign shall be designed and located in such a manner as to:

- A. Not impair public safety.
- B. Not restrict clear vision between a sidewalk and a street.
- C. Not be confused with any traffic sign or signal.
- D. Not prevent free access to any door, window or fire escape.
- E. Withstand a wind pressure load of at least thirty (30) pounds per square foot.

312.06 Illuminated and flashing signs:

- A. Signs may be illuminated by a steady light provided that such lighting will not illuminate or reflect onto other properties.
- B. Flashing, oscillating and revolving signs shall not be permitted, unless necessary for public safety or welfare.

§313: Extraction of Soil, Sand and Gravel

The removal of soil, sand or gravel for sale shall be permitted only upon approval of a plan for the rehabilitation of the site by the Planning Commission and the posting of a bond to assure rehabilitation.

§314: Landfill

In any district, the dumping of refuse and waste material for landfill is prohibited. Only loam, soil, rock, stone, gravel, sand, cinders, and other inert materials may be used for landfill to grades approved by the Planning Commission. The finished grade of such filling shall not exceed a grade of 1:1.5 (rise to run) and shall be seeded or lined with rip rap to avoid erosion. Such filling shall require conditional use approval and shall not commence prior to the issuance of a permit by the Administrative Officer.

§315: Landscaping and Screening Requirements

Landscaping may be required under site plan review for screening and/or stormwater management purposes. When required, landscaping shall be installed and maintained in front, side and/or rear yards, shall take the form of shade trees, deciduous shrubs, evergreens, grassed areas and ground cover. All such landscaping shall be maintained in a healthy, growing condition, with ground cover or grassed area.

In any district, any area designated, used or intended to be used as a service area for any building or land use; other than one family and two family dwellings; shall be screened from view with either a wall, a solid fence or a fence of evergreens at a height of at least five feet above grade level on all sides where the adjacent land is in a residential district or residential use.

§316: Mobile Home Parks

No person shall construct or operate a mobile home park without first obtaining site plan and conditional use approval from the Planning Commission and a permit from the Administrative Officer. Before issuing a mobile home park permit, a performance bond shall be obtained from the operator to assure that the park is constructed in a satisfactory manner.

Application for a mobile home park site approval shall be made to the Planning Commission. The application shall be accompanied with a site plan and drawings showing property lines, area, contours, showing any proposed grading, roads, walkways, lots, parking, water lines, sanitary sewer and storm sewer drainage facilities, garbage collection stations and electrical distribution.

The following regulations shall apply to all mobile homes in mobile home parks:

316.01 Mobile home park area, not less than five (5) acres, with ten (10) percent of total area for recreational purposes.

316.02 Mobile home lots shall be at least eight thousand (8,000) square feet in area, with a minimum width of at least sixty (60)

316.03 Access driveways shall have a right-of-way at least fifty (50) feet wide and a compacted gravel surface that is at least twenty-four (24) feet wide and twelve (12) inches deep.

316.04 Parking, at least two (2) spaces for each lot.

316.05 A strip of land at least fifty (50) feet in width shall be maintained as a landscaped area abutting all mobile park property lines.

316.06 No mobile home shall be parked on a lot closer than ten (10) feet to a lot line.

316.07 No additions shall be made to a mobile home except a canopy, an enclosed porch, or an addition made by a mobile home manufacturer.

316.08 Not more than two (2) accessory buildings will be permitted per mobile home.

§317: Camp Grounds

317.01 No person or persons shall construct or operate a camp ground without first obtaining site plan approval from the Planning Commission and a permit from the Administrative Officer. Before issuing a camp ground permit, a performance bond shall be obtained from the operator to assure the camp is maintained in a satisfactory manner.

317.02 Application for a camp ground site plan approval shall be made to the Planning Commission. The application shall be accompanied with a site plan

and drawings showing property lines, area, contours, roads, walkways, lots, parking, water lines, sanitary sewer and storm drainage facilities, garbage collection stations and electrical distribution.

- 317.03 All State permits must be acquired by the developer; however, the Town of Westfield cannot condition the issuance of a zoning permit upon the issuance of State permits.

§318: Flood Hazard Area Regulations

318.01 Lands to Which These Regulations Apply:

These regulations shall apply for development in all areas in the Town of Westfield identified as areas of special flood hazard on the National Flood Insurance Program maps which are hereby adopted by reference and declared to be part of these regulations.

318.02 Conditional Use Permit Required

- A. All development including fill, excavation, grading, erection or placement of structures and storage of equipment and material prescribed by the Town of Westfield Zoning Bylaw are permitted within an area of special flood hazard only upon the granting of a conditional use permit by the Board of Adjustment.
- B. Prior to issuing a permit for the construction of new buildings, the substantial improvement of existing buildings, or for development in the floodway, a copy of the application shall be submitted to the Vermont Agency of Natural Resources, Flood Plain Management Section in accordance with 24 VSA, §§4424(D). A permit may be issued only following receipt of comments from the Agency or the expiration of thirty (30) days from the date the application was mailed to the Agency, whichever is sooner.
- C. Adjacent communities and the Vermont Agency of Natural Resources shall be notified at least fifteen (15) days prior to issuing any permit for the alteration or relocation of a watercourse and copies of such notification shall be submitted to the of the Federal Insurance Administration.
- D. Proposed development shall be reviewed to assure that all necessary permits have been received from those government agencies from which approval is required by Federal, State or Municipal law.

318.03 Conditional Use Review Procedures

- A. Upon receiving an application for a conditional use permit under these regulations, the Board of Adjustment shall, prior to rendering a decision thereon:
 - 1. Obtain from the applicant:
 - a. The elevation (in relation to mean sea level) of the lowest floor, including basement, of new buildings or buildings to be substantially improved;

- b. Where flood proofing is proposed, the elevation (in relation to mean sea level) to which the building will be flood proofed;
 - c. Plans drawn to scale showing the existing and proposed land contours, buildings, structures, streams, roads and other pertinent physical features;
 - d. Base flood elevation data for subdivisions and other proposed development which contain at least 50 (fifty) lots or 5 (five) acres (whichever is the smaller);
 - e. Such other information deemed necessary by the Board of Adjustment for determining the suitability of the site for the proposed development.
 - 2. Obtain from the Vermont Water Resources Board or other state or federal agencies any available base flood elevation data.
- B. In reviewing each application, the Board of Adjustment shall consider:
- 1. The evaluation of the Vermont Water Resources Board.
 - 2. The availability of alternative locations not subject to flooding for the proposed use.
 - 3. The susceptibility of the proposed improvement to flood damages.
 - 4. The safety of access to the property in times of flood for ordinary and emergency vehicles.
 - 5. The potential for damage to the property caused by erosion.
 - 6. The danger that materials may be swept onto other lands and cause damage to others.
 - 7. Such other factors as are relevant to the purposes of this bylaw.
- C. The Board of Adjustment may grant a conditional use permit for development provided:
- 1. All necessary permits are obtained from those governmental agencies from which approval is required by Federal or State law.
 - 2. The development standards of 320.05 are met or exceeded.

318.04 Base Flood Elevations and Floodway Limits

- A. Where available (i.e., Zone 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 and enforce these regulations.
- B. In areas where base flood elevations and floodway limits have not been provided by the National Flood Insurance Program (i.e. Zone A) base flood elevations and floodway information available from State or Federal agencies or other sources, shall be obtained and reasonably utilized to administer and enforce these regulations.

318.05 Development Standards

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

B. Fringe Areas: (i.e., flooded areas outside of the floodway)

1. All development shall be designed:
 - a. To minimize flood damage to the proposed development and to the public facilities and utilities, and;
 - b. To provide adequate drainage to reduce exposure to flood hazards.
2. Structures shall be:
 - a. Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure during the occurrence of the base flood;
 - b. Constructed with materials resistant to flood damage;
 - c. Constructed by methods and practices that minimize flood damage, and;
 - d. 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. On-site 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 above the base flood elevation.
7. The lowest floor, including basement, of all new buildings shall be at or above the base flood elevation.
8. Existing buildings to be substantially improved for residential purposes shall be modified or elevated to meet the requirements of 320.05 (B) (7).

9. Existing buildings to be substantially improved for non-residential purposes shall either:
 - a) Meet the requirements of 320.05 (b) (8), or;
 - b) 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 effects of buoyancy. A permit for a building proposed to be flood proofed shall not be issued until a registered professional engineer or architect has reviewed the structural design, specification 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.
10. 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. A minimum of two (2) 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;
 - b. The bottom of all openings shall be no higher than one (1) foot above grade;
 - c. Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.
11. Recreational Vehicles placed on sites within Zones A1-A30, AH and AE shall either:
 - a. Be on the site for fewer than 180 consecutive days;
 - b. Be fully licensed and ready for highway use, or;
 - c. Meet all standards of Section 60.3 (b)(1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for “manufactured homes” of Section 60.3 (c)(6).

318.06 Duties and Responsibilities of the Administrative Officer

The Administrative Officer shall maintain a record of:

- A. All permits issued for development in areas of special flood hazard.
- B. The elevation, in relation to mean sea level, of the lowest floor, including basement, of all new or substantially improved buildings.
- C. The elevation, in relation to mean sea level, to which buildings have been flood proofed.
- D. All flood proofing certifications required under this regulation.

E. All variance actions, including justification for their issuance.

318.07 Variances to the Development Standards

Variances shall be granted by the Board of Adjustment only:

- A. In accordance with the provisions of 24 VSA, §4469 and §4424(E) and in accordance with the criteria for granting variances found in 44 CFR, §60.6, of the National Flood Insurance Program Regulations.
- B. Upon a determination that during the base flood discharge the variance will not result in increased flood levels.
- C. Upon a 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.

318.08 Warning of Disclaimer of Liability

These regulations do not imply that land outside the areas of special flood hazard or land uses 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 Westfield or any official or employee thereof for any flood damages that result from reliance on this bylaw or any administrative decision lawfully made hereunder.

§319: Dwelling Units Above Businesses

In any district, businesses that have more than one (1) floor may have no more than two (2) dwelling units on the floors above the ground floor.

§320: Alpine Haven Well Head Protection Area and the Westfield Water System

No land development shall occur within a two hundred (200) foot radius of the Alpine Haven Well. No land development shall occur within a two hundred (200) foot radius of the source of the Westfield Water System.

§321: Agriculture and Forestry

321.01 Nothing contained herein shall restrict accepted agricultural or farming practices, or accepted silvicultural practices, including the construction of farm structures, as such practices are defined by the Commissioner of Agriculture, Food and Markets or the Commissioner of Forests, Parks and Recreation, respectively, under 10VSA, §§1021(f) and 1259(f) and 6 VSA, §4810.

321.02 Zoning permits need not be obtained for farm structures. However, any landowner proposing to erect a farm structure shall notify the Administrative Officer or the Town Clerk of such intent prior to the erection of such structure. The notification shall be in writing and shall contain a sketch of the proposed structure including the setbacks from adjoining property lines and road right-of-ways.

321.03 Farm structures shall comply with setbacks approved by the Commissioner of Agriculture, Food and Markets. The approved setbacks are those setbacks contained in §205 of this bylaw.

321.04 A person proposing to construct a farm structure with setbacks less restrictive than those contained herein shall submit, in writing, a request for a variance to the Commissioner of Agriculture, Food and Markets. Such request must include the following information:

- A. A statement of the reason or reasons less restrictive setbacks are necessary;
- B. A copy of this zoning bylaw;
- C. A sketch plan of the proposed structure(s) showing the distance from all property lines, and;
- D. A description of the adjoining land uses.

§322: Fences

Fences shall not be subject to the setbacks established by tables 205.01 to 205.03. However, fences shall be at least one (1) foot from the edge of the Right-of-Way and all other property lines.

§323: Waterway Setbacks and Vegetated Buffer Strip

The minimum setback distance from the top of the bank of all waterways buildings or other structures will be fifty (50) feet. A buffer strip of undisturbed vegetation shall be left along all waterways, with the use of native vegetation in the landscaping encouraged. No activity may destabilize the shoreline. Cutting and removal of vegetation in the area parallel to all points along the shoreline and extending fifty (50) feet inland from the top of the bank is not allowed except as follows:

- a) Removal of dangerous dead or dying trees is allowed;
- b) A path no more than ten (10) feet wide is permitted for shoreline access. The path should not be in a straight line parallel to the slope such that it creates a conduit for runoff.

§324: Telecommunication Facilities

324.01 Purposes: The purposes of this bylaw are to advance the objectives of the Westfield Town Plan, to protect the public health, safety and general welfare of the Town of Westfield, and to accommodate the communication needs of the community. This bylaw shall:

- A. Preserve the character and appearance of the Town of Westfield while allowing adequate telecommunications services to be developed.
- B. Protect the scenic, historic, environmental and natural resources of the Town of Westfield.

- C. Provide standards and requirements for the operation, siting, design, appearance, construction, monitoring and removal of telecommunications facilities and towers.
- D. Minimize tower and antenna proliferation by requiring the sharing of existing telecommunications facilities, towers and sites where possible and appropriate.
- E. Facilitate the provision of telecommunications services to the community.
- F. Minimize the adverse visual effects of telecommunications facilities and towers through careful design and siting standards.
- G. Encourage the location of towers and antennas in non-residential areas and away from other sensitive areas such as those that have schools and child care facilities.

324.02 Authority: Pursuant to 24 V.S.A. § 4401 et seq. the Planning Commission of the Town of Westfield is authorized to review, approve, conditionally approve, and deny applications for wireless telecommunications facilities, including sketch, preliminary and final plans, and installation. Pursuant to 24 V.S.A. § 4461(c), the Board is authorized to hire qualified persons to conduct an independent technical review of applications and to require the applicant to pay for all reasonable costs thereof.

324.03 Consistency with Federal Law: In addition to other findings required by this bylaw, the Board shall find that its decision regarding an application is intended to be consistent with federal law, particularly the Telecommunications Act of 1996. The bylaw does not:

- A. Prohibit or have the effect of prohibiting the provision of personal wireless services;
- B. Unreasonably discriminate among providers of functionally equivalent services; or
- C. Regulate personal wireless services on the basis of the environmental effects of radio frequency emissions to the extent that the regulated services and facilities comply with the Federal Communications Commission (FCC) regulations concerning such emissions.

324.04 Limitations: In accordance with 24 V.S.A. §4412(8), no permit shall be required for the placement of communication antennae and facilities used to transmit, receive, or transmit and receive communications signals on a property owner's premises if the aggregate area of the largest faces of the antennae is not more than eight square feet, and if the antennae and any mast support does not extend more than 12 feet above the roof of that portion of the building to which the mast is attached.

324.05 De Minimis Impacts: In accordance with 24 V.S.A. §4412(9), the Zoning Administrator shall review telecommunications facilities applications, and upon determining that a particular application will impose no impact or de minimis impact upon any criteria established in this bylaw, shall approve the application.

324.06 Permitted and Prohibited Locations: The following locations are ranked in order of preference and are encouraged:

- A. Personal wireless telecommunication facility sites that are most distant from single-family detached dwellings and schools.
- B. Where the visual impact of towers can be minimized by the use of camouflage, stealth design or other innovative measures to reduce, eliminate or disguise the negative visual impact.
- C. Existing personal wireless telecommunication facility(s).
- D. Existing antenna/tower sites.

Additionally, freestanding telecommunications towers or antennas over 20 feet in elevation may not be located in any of the following locations:

- A. The habitat of any State listed Rare or Endangered Species.
- B. Closer than 'tower height plus one-hundred (100) feet' horizontally to the boundary of the property on which the tower is located.
- C. Closer than 'tower height plus one-hundred (100) feet' horizontally to any structure existing at the time of the application which is used as either a primary or secondary residence, to the property of any school, or to any other building.
- D. Within 'tower height plus one-hundred (100) feet' horizontally of any river or perennial stream.
- E. Within 'tower height plus one-hundred (100) feet' horizontally of any publicly maintained road.

324.07 Small Scale Facilities: The placement of wireless telecommunications antennas, repeaters and installation of ground facilities less than twenty (20) feet in height, may be approved by the Administrative Officer, provided the facility meets the applicable requirements of this bylaw, upon submission of:

- A. A final site and building plan.
- B. A report prepared by a qualified engineer indicating the structure's suitability for the telecommunications facility.

However no such device may be located closer than 50' to an existing residence.

324.08 Application Requirements for Personal Wireless Telecommunication Facilities Not Covered Under Section 326.07: An applicant for a permit must be a

personal wireless service provider or FCC licensee, or must provide a copy of its executed contract to provide land or facilities to such an entity, to the Administrative Officer at the time that an application is submitted. A permit shall not be granted for a tower or facility to be built on speculation.

No construction, alteration, modification (including the installation of antennas for new uses) or installation of any wireless telecommunications tower or facility shall commence without a conditional use permit first being obtained from the Planning Commission.

In addition to information otherwise required in the Town of Westfield's Zoning Bylaws, applicants for wireless telecommunications towers or facilities shall include the following supplemental information:

- A. The name and address of the applicant, the record landowners and any agents of the landowners or applicants as well as an applicant's registered agent and registered office. If the applicant is not a natural person, the name and address of the business and the state in which it is incorporated and has its principal office shall be provided.
- B. The name, address and telephone number of the person to be contacted and who is authorized to act in the event of an emergency regarding the structure or safety of the facility.
- C. The names and addresses of the record owners of all abutting property.
- D. A report from qualified engineers that:
 - i. Describes the facility height, design and elevation.
 - ii. Documents the height above grade for all proposed mounting positions for antennas to be collocated on a telecommunications tower or facility and the minimum separation distances between antennas.
 - iii. Describes the tower's proposed capacity, including the number, height and type(s) of antennas that the applicant expects the tower to accommodate.
 - iv. In the case of new tower proposals, demonstrates that existing telecommunications sites and other existing structures, or other structures proposed by the applicant within five (5) miles of the proposed site cannot reasonably provide adequate coverage and adequate capacity to the Town of Westfield. The documentation shall include, for each facility site or proposed site within such radius, the exact location, ground elevation, height of tower or structure, and sufficient additional data to allow the independent reviewer to verify that other locations will not be suitable.

- v. Demonstrates that the applicant has analyzed the feasibility of using repeaters or micro-cells in conjunction with all facility sites to provide coverage to the intended service area.
 - vi. Describes potential changes to those existing facilities or sites in their current state that would enable them to provide adequate coverage.
 - vii. Describes the output frequency, number of channels, sector orientation and power output per channel, as appropriate for each proposed antenna.
 - viii. Includes a written explanation for use of the proposed facility, including reasons for seeking capacity in excess of immediate needs if applicable, as well as plans for additional development and coverage within the Town.
 - ix. Provides assurance that at the proposed site the applicant will establish and maintain compliance with all FCC rules and regulations, particularly with respect to radio frequency exposure. The Planning Commission may hire independent engineers to perform evaluations of compliance with the FCC regulations, standards and requirements on an annual basis at unannounced times.
 - x. Includes other information required by the Board that is necessary to evaluate the request. Includes an engineer's stamp and registration number, where appropriate.
 - xi. A letter of intent committing the facility owner and his or her successors to permit shared use of the facility if the additional user agrees to meet reasonable terms and conditions for shared use.
- E. For a facility to be installed on an existing structure, a copy of the applicant's executed contract with the owner of the existing structure (to be provided to the Administrative Officer at the time an application is submitted).
- F. To the extent required by the National Environmental Policy Act (NEPA) as administered by the FCC, a complete Environmental Assessment (EA) draft or final report describing the probable impacts of the proposed facility.
- G. A copy of the application or draft application for an Act 250 permit, if applicable.
- H. The permit application shall be signed under the pains and penalties of perjury.

324.09 Site Plan Requirements for Personal Wireless Telecommunication Facilities Not Covered Under Section 326.07: In addition to site plan requirements found elsewhere in the Town of Westfield's Zoning Bylaws, site plans for

wireless telecommunications facilities shall include the following supplemental information:

- A. Location Map: a copy of a portion of the most recent USGS Quadrangle map showing the area within at least a two-mile radius of the proposed facility site.
- B. Vicinity Map showing the entire vicinity within a 2500-foot radius of the facility site, including the facility or tower, topography, public and private roads and driveways, buildings and structures, water bodies, wetlands, landscape features, and habitats for endangered species. It shall indicate the property lines of the proposed facility site parcel and all easements or rights of way needed for access from a public way to the facility.
- C. Proposed site plans of the entire development indicating all improvements including landscaping, utility lines, guy wires, screening and roads.
- D. Elevations showing all facades and indicating all exterior materials and color of towers, buildings and associated facilities.
- E. Computer generated photo simulations of the proposed facility showing the facility from all public rights-of-way and any adjacent property from which it may be visible. Each photo must be labeled with the line of sight, elevation and with the date taken imprinted on the photograph. The photos must show the color of the facility and method of screening.
- F. In the case of a proposed site that is forested, the approximate average height of the existing vegetation within two hundred (200) feet of the tower base.
- G. Construction sequence and time schedule for completion of each phase of the entire project.

Plans shall be drawn at a minimum at the scale of one (1) inch equals fifty (50) feet.

324.10 Collocation Requirements: An application for a new wireless telecommunications facility shall not be approved unless the Planning Commission finds that the facilities planned for the proposed structure cannot be accommodated on an existing or approved tower or structure due to one of the following reasons:

- A. The proposed antennas and equipment would exceed the structural or spatial capacity of the existing or approved tower or facility, as documented by a qualified engineer licensed to practice in the State of Vermont. Additionally, the existing or approved tower cannot be reinforced, modified or replaced to accommodate planned or

equivalent equipment, at a reasonable cost, to provide coverage and capacity comparable to that of the proposed facility.

- B. The proposed antennas and equipment would cause interference materially impacting the usefulness of other existing or permitted equipment at the existing or approved tower or facility as documented by a qualified engineer and such interference cannot be mitigated at a reasonable cost.
- C. The proposed antennas and equipment, alone or together with existing facilities, equipment or antennas, would create excessive radio frequency exposure.
- D. Existing or approved towers and structures cannot accommodate the planned equipment at a height necessary to function reasonably or are too far from the area of needed coverage to function reasonably as documented by a qualified engineer.
- E. Aesthetic reasons make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.
- F. There is no existing or approved tower in the area in which coverage is sought.
- G. Other unforeseen specific reasons make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.

Towers must be designed to allow for future placement of antennas upon the tower and to accept antennas mounted at varying heights when overall permitted height allows. Towers shall be designed structurally and in all other respects to accommodate both the applicant's antennas and additional antennas when overall permitted height allows.

324.11 Access Roads and Above Ground Facilities: Where the construction of new personal wireless telecommunications towers and facilities requires construction of or improvement to access roads, to the extent practicable, roads shall follow the contour of the land. 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. The Town may require closure of access roads to vehicles following facility construction where it is determined that site conditions warrant the same and where maintenance personnel can reasonably access the facility site on foot.

324.12 Tower and Antenna Design Requirements: Proposed facilities shall not unreasonably interfere with the view from any public park, scenic view, or major view corridor. Height and mass of facilities shall not exceed that which is essential for the intended use and public safety.

- A. Towers, antennas and any necessary support structures shall be designed to blend into the surrounding environment through the

use of color camouflaging and architectural treatment, except in cases in which the Federal Aviation Authority (FAA), state or federal authorities have dictated color. Use of stealth design, including those which imitate natural features, may be required in visually sensitive locations.

- B. In order to protect public safety and to preserve the scenic character and appearance of the area, the height limit for towers, antennas and tower-related fixtures shall be not more than fifteen (15) feet above the average height of the tree line measured within one hundred (100) feet of the highest vertical element of the telecommunications facility. Notwithstanding the above, additional height may be approved upon a finding by the Planning Commission that the additional height is necessary in order to provide adequate coverage in the Town of Westfield or to accomplish collocation of facilities and that the additional height will not cause an undue visual impact on the scenic character or appearance of the area.
- C. Towers, antennas and any necessary support structures shall be designed to avoid having an undue adverse impact aesthetic impact on prominent ridgelines and hilltops. In determining whether a tower's aesthetic impact would be undue and adverse, the Board will consider:
 - i. the period of time during which the proposed tower would be viewed by the traveling public on a public highway;
 - ii. the frequency of the view experienced by the traveling public;
 - iii. the degree to which the tower would be screened by existing vegetation, the topography of the land, and existing structures;
 - iv. background features in the line of sight to the proposed tower that obscure the facility or make it more conspicuous;
 - v. the distance of the proposed tower from the view point and the proportion of the facility that is visible above the skyline;
 - vi. the sensitivity or unique value of a particular view affected by the proposed tower;
 - vii. significant disruption of a view corridor 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 facility. Furthermore, the Board may designate an alternative location for the tower to be evaluated by the applicant if it is determined that the proposed location would result in undue adverse aesthetic impacts. 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 communication objectives.

- D. All buildings and structures accessory to a tower (except for electric power poles where specifically exempted by the Board) shall meet the minimum setback requirements of the underlying zoning district or setback requirements specified in this bylaw. If the minimum setbacks of the underlying zoning district are less than the height of the tower, including antennas or other vertical appurtenances, the minimum horizontal distance from the tower to any property line shall be no less than the height of the tower plus one-hundred (100) feet, including antennas and other vertical appurtenances.
- E. Ground mounted equipment or antennas as well as buildings and structures accessory to a tower shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better complements the architectural character of the surrounding neighborhood. A planted or vegetative screen shall be a minimum of ten (10) feet in depth with a minimum height of six (6) feet and shall have the potential to grow to a height of at least fifteen (15) feet at maturity. Existing onsite vegetation outside the immediate site for the wireless facility shall be preserved or improved. Disturbance to existing topography shall be minimized unless the disturbance is demonstrated to result in less visual impact on the facility from surrounding properties and other vantage points.

324.13 Amendments to Existing Personal Wireless Telecommunications Facility

Permit: An alteration or addition to a previously approved wireless telecommunications facility shall require a permit amendment when any of the following are proposed:

- A. Change in the number of buildings or facilities permitted on the site;
- B. Addition or change of any equipment resulting in greater visibility or structural wind loading, or additional height of the tower, including profile of additional antennas, not specified in the original application.

324.14 Tower Lighting and Signage; Noise Generated By Facility: Unless required by the Federal Aviation Administration (FAA), no lighting of towers is permitted. In any case where a tower is determined to need obstruction marking or lighting, the applicant must demonstrate that it has or will request the least visually obtrusive marking and/or lighting scheme in FAA applications. Copies of required FAA applications shall be submitted by the applicant. Heights may be reduced to eliminate the need for lighting or another location selected.

No commercial signs or lettering shall be placed on a tower or facility. Signage shall be limited to that required by federal or state regulation.

The Board may impose conditions to minimize the affect of noise from the operation of machinery or equipment upon adjacent properties.

324.15 Temporary Wireless Communication Facilities: Any wireless telecommunications facility designed for temporary use is subject to the following:

- A. Use of a temporary facility is permitted only if the owner has received a temporary use permit from the Town of Westfield.
- B. Temporary facilities are permitted for no longer than five days use during a special event.
- C. The maximum height of a temporary facility is fifty (50) feet from grade.
- D. Temporary facilities must comply with all applicable portions of these regulations.

324.16 Monitoring and Evaluation of Compliance: Pre-testing and post-testing (including monitoring) shall be required.

- A. Pre-testing: Prior to beginning operation of the wireless telecommunication facility, the applicant shall pay for an independent licensed radio frequency engineer to monitor the background levels of non-ionizing radiofrequency radiation around the proposed facility site and/or any repeater locations to be used for the applicant's wireless telecommunication facility. The radio frequency engineer shall use the monitoring protocol (Cobbs Protocol). A report of monitoring results shall be prepared by the radio frequency engineer and submitted to the Selectboard, Administrative Officer, the Planning Commission, and the Town Clerk.
- B. Annual Post-testing: Within thirty (30) days of the first transmission (and annually thereafter) from any new or modified telecommunications facility, or upon activation of any additional permitted channels, the owner(s) of any wireless telecommunication facility(s) shall submit reports prepared by an independent qualified telecommunications or radiofrequency engineer(s) regarding any non-ionizing radiofrequency radiation exposure at the facility site as well as from repeaters (if any). These annual reports shall be submitted to the Selectboard, the Westfield Board of Adjustment, the Planning Commission, the Town Clerk, and abutting property owners, within thirty (30) days of the anniversary of the first transmission.

- C. **Excessive Exposure:** Should the monitoring of a facility site reveal that the site exceeds the current FCC standard and guidelines, the owner(s) of all facilities utilizing that site shall be so notified. In accordance with FCC requirements, the owner(s) must immediately reduce power or cease operation as necessary to protect persons having access to the sites, tower or antennas. Additionally, the owner(s) shall submit to the Westfield Board of Adjustment and the Administrative Officer a plan for the correction of the situation that resulted in excessive exposure.
- D. **Structural Inspection:** The tower owner(s) shall pay for an independent licensed professional structural engineer to conduct inspection of the tower's structural integrity and safety. Pre-existing guyed towers shall be inspected every three (3) years. Monopoles and non-guyed lattice towers shall be inspected every five (5) years. A report of the inspection results shall be prepared by the structural engineer and submitted to the Selectboard, the Westfield Zoning Board of Adjustment, the Planning Commission and the Town Clerk. Any modification of an existing facility that increases tower dimension or antenna numbers or type shall require a new structural inspection.
- E. **Unsafe Structure:** Should the inspection of any tower reveal any structural defect(s) that, in the opinion of the independent structural engineer, render(s) the tower unsafe, the following actions shall be taken. Within ten (10) business days of written notification of unsafe structure, the owner(s) of the tower shall submit a plan to remediate the structural defect(s). This plan shall be initiated within ten (10) business days of the submission of the remediation plan and completed as soon as reasonably possible.

324.17 Facility Removal: Abandoned, unused, obsolete, or noncompliant towers or facilities governed under this bylaw shall be removed as follows:

- A. The owner of a facility/tower shall annually, on January 15, file a declaration with the Town of Westfield's Administrative Officer certifying the continuing safe operation of every facility/tower installed subject to these regulations. Failure to file a declaration shall mean that the facility/tower is no longer in use and considered abandoned.
- B. Abandoned or unused towers or facilities shall be removed within 180 days of cessation of operations at the site unless a time extension is approved by the Planning Commission. In the event the tower or facility is not removed within 180 days of the cessation of operations at a site, the municipality shall notify the owner and may remove the tower or facilities. Costs of removal shall be assessed against the property or tower owner.

- C. Towers and facilities which are constructed in violation of permit conditions or application representations shall be removed within 180 days of cessation of operations at the site unless a time extension or negotiated solution is approved by the Planning Commission. In the event the tower or facility is not removed within 180 days of notification of such a violation, the municipality may remove the tower or facilities. Costs of removal shall be assessed against the property or tower owner.
- D. An owner who has failed to file an annual declaration with the Administrative Officer by January 15 may, by February 15, file a declaration of use or intended use and may request the ability to continue use of the facility/tower.
- E. The Applicant shall, as a condition of the conditional use permit, provide a financial surety bond payable to the Town of Westfield and acceptable to the Board to cover the cost of removal of the facility and remediation of the landscape, should the above clauses be invoked.

324.18 Maintenance Requirements: The Applicant shall maintain all facilities. Such maintenance shall include, but not be limited to painting, structural integrity and landscaping. In the event the applicant fails to maintain the facility, the Town of Westfield may undertake such maintenance at the expense of the applicant or landowner.

324.19 Insurance Requirements: The facility owner shall maintain adequate insurance on all facilities.

324.20 Fees: A schedule of fees for personal wireless telecommunication facilities permitting and renewal, any monitoring of exposure and inspection of structures, and any other fees shall be established by the Westfield Selectboard as provided for in §4440(b). This schedule may be amended from time to time.

§325: Sewage and Water Facilities

All new, revised, or repaired sewage and water facilities are to be done in accordance to State regulations - Environmental Protection Rules, Chapter 1, *Wastewater System and Potable Water Supply Rules*, Effective September 29, 2007

§326: Wind Energy Conversion Systems

This section provides basic design criteria intended to encourage the responsible use of wind energy conversion systems (WECS) consistent with the public safety. Any wind driven conversion or power generating facility, windmills and wind turbines that are being erected for personal use only shall conform to the following regulations. Any such facilities that are to be connected to the grid, including net

metering systems, will be regulated under 30 VSA, § 248 and are exempt from the requirements of this bylaw.

326.01 Application Requirements: Applications shall contain the following information:

- A. The applicant's and property owner's name, address and phone number;
- B. Plot plan showing property lines, easements, setback lines and layout of all structures on the lot;
- C. Standard drawings of the structural components of the WECS, including structures, pole or tower, base, footings, guy lines where required, and guy line anchor bases. The drawing shall include the distance of these components from all property lines;
- D. Height of any structure over thirty-five (35) feet within a five hundred (500) foot radius on-site or off-site of the proposed WECS.
- E. Evidence from a qualified individual that the site is feasible for a WECS.
- F. Certification from a registered engineer or qualified person that the rotor and overspeed control has been designed for the proposed use on the proposed site.

326.02 Safety Requirements: The Town of Westfield promotes the effective and efficient use of WECS in a manner that the public health, safety and welfare of the neighboring property owners or occupants will not be jeopardized. To ensure that the use of the property will not result in material damage or prejudice to other properties in the area, the following requirements apply:

- A. The safety of the design of all WECS towers shall be certified by a professional engineer or by an authorized factory representative;
- B. All WECS shall be equipped with manual and automatic overspeed controls to limit rotation of blades to speed below the designed limits of the conversion system. The professional engineer or authorized factory representative shall certify that the rotor and overspeed control design and fabrication conform to good engineering practices.
- C. The WECS shall be designed and installed to withstand natural lightning strikes.
- D. Appropriate warning signs shall be posted. The type and placement of the signs shall be determined on an individual basis as safety needs dictate.
- E. It is the responsibility of the property owner or applicant to contact the FCC and FAA regarding additional permits.

326.03 Setbacks:

- A. No part of the WECS shall be located within or above any required front, side, or rear setback area of the district in which it is located.
- B. The WECS shall be located at a distance of at least 1.25 times the height of the facility (measured from the base to the highest reach of the blade) from any structure occupied by humans and from all property lines.
- C. The setback from the property lines shall be waived if the abutters of those affected properties so grant their permission in writing.

326.04 Design Requirements:

- A. Aesthetics: The WECS shall be designed and placed in such a manner to minimize to the greatest extent feasible, all adverse visual impacts on neighboring areas. The colors and surface treatment of the WECS and supporting structures shall to the greatest extent feasible, minimize disruption of the natural characteristics of the site.
- B. Height: The minimum height of the lowest position of the WECS blade shall be at least thirty (30) feet above the ground and forty (40) feet above the highest structure or tree within a two hundred and fifty (250) foot radius.
- C. Fence: All towers or poles must be unclimable by design or protected by anti-climbing devices such as:
 - i. Fences with locking portals at least six (6) feet high;
 - ii. Anti-climbing devices twelve (12) feet from base of the pole;
 - iii. Anchor points for guy lines supporting tower shall be enclosed by a six (6) foot high fence or shall be located within the confines of the yard which is completely fenced.
- D. Noise: Operational noise, as measured by the latest standards of the American Standards Institute, shall not exceed fifty-five (55) decibels, measured at the property line of the property on which the WECS has been installed except for temporary construction or maintenance and in no event shall the WECS create a nuisance.
- E. Lighting: Lighting of the exterior of the facility shall be prohibited, unless required by the FAA.
- F. Access Roads: The site and any access roadways shall be developed and maintained in a manner that will minimize soil erosion, contamination of surface and ground water sources, and damage to important wildlife habitats or natural areas.
- G. Ornamental: Systems that are by nature ornamental, rather than functional, shall be exempt from attaining a permit if the total height is less than thirty-five (35) feet.

326.05 Interference: The WECS shall be operated such that no disrupting electromagnetic interference is caused. If it is determined that a WECS is

causing electromagnetic interference, the operator shall take necessary corrective action to eliminate this interference including relocation or removal of the facilities.

326.06 Facility Removal: If any WECS remains non-functional or inoperative for a continuous period of one year, the permittee shall remove said system at their expense within two (2) years of cessation of operations or use, or when the tower structure becomes structurally unsound. Removal of the system includes the entire structure including foundations, transmission equipment, and fencing from the property. In the event that the system is not removed or dismantled within the two (2) years of the cessation of operations at the site, the municipality shall notify the owner and may remove the facility. Cost of removal shall be assessed against the property or WECS owner.

326.07 Insurance Requirements: The WECS operator shall maintain a current insurance policy which will cover installation and operation of the WECS.

§327: Structures Exempt from Maximum Height Requirements

The height of antenna structures, wind turbines with blades less than 20 feet in diameter, or rooftop solar collectors less than 10 feet high, any of which are mounted on complying structures, shall not be regulated unless this bylaw provides specific standards for regulation. In addition, silos, church spires, water towers, and/or public utility towers shall be exempt from the maximum height limits.

§328: Child Care

- 328.01 No permit shall be necessary for the owner of an existing single family dwelling to operate a child care within their home as long as they are not caring for more than 6 full time children and 4 part time children unless the owner of the dwelling desires to enlarge the structure.
- 328.02 Someone seeking to establish a day care facility in a proposed single family dwelling structure, as opposed to an existing single family dwelling, that will be designed to serve no more than 6 full time and 4 part time children must obtain a permit for a single family dwelling prior to erecting the single family dwelling.
- 328.03 A child care facility designed and operated for the care of more than 6 full time and 4 part time children, shall not be established prior to the issuance of a zoning permit. Prior to the issuance of such permit, such facilities shall be subject to conditional use review under § 605 of this bylaw. The owner of such a facility shall be licensed or registered by the state for child care.

ARTICLE 4: NON-CONFORMING USES & STRUCTURES

§401: Permits Issued prior to Adoption or Amendment of 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 and which has been completed within one year from the effective date of this bylaw.

§402: Non-Conforming Structures

Nothing in this section shall be deemed to prevent normal maintenance and repair of a non-conforming structure provided that such action does not increase the degree of non-conformance.

§403: Non-Conforming Uses

The following provisions shall apply to all buildings and uses existing on the effective date of this bylaw which do not conform to the requirements of this bylaw.

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

- 403.01 Shall not be moved, enlarged, altered, extended, reconstructed, or restored nor shall any external evidence of such use be increased by any means whatsoever, without approval by the Planning Commission.
- 403.02 Shall not be changed to another non-conforming use without approval by the Planning commission.
- 403.03 Shall not be re-established or restored without approval by the Planning Commission if such use has been discontinued for a period of six (6) months, or has been changed to, or replaced by a conforming use.

ARTICLE 5: DEFINITIONS

Except where specifically defined herein, all words used in this bylaw shall carry their customary meaning. Words used in the present tense include the future and the singular includes the plural; the word "lot" includes "plot"; the word "building" includes "structure"; the word "shall" means a requirement is mandatory; "occupied" or "used" shall be considered as though preceded by "or intended, arranged or designed to be used or occupied"; "person" includes individual, partnership, association, corporation, company, organization or any other legal entity.

ABANDON: For all land uses other than telecommunications towers, abandon shall mean to leave without claimed ownership for thirty (30) days or more.

ABUTTING PROPERTY OWNER: Any person or persons, corporation or other entity that owns, leases, or in any other way uses or controls, the real property abutting any portion of the property of another.

ACCESSORY USE/STRUCTURE: A use or building customarily incidental and subordinate to the principal use or building and located on the same lot.

ACRE: An area of land equal to 43,560 square feet.

ADEQUATE CAPACITY: Capacity for wireless telephony is considered to be "adequate" if the grade of service (GOS) is p.05 or better for median teletraffic levels offered during the typical busy hour, as assessed by direct measurement of the facility in question. The GOS shall be determined by the use of standard Erlang B calculations. As call blocking may occur in either the land line or radio portions of a wireless network, adequate capacity for this regulation shall apply only to the capacity of the radio components. Where capacity must be determined prior to the installation of the personal wireless services facility in question, adequate capacity shall be determined on the basis of a 20% busy hour (20% of all offered traffic occurring within the busiest hour of the day), with total daily traffic based on aggregate estimates of the expected traffic in the coverage area.

ADEQUATE COVERAGE: Coverage for wireless telephony is "adequate" within that area surrounding a base station where the predicted or measured median field strength of the transmitted signal is such that most of the time, transceivers properly installed and operated will be able to communicate with the base station without objectionable noise (or excessive bit-error-rate for digital) and without calls being dropped. In the case of cellular communications in a rural environment, this would be a signal strength of at least -90 dBm. It is acceptable for there to be holes within the area of adequate coverage as long as the signal regains its strength further away from the base station. The outer boundary of the area of adequate coverage, however, is that location past which the signal does not regain.

AFFILIATE: When used in relation to an operator, another person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or common control with the operator, or an operator's principal partners, shareholders, or owners of some other ownership interest. When used in relation to the municipality, any agency, board, authority or political subdivision affiliated with the municipality or other person in which the municipality has legal or financial interest.

AGRICULTURE: The cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; or the raising, feeding or management of livestock, poultry, equines, fish or bees; or the operation of greenhouses; or the production of maple syrup; or the on-site storage, preparation and sale of agricultural products principally produced on the farm; or the on-site production of fuel or power from agricultural products or waste produced on the farm; or the raising, feeding, or management of four or more equines owned or boarded by the farmer, including training, showing, and providing instruction and lessons in riding, training, and the management of equines.

ALTERATION: Structural changes, rearrangement, change of location, or addition to a building, other than repairs and modification in building equipment or fixtures.

ANTENNA: A device for transmitting and/or receiving electromagnetic waves, which is attached to a tower or other structure.

ANTENNA HEIGHT: The vertical distance measured from the base of the antenna support structure at grade to the highest point of the structure. If the support structure is on a sloped grade, then the average between the highest and lowest grades shall be used in calculating the antenna height.

ANTENNA SUPPORT STRUCTURE: Any pole, telescoping mast, tower tripod, or any other structure which supports a device used in the transmitting and/or receiving of electromagnetic waves.

APPLICATION: The application form and all accompanying documents and exhibits required of an applicant by an approving authority for development review purposes.

AREA OF SHALLOW FLOODING: Means a designated AO or AH Zone on a community's Flood Insurance Rate Map (FIRM) with a one percent or greater annual 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: Is the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. The area may be designated as Zone A on the FHBM. After detailed ratemaking has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AO, AH, A1-A30, AE, or A99.

AUTHORIZED FACTORY REPRESENTATIVE: An individual who has received factory or factory approved technical school training and certification regarding the installation and maintenance of wind energy conversion systems.

BANK: Institution for receiving, lending, exchanging, and safeguarding money and in some cases, issuing notes and transacting other financial business.

BASE FLOOD: Means the flood having a one percent chance of being equaled or exceeded in any given year.

BASEMENT: Any area of the building having its floor subgraded (below ground level) on all sides.

BOARDING HOUSE: Building wherein more than four people are sheltered for profit.

BUILDING: Any structure having a roof supported by columns or walls and intended for the shelter, housing or enclosure of any individual, animal, process, equipment, goods or materials of any kind or nature.

BUILDING AREA: Total of area taken on a horizontal plane at the main finished grade level of the principal building and all accessory buildings, exclusive of unenclosed porches twenty-five (25) square feet or less, terraces and steps. All dimensions shall be measured between exterior faces of walls.

BUILDING FRONT LINE: A line that is parallel to the front lot line transecting that point in the building face which is closest to the front lot line. This face includes porches whether enclosed or unenclosed but does not include steps.

BUILDING HEIGHT: Vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof for flat and mansard roofs, and to the average height between eaves and ridge for other types of roofs.

CAMP GROUND: Land on which are located one or more cabins, trailers, shelters, or other accommodation suitable for seasonal or temporary living purposes.

CEMETERY: Property used for the interring of the dead.

CHANNEL (TELECOMMUNICATIONS): The segment of the radiation spectrum to or from an antenna which carries one signal. An antenna may radiate on many channels simultaneously.

CHILD CARE: A home or facility serving more than six full-time and four part-time children.

CLUB, PRIVATE: Building or use catering exclusively to club members and their guests for recreational purposes.

COLOCATION: Locating personal wireless telecommunications equipment from more than one provider at a single site or structure.

COMMERCIAL ACCOMODATIONS: Any business engaged in the provision of rooms for short-term occupancy, with or without meals, to the traveling public.

COMMUNITY CENTER: Includes public or private meeting hall, place of assembly, museum, art gallery, library, place of further education, church.

COMMUNITY FACILITY: A building or structure owned and operated by a governmental agency to provide a governmental service to the public.

COMPLETED: A structure shall be considered complete when the roof and wall are in place, all electrical and plumbing systems have been installed and are operational, and the structure is inhabitable.

CONDITIONAL USE: Any use permitted in a district upon issuance of a conditional use permit under §604: Conditional Use, of this bylaw.

COVERAGE: That percentage of the lot area covered by the building area.

dBm: Unit of measure of the power level of a signal expressed in decibels above 1 milliwatt.

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 any mining, excavation or landfill, and any change in the use of any building or other structure, or land, or extension of use of land.

DISTRICT: A part, zone or geographic area within the municipality within which certain zoning or development regulations apply.

DRIVEWAY: A private roadway providing access for vehicles to a parking space, garage, dwelling or other structure.

DWELLING, ACCESSORY: An efficiency or one-bedroom apartment, located within or appurtenant to an owner-occupied single-family dwelling, that is clearly subordinate to a single-family dwelling, and has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided there is compliance with all the following:

- The property has sufficient wastewater capacity.
- The unit does not exceed 30 percent of the total habitable floor area of the single-family dwelling.
- Applicable setback, coverage, and parking requirements specified in the bylaws are met. 24 V.S.A. § 4412(1)(E).

DWELLING, MULTIPLE FAMILIES: Building used as living quarters by three (3) or more families living independently of each other.

DWELLING, ONE FAMILY: Detached building used for living quarters for one (1) family.

DWELLING, TWO FAMILIES: Building used as living quarters by two (2) families living independently of each other.

DWELLING UNIT: One or more rooms, designed, occupied or intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities provided within the dwelling unit for the exclusive use of a single family maintaining a household.

EARTH RESOURCE REMOVAL: Extraction or mining of sand, gravel and stone for sale or off-tract use on an open land area.

EASEMENT: A grant of one or more of the property rights by the property owner to and/or for the use by the public, a corporation or another person or entity.

ESSENTIAL SERVICES: The erection, construction, alteration, or maintenance of underground, surface or overhead electrical, gas, steam, water and sewage transmission and collection systems and the equipment and accessory uses necessary for such systems to furnish an adequate level of public service.

FAMILY: One (1) or more persons living, sleeping, cooking and eating on the same premises as a single housekeeping unit.

FARM STRUCTURE: A building, enclosure, enclosure, or fence for housing livestock, raising horticultural or agronomic plants, or carrying out other practices associated with agricultural or farming practices, including a silo, as “agriculture” is defined above, but excludes a dwelling for human habitation.

FARM: See the definition of Agriculture.

FEE: A fixed charge as determined by the Town’s legislative body for the purpose of covering the cost of the administration of the bylaw.

FENCE: An artificially constructed barrier of any material or combination of material erected to enclose or screen areas of land.

FINISHED GRADE: Completed surfaces of ground, lawns, walks, paved areas and roads brought to grades as shown on plans relating thereto.

FLOOD HAZARD AREA: The land subject to flooding from the base flood.

FLOOD FRINGE AREA: That portion of the flood hazard area outside of the flood way based on the total area inundated during the regulatory base flood plus twenty-five (25) percent of the regulatory base flood discharge.

FLOOD PROOFING: Means any combination of structural and nonstructural additions, changes, or adjustment to properties and structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

FLOOR AREA: Sum of the gross horizontal area of the floors of a building, excluding unfinished basement floor areas. All dimensions shall be measured between interior faces of walls.

FRONT YARD: See YARD, FRONT

FORESTRY: Establishments primarily engaged in the operation of timber tracts, tree farms, forest nurseries, the gathering of forest products, or in performing forest services.

FUNERAL HOME: A building used for the preparation of the deceased for burial and the display of the deceased and ceremonies connected therewith before burial or cremation.

GHz: Gigahertz. One billion (1,000,000,000) hertz.

GROUP HOME: Any residential facility operating under a license or registration granted or recognized by a state agency, that serves not more than eight unrelated persons, who have a handicap or disability as defined in 9 V.S.A. § 4501, and who live together as a single housekeeping unit. In addition to room, board and supervision, residents of a group home may receive other services at the group home meeting their health, developmental or educational needs.

HERTZ: (Hz) One hertz is the frequency of an electric or magnetic field which reverses polarity once each second, or one cycle per second.

HOME OCCUPATION: The use of a minor portion of a dwelling unit by the occupants thereof for an occupation which is customary in residential areas and which does not have an undue adverse effect upon the character of the residential area in which the dwelling is located.

HOUSEHOLD APPLIANCE: Any range, stove, refrigerator, washing machine, clothes dryer, water pump, power tool and the like.

INTERESTED PERSON: In accordance with Section 4465 of 24 V.S.A, an interested person means any one of the following:

(1) A person owning title to property, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by a bylaw, who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.

(2) The municipality that has a plan or a bylaw at issue in an appeal brought under this chapter or any municipality that adjoins that municipality.

(3) A person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under this chapter, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality.

(4) Any ten persons who may be any combination of voters or real property owners within a municipality listed in subdivision (2) of this subsection who, by signed petition to the appropriate municipal panel of a municipality, the plan or a bylaw of which is at issue in any appeal brought under this title, allege that any relief requested by a person under this title, if granted, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality. This petition to the appropriate municipal panel must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal.

(5) Any department and administrative subdivision of this state owning property or any interest in property within a municipality listed in subdivision (2) of this subsection, and the agency of commerce and community development of this state.

JUNK: Old or discarded scrap copper, brass, iron, steel and other old or scrap or nonferrous material, including but not limited to household appliances, furniture, rope, rags, batteries, glass, rubber debris, waste, trash, construction debris, plumbing fixtures, or any discarded, dismantled, wrecked, scrapped or ruined motor vehicles or parts thereof. Any of the above items used in a bona fide agricultural operation are excluded from this definition.

JUNK MOTOR VEHICLE: A discarded, dismantled, wrecked, scrapped or ruined motor vehicle or parts thereof, or one other than an on-premise utility vehicle, which is allowed to remain unregistered for a period of ninety days from the date of discovery.

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 as a scrap metal processing facility. "Junkyard" also means any place of outdoor storage or deposit, not in connection with a business, which is maintained or used for storing or keeping two or more unregistered motor vehicles which are

visible from any portion of a public highway (any highway, road, street or other public way, regardless of classification). However, the term does not include a private garbage dump or a sanitary landfill approved or permitted by the State of Vermont. It does not mean a garage where wrecked or disabled motor vehicles are stored for less than 90 days for inspection or repairs.

LAND: A singular piece of real estate deeded to a specified owner.

LIGHT MANUFACTURING: Fabrication, processing or assembly employing only electric or other substantially noiseless and inoffensive motive power, utilizing hand labor or quiet machinery and processes, and free from neighborhood-disturbing agents, such as odors, gas, fumes, smoke, cinders, flashing or excessively bright lights, refuse matter, electromagnetic radiation, heat or vibration.

LOADING SPACE: An off-street space or berth used for the loading or unloading of commercial vehicles.

LOT: Land occupied or to be occupied by a building and its accessory buildings, together with 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 street, or other means of access as may be determined by the Planning Commission to be adequate as a condition of the issuance of a zoning permit for a building on such land.

LOT AREA: Total area within the property lines excluding any part thereof lying within the limits of a public highway or proposed public highway.

LOT DEPTH: The distance measured from the front lot line to that point farthest from the front lot line measured at right angles to the front lot line.

LOT FRONTAGE: The length of the front lot line measured at the edge of the right-of-way.

LOT LINE FRONT: That lot line separating a lot from a street right-of-way.

LOT LINE, REAR: That lot line opposite and most distant from the front lot line; or in the case of triangular or otherwise irregularly shaped lots, a line ten feet in length entirely within the lot, parallel to and at a maximum distance from the front lot line.

LOT LINE, SIDE: Any lot line other than a front or rear lot line.

LOWEST FLOOR: 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 of 44 CFR (Code of Federal Regulations), § 60.3, Flood Plain Management Criteria for Flood Prone Areas.

MANUAL AND AUTOMATIC CONTROLS: Give protection to power grids and limit rotation of the blades to below the designed limits of the conversion system.

MANUFACTURED HOME: A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For flood plain management purposes the term “manufactured home” also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes the term “manufactured home” does not include park trailers, travel trailers, and other similar vehicles.

MEAN SEA LEVEL: 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 communities Flood Insurance Rate Map are referenced.

MOBILE HOME: A trailer or a movable living unit with or without wheels, used for living quarters. A sectional prefabricated house shall not be considered a mobile home.

MOBILE HOME PARK: Land on which more than two (2) mobile homes are placed and occupied for living purposes.

MONITORING: The measurement, by the use of instruments in the field, of non-ionizing radiation exposure at a facility site as a whole, or from individual personal wireless communication facilities, towers, antennas or repeaters.

MONITORING PROTOCOL: The testing protocol, such as the Cobbs Protocol, (or one substantially similar, including compliance determined in accordance with the National Council on Radiation Protection and Measurements, Reports 86 and 119) which is to be used to monitor the emissions and determine exposure risk from existing and new telecommunications facilities upon adoption of this article.

MONOPOLE: A single self-supporting vertical pole with no guy wire anchors, usually consisting of a galvanized or other unpainted metal or a wooden pole with below grade foundations.

MOTEL: Building containing rooms which are rented as a series of sleeping units for automobile transients, each sleeping unit consisting of at least a bedroom and bathroom.

NON-CONFORMING USE: Use of land or structure which does not comply with all zoning regulations for the district in which it is located, where such use conformed to all applicable laws, ordinances and regulations prior to enactment of those regulations.

NON-CONFORMING LOT or STRUCTURE: A lot or structure not conforming with the zoning regulations for the district in which it is located, where such lot or structure or lot conformed with all applicable laws, ordinances and regulations prior to the enactment of these regulations.

NON-RESIDENTIAL USE: All uses of buildings, structures or land except one-family dwellings, two-family dwellings, and multiple-family dwellings.

OFFICE SPACE: Sum of the gross horizontal area of the floors of the room or group of rooms used for conducting the affairs of a business, profession, service, industry, or government. All dimensions shall be measured between interior faces of walls.

OUTDOOR RECREATION: A facility open to the general public, including but not limited to golf course driving range, golf pitch and putt course, golf courses, hunting preserve, ski area, tennis courts, and any other public facilities as they become available.

PARKING SPACE: Off-street space used for the temporary location of one licensed motor vehicle, which conforms with the dimensional requirements for a parking space as set forth in § 313, and having direct access to a street or alley.

PERMITTED USE: A use specifically allowed in a district; upon issuance of a zoning permit, excluding illegal uses and non-conforming uses.

PERSONAL WIRELESS SERVICES: Commercial mobile services, unlicensed wireless exchange access services. These services include: cellular services, personal communications services, specialized mobile radio services, and paging services.

PERSONAL WIRELESS TELECOMMUNICATIONS FACILITY: All equipment (including repeaters) and locations of equipment with which a telecommunications provider transmits and receives the waves which carry their services. This facility may be sited on one or more towers or structure(s) owned and permitted by the provider or another owner or entity.

PERSONAL WIRELESS TELECOMMUNICATIONS SERVICE PROVIDER: An entity licensed by the FCC to provide telecommunications services to individuals or institutions.

PLAT: A map representing a tract of land, showing the boundaries and location of individual properties and streets.

PLOT: A parcel of land that can be identified and referenced to a recorded plat or map.

PRINCIPAL USE: The primary or predominant use of any lot.

PROFESSIONAL ENGINEER: An engineer licensed to practice in the State of Vermont.

PROFESSIONAL OFFICES: The office of a recognized profession maintained for the conduct of that profession. This shall include but not be limited to lawyers, doctors, and accountants.

PUBLIC ASSEMBLY: Includes auditorium, theater, public hall, school hall, meeting hall, church, and temple.

PUBLIC FACILITY: Any structure or land use necessary for either the conduct of municipal business or the maintenance of municipally owned structures, land, services, and/or vehicles.

REAR YARD: See YARD, REAR

RELIGIOUS USES: Includes church, temple, parish house, convent, seminary and retreat house and structures or uses incidental thereto.

REPEATER: A small receiver/relay transmitter designed to provide service to areas which are not able to receive adequate coverage from a base station in a personal wireless telecommunications network and has no significant visual impact on the surrounding area.

RESIDENTIAL AREA: Any part of Westfield in which this bylaw permits accessory, one, two, or multi family dwellings.

RESIDENTIAL USE: Includes accessory dwelling, one-family dwelling, two-family dwelling, multiple-family dwelling and professional residence-office.

RESTAURANT/BAKERY: Any fixed or mobile place or facility at or in which food or drink is offered or prepared for retail sale or for service with or without charge on or at the premises or elsewhere.

RETAIL SALES/SERVICE: Includes enclosed store for the sale of retail goods and personal service shop and shall exclude any free-standing retail stand, gasoline

service and motor vehicle repair service, new and used car sales and service, trailer and mobile homes sales and service.

RIGHT-OF-WAY: The strip of land acquired by reservation, dedication, forced dedication, prescription or condemnation and intended to be occupied or occupied by a road, crosswalk, railroad, electric transmission line, oil or gas pipeline, water line, sanitary storm sewer and other similar uses. Unless indicated otherwise by Town records, all public street right-of-ways should be deemed to be fifty (50) feet in width.

SCHOOL: Any building, campus, or part thereof which is designed, constructed or used for educational purposes or instruction in any branch of knowledge. This term shall include pre-school, elementary school, secondary school or post-secondary school whether public or private.

SCENIC VIEW: A wide angle or panoramic field of sight which may include natural and/or human-made structures and activities. A scenic view may be from a stationary viewpoint or be seen as one travels along a roadway, waterway, or path. A view may be to a faraway object, such as a mountain, or a nearby object. Scenic views of particular importance are noted in the Westfield Town Plan under “Wildlife Habitat and Significant Natural and Historic Features”.

SELF STORAGE UNITS: Buildings containing 2 or more storage lockers available to the general public in exchange for a monthly fee where such lockers are accessible to the lessee from the exterior of the building.

SETBACK: The distance between the street right-of-way line and the front line of a building or any projection thereof, excluding uncovered steps.

SIDE YARD: See YARD, SIDE

SIGN: Any device, structure, building or part thereof, for visual communications that is used for the purpose of bringing the subject thereof to the attention of the public.

STEALTH FACILITY: Any communications facility which is designed to blend into the surrounding environment. Examples of stealth facilities may include architecturally screened roof-mounted antennas, building-mounted antennas painted to match the existing structure, antennas integrated into architectural elements, antenna structures designed to look like light poles, and structures designed to resemble natural features such as trees or rock outcroppings.

STREET: Public highway for vehicular traffic which affords the principal means of access to abutting properties.

STREET LINE: Right-of-way line of a public highway as dedicated by a deed of record, where the width of the street is not established, the street line shall be considered to be twenty-five (25) feet from the center line of the traveled portion of the right-of-way.

STRUCTURE: A combination of materials that form a construction for use, occupancy, or ornamentation whether installed on above, or below the surface of land or water.

SUBSTANTIAL IMPROVEMENT: Means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty (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 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 Sites.

TEMPORARY STRUCTURES/USES: A structure without any foundation or footings and which is removed when the designated time period, activity, or use for which the temporary structure was erected has ceased. This term also means a use established for a fixed period of time with the intent to discontinue such use upon the expiration of the time period.

TEMPORARY WIRELESS COMMUNICATION FACILITY: Any tower, pole, antenna, etc., designed for use while a permanent wireless facility is under construction, or for a special event or conference.

TOP OF BANK: The bank is the land area immediately adjacent to the bed of the stream which is essential in maintaining its integrity. The top of the bank is the line where the steep walls of the bank and the more moderate slope of adjacent land meet.

RECREATIONAL VEHICLE: A vehicular type portable structure without a permanent foundation, which can be towed, hauled or driven and primarily designed as temporary living accommodation for recreational, camping, and travel use and including, but not limited to, travel trailers, truck campers, camping trailers, and self-propelled motor homes.

TRAVELED WAY: That portion of a public highway designed for the movement of a motor vehicle, shoulders, and roadside parking, rest, observation areas, and other areas immediately adjacent and contiguous to the traveled portion of the roadway.

VARIANCE: Permission to depart from the literal requirements of this zoning bylaw. Such permission shall be granted only by the Westfield Zoning Board of Adjustment in compliance with the criteria set forth in 24 VSA §4469 and after a public hearing warned in compliance with 24 VSA §4464.

VEGETATED BUFFER STRIP: Undisturbed vegetation located along waterways.

VIEW CORRIDOR: A three-dimensional area extending out from a viewpoint. The width of the view corridor depends on the focus of the view. The focus of the view may be a single object, such as a mountain, which would result in a narrow corridor, or a group of objects, such as a downtown skyline, which would result in a wide corridor. Panoramic views have very wide corridors and may include a 360-degree perspective. Although the view corridor extends from the viewpoint to the focus of the view, the mapped portion of the corridor extends from the viewpoint and is based on the area where base zone heights must be limited in order to protect the view.

WATERWAY: Any body of flowing water identified as a perennial river, stream or brook on a USGS topographical map.

WATER RESERVOIR: This term shall mean either an impoundment of water created by a human made dam or a tower, structure or lake built for the sole purpose of storing water.

WILDLIFE REFUGE: An area of land, with or without structures, that has been set aside for the sole purpose of providing a protected habitat for one or more species of animal.

WIND ENERGY CONVERSION SYSTEM (WECS): Any device such as a wind charger, windmill or wind turbine which converts wind energy into a form of usable energy.

YARD: An open space that lies between the principal or accessory building or buildings and the nearest lot line. Such yard is unoccupied and unobstructed from the ground upward except as may be specifically provided in this zoning bylaw.

YARD, FRONT: Yard between the front lot line and the front of a principal or accessory building extended to the side lot lines of the lot. The depth of the front yard shall be measured from the front lot line to the front line of the principal or accessory building.

YARD, REAR: Yard between the rear lot line and the rear of a principal or accessory building extended to the side lot lines of the lot. The depth of the rear yard shall be measured from the rear lot line to the rear of the principal or accessory building.

YARD, SIDE: Yard between the principal or accessory building and a side lot line, and extending through from the front yard to the rear yard.

ARTICLE 6: ADMINISTRATION AND ENFORCEMENT

§601: Administrative Officer

The Selectboard shall appoint an Administrative Officer from nominations submitted by the Planning Commission for a term of three (3) years in accordance with the Act [§4448]. The Selectboard may remove an Administrative Officer for cause at any time after consultation with the Planning Commission.

An acting Administrative Officer may be appointed by the Selectboard, from nominations submitted by the Planning Commission, who shall have the same duties and responsibilities of the Zoning Administrator in the Zoning Administrator's absence. In the event an acting Administrative Officer is appointed, the Selectboard shall establish clear policies regarding the authority of the Zoning Administrator relative to the authority of the acting Administrative Officer.

The Administrator Officer shall literally administer and strictly enforce the provisions of these regulations, and in doing so shall inspect development, maintain records, and perform other related tasks as is necessary and appropriate.

§602: Planning Commission

The Planning Commission shall consist of not less than three (3) or more than nine (9) members appointed by the Selectboard in accordance with the Act [§§4321–4323]. At least a majority of members shall be residents of the municipality. Any member of the Commission may be removed at any time by a unanimous vote of the Selectboard.

The Commission shall adopt rules of procedure deemed necessary and appropriate for the performance of its functions as required under the Act [§4323(b)] and Vermont's Open Meeting Laws. In accordance with the Act, the Commission shall have the following duties in association with these regulations:

- to prepare proposed amendments to these regulations, and consider proposed amendments submitted by others, including amendments submitted by petition;
- to prepare and approve written reports on any proposed amendment to these regulations as required by the Act [§4441(c)]; and
- to hold one or more warned public hearings on proposed amendments to these regulations, prior to submission of a proposed amendment and written report to the Legislative Body [§4441(d)].

The Planning Commission shall adopt rules of procedure and rules of ethics with respect to conflicts of interest to guide its official conduct, as required under the Act

[§4461(a)] and Vermont's Open Meeting Law. The Commission shall have all powers and duties as set forth in the Act to administer the provisions of these regulations, including but not limited to the power to hear and act upon:

- applications for rights-of-way or easements for development lacking frontage (Section 302),
- applications for site plan approval (Section 606),
- applications for subdivision approval (Section 607).

§603: Board of Adjustment

The Board of Adjustment shall consist of not less than three (3) nor more than nine (9) members appointed by the Selectboard for specified terms in accordance with the Act [§4460(b) and (c)]. The Selectboard also may appoint alternates, for specified terms, to serve on the Board in situations when one or more members of the Board are disqualified or are otherwise unable to serve. Any member of the Board of Adjustment may be removed for cause by the Selectboard upon written charges and after public hearing.

The Board shall adopt rules of procedure and rules of ethics with respect to conflicts of interest to guide its official conduct, as required under the Act [§4461(a)] and Vermont's Open Meeting Law. The Board shall have all powers and duties as set forth in the Act to administer the provisions of these regulations, including but not limited to the power to hear and act upon:

- appeals from any decision, act or failure to act by the Administrative Officer (Section 608), and any associated variance requests (Section 612),
- applications for conditional use approval (Section 605),
- requests for waivers from one or more dimensional standards (see Section 611).

§604 Administrative Review & Zoning Permits

604.01 No land development as defined in 24 V.S.A. §4303(10) may be commenced without a permit issued by the Administrative Officer. No zoning permit may be issued by the Administrative Officer unless the proposed development complies with all applicable sections of this bylaw, and all applicable approvals required by the Board of Adjustment or Planning Commission have been granted.

604.02 **Zoning Permits:** An application for a zoning permit shall be filed with the Administrative Officer on forms provided by the Town of Westfield. All required application fees for all relevant development review processes, as set by the Town of Westfield Selectboard, shall be submitted with the application as well. The applications for a permitted use shall include a sketch plan, no smaller than 8.5" x 11", drawn to scale, that depicts the following:

- A. the dimensions of the lot, including existing property boundaries,
- B. the location, footprint and height of existing and proposed structures or additions;
- C. the location of existing and proposed accesses (curb cuts), driveways and parking areas,
- D. the location of existing and proposed easements and rights-of-way,
- E. existing and required setbacks from property boundaries, road rights-of-way, surface waters and wetlands,
- F. the location of existing and proposed water and wastewater systems,
- G. proposed erosion and sedimentation control measures to be undertaken; and,
- H. other such information as required by the Administrative Officer to determine conformance with these regulations.

604.03 Within thirty (30) days of receipt of a complete application, including all application materials and fees, the Administrative Officer shall act to either issue or deny a zoning permit in writing, or to refer the application to the Board of Adjustment or Planning Commission for consideration. In accordance with 24 V.S.A. §§4448 and 4449, if the Administrative Officer fails to act within the 30-day period, a permit shall be deemed issued on the 31st day. If the Administrator Officer refers the application to the Planning Commission or Board of Adjustment, additional fees will be required, and additional information may be required.

604.04 Zoning permits and letters of denial shall include a statement of the time within which appeals may be taken under §608 of this bylaw; and shall require posting of a notice of permit, on a form prescribed by the Town of Westfield. The Administrative Officer shall post this notice of permit within view from the public right-of-way nearest the subject property until the time for appeal has expired.

604.05 The Administrative Officer, within three (3) days of the date of issuance, shall deliver a copy of the zoning permit to the Town of Westfield Listers; and shall post a copy of the permit in the Town of Westfield municipal offices for a period of fifteen (15) days from the date of issuance.

604.06 No zoning permit shall take effect until the time for appeal under §608 of this bylaw has passed, or in the event that a notice of appeal is properly filed, until final adjudication of the appeal.

604.07 Zoning permits shall remain in effect for two years from the date of issuance. All development authorized by the permit shall be substantially commenced within this two-year period or reapplication shall be required to continue development.

604.08 Within 30 days of the issuance of a zoning permit, the Administrative Officer shall deliver the original, a legible copy, or a notice of the permit to the Westfield Town Clerk for recording in the Town of Westfield land records.

§605: Conditional Use

605.01 No Zoning permit shall be issued by the Administrative Officer for any use or structure which requires a Conditional Use permit specified in District Tables 205.01 to 205.03 as Conditional Uses, until the Board of Adjustment grants such approval. In considering its action, the Board of Adjustment shall, following public notice as required by 24 VSA, §4464(a)(1), hold a public hearing, make findings on general and specific standards, and attach conditions as provided herein and in 24 VSA, §4414(3).

605.02 Submission of Conditional Use Permit Application:

Along with a completed zoning permit application, the applicant shall submit one set of site plans, drawn to scale, along with supporting data to the Board of Adjustment. Such application shall include the following information presented in drawn form and accompanied by written text:

- A. Name and address of the owner of record of the land in question and of adjoining lands. Name and address of the person or firm preparing the map, scale of map, north point and date;
- B. Site plan showing proposed structure locations and land use areas, streets, driveways, traffic circulation, parking and loading spaces and pedestrian walks.

605.03 In order for the permit to be granted the proposed use shall not adversely affect:

- A. The capacity of existing or planned community facilities.
- B. The character of the area affected as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the municipal plan.
- C. Traffic on roads and highways in the vicinity.
- D. Bylaws in effect with special reference to this zoning bylaw, and;
- E. The utilization of renewable energy resources.

605.04 In permitting a conditional use, the Board of Adjustment may impose, in addition to the regulations and standards expressly specified by this bylaw, other conditions found necessary to protect the best interests of the surrounding property, the neighborhood, or the municipality as a whole. These conditions may include the following:

- A. Increasing the required lot size or yard dimensions in order to protect adjacent properties.

- B. Limiting the coverage or height of buildings because of obstruction to view and reduction of light and air to adjacent property.
- C. Controlling the location and number of vehicular access points to the property.
- D. Increasing street width.
- E. Increasing the number of off-street parking or loading spaces required.
- F. Limiting the number, location and size of signs.
- G. Requiring suitable landscaping where necessary to reduce noise and glare and to maintain the property in a character in keeping with the surrounding area.
- H. Specifying a specific time limit for construction, alteration, or enlargement of a structure to house a conditional use.
- I. Requiring that any future enlargement or alteration of the use be reviewed by the Board of Adjustment to permit the specifying of new conditions.
- J. As a condition of the grant of a Conditional Use, the Board of Adjustment may attach such additional reasonable conditions and safeguards as it may deem necessary to implement the purposes 24 VSA, Chapter 117 and this zoning bylaw.

605.05 A change in use, expansion or construction of land, area, or alteration of structures or uses which are designated as Conditional Uses within the district in which they are located and are existing therein, prior to the effective date of this bylaw, shall conform to all regulations herein pertaining to Conditional Uses.

605.06 The Board of Adjustment shall act to approve or disapprove any such requested Conditional Use within forty-five (45) days after the date of the final public hearing. Failure to act within such a forty-five (45) day period shall be deemed approval.

§606: Site Plan Review

606.01 No zoning permit shall be issued by the Administrative Officer for any use or structure, except one-family and two-family dwellings, until the Planning Commission grants Site Plan approval. The Planning Commission shall conform to requirement of 24 VSA, §4416 before acting upon any application, and may impose appropriate conditions and safeguards.

606.02 The owner shall submit two (2) sets of maps and supporting data to the Planning Commission which shall include the following: Site Plans drawn to scale showing; existing features, contours, structures, easements, and proposed structure locations and land use areas, streets, driveways, circulation, parking and loading spaces, pedestrian walks, landscaping, including site grading and screening.

606.03 Prior to granting site plan approval the Planning Commission shall hold a public hearing. The Planning Commission shall review the site plan map and supporting data before approval, approval with stated conditions, or disapproval is granted. At least 15 days prior to the required public hearing a public hearing shall be warned as follows:

- A. Posting of the date, time, and place of the public hearing in or near the town clerk's office and two other public places.
- B. Written notification to the applicant and the owners of all adjoining properties without regard to the existence of public rights-of-way. Such notice shall include:
 - 1. A description of the proposed project.
 - 2. Where additional information can be obtained regarding the project.
 - 3. That participation in the public hearing is a prerequisite to the right to filing an appeal.

606.04 When reviewing site plans, the Planning Commission may impose appropriate conditions and safeguards with respect only to:

- A. The adequacy of traffic access;
- B. The adequacy of circulation and parking;
- C. The adequacy of landscaping and screening, and;
- D. The protection of the utilization of renewable energy resources.

606.05 The Planning Commission shall act to approve or disapprove any such site plan within forty-five (45) days after the date upon which it adjourns the public hearing. Failure to act within such forty-five (45) day period shall be deemed approval.

§607: Subdivisions of Land

607.01 Applications for minor subdivisions of land of up to three lots shall be reviewed by the Administrative Officer under the Administrative Review process. Minor subdivisions shall comply with all other applicable sections of this bylaw.

607.02 Applications for major subdivisions of land consisting of four or more lots shall also be subject to Site Plan Review by the Planning Commission after public notice and hearing. In accordance with 24 V.S.A. §4464(a)(1), the warning period for the public hearing shall not be less than 15 days.

607.03 Any application for subdivision of land shall be accompanied by a plat of sufficient scale and clarity to portray existing conditions and proposed development. The plat shall include all lot lines and boundary dimensions, names of roads abutting the property, location and size of existing improvements identified as "existing," location and size of proposed improvements identified as "proposed," setback dimensions of proposed

and existing structures, location of existing and proposed driveways and culverts, location of existing and proposed wells and/or septic systems and location of waterways, wetlands, and flood plains. In addition, a topographic survey may be required.

607.04 No lot that is created as the result of subdivision of land shall have more than 50% of its buildable area in slopes greater than 20%.

607.05 The approved subdivision may not be officially filed until all appeal periods have expired and/or all appeals are concluded.

607.06 A final plat on mylar must be submitted to the Administrative Officer for review before the subdivision is filed and recorded in the Town's land records.

607.07 The approval of the final plat by the Planning Commission shall expire 180 days from that approval unless the approved final plat has been filed and recorded in the Town's land records.

§608: Combined Review

In accordance with 24 V.S.A. § 4462, in cases where a proposed project will require more than one type of development review, the planning commission and zoning board of adjustment may warn and hold a joint hearing or single hearing for the purpose of reviewing and acting on the proposal. The Administrative Officer shall identify proposed projects appropriate for combined review and assist applicants in preparing and submitting coordinated applications to facilitate combined review.

Notice for a combined review hearing shall be made in accordance with 24 V.S.A. § 4464(a)(1). The hearing notice shall include a statement that the hearing will be a combined review of the proposed project and list each review processes that will be conducted at the hearing.

As applicable, the combined review process shall be conducted in the following order:

1. Site Plan
2. Access by right-of-way
3. Requests for Waivers or Variances
4. Subdivision Approval
5. Conditional Use Review

All hearing and decision requirements and all deadlines applicable to each review process shall apply. Separate written decisions may be issued for each review conducted as part of the combined review, but shall be coordinated where appropriate.

§609: Appeals of Administrative Officer Decisions

609.01 Any interested person as defined under 24 V.S.A. §4465 may appeal a decision or act of the Administrative Officer within 15 days of the date of the decision or act by filing a notice of appeal with the Town Clerk, and by filing a copy of the notice with the Administrative Officer. A notice of appeal filed under this section shall be in writing and include the following information:

- the name and address of the appellant,
- a brief description of the property with respect to which the appeal is taken,
- a reference to applicable provisions of these regulations,
- the relief requested by the appellant, including any request for a variance from one or more provisions of these regulations, and
- the alleged grounds why such relief is believed proper under the circumstances.

609.02 The Board of Adjustment shall hold a public hearing on a notice of appeal within 60 days of its filing, as required in 24 V.S.A. §4468. The Board of Adjustment shall give public notice of the hearing under §611 of this bylaw, and shall mail a copy of the hearing notice to the appellant not less than 15 days prior to the hearing date.

609.03 The Board of Adjustment may reject an appeal or request for reconsideration without hearing, and render a decision which shall include findings of fact within 10 days of the filing of a notice of appeal, if the Board determines that the issues raised by the appellant have been decided in an earlier appeal or are based on substantially or materially the same facts presented by or on behalf of the appellant.

609.04 All appeal hearings shall be open to the public and shall be conducted in accordance with rules of procedures, as required by 24 V.S.A. §4461. Any interested person or body may appear and be heard in person or be represented by an agent or attorney at the hearing. The hearing may be adjourned by the Board from time to time, provided that the date, time, and place of the continuation of the hearing are announced at the hearing.

609.05 A decision on appeal shall be rendered within 45 days after the final adjournment of the hearing. The decision shall be sent by certified mail to the appellant within the 45 day period. Copies of the decision shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Administrative Officer and the Town Clerk as part of the public records of the municipality. If the Board of Adjustment fails to issue a decision within this 45-day period, the appeal will be deemed approved and shall be effective on the 46th day.

§610: Appeals to Environmental Court

In accordance with the Act [§4471], an interested person who has participated in a regulatory proceeding of the Board of Adjustment or Planning Commission may appeal a decision rendered by either of those bodies, within 30 days of such decision, to the Vermont Environmental Court. Appeals to Environmental Court shall also meet the following requirements:

- 610.01 “Participation” in a Board of Adjustment or Planning Commission proceeding shall consist of offering, through oral or written testimony, evidence of a statement of concern related to the subject of the proceeding.
- 610.02 The notice of appeal shall be filed by certified mailing, with fees, to the Environmental Court and by mailing a copy to the Town Clerk, or the Administrative Officer if so designated, who shall supply a list of interested persons (including the applicant if not the appellant), to the appellant within five (5) working days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person. If any one or more of those persons are not then parties to the appeal, upon motion they shall be granted leave by the court to intervene.

§611: Public Notice

Any requirement of public notice required by this bylaw, whether or not required by any provision of 24 VSA, Chapter 117, and whether applicable to the Board of Adjustment or the Planning Commission, shall be given by the publication and posting of a public hearing notice as required by 24 VSA, § 4464.

§612: Waivers

The Board of Adjustment may grant waivers to reduce dimensional requirements, in accordance with specific standards that shall be in conformance with the plan and the goals set forth in 24 V.S.A. §4302. Standards may:

- (1) Allow mitigation through design, screening, or other remedy;
- (2) Allow waivers for structures providing for disability accessibility, fire safety, and other requirements of law; and
- (3) Provide for energy conservation and renewable energy structures.

§613: Variance Criteria

The Board of Adjustment shall hear and decide requests for variances as required by the Act [§4469(a)] and appeal procedures under Section 608. In granting a variance, the Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect. The Board may grant a variance and render a decision in favor of the appellant only if *all* of the following facts are found, and the findings are specified in its written decision:

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

§614: Violations

The commencement or continuation of any land development [or subdivision] that does not meet the requirements of these regulations shall constitute a violation. All violations shall be pursued in accordance with the Act [§§4451, 4452]. Each day that a violation continues shall constitute a separate offense. The Administrative Officer shall institute, in the name of the Town of Westfield, any appropriate action, injunction or other proceeding to enforce the provisions of these regulations. All fines imposed and collected shall be paid over to the municipality.

614.01 **Notice of Violation:** No action may be brought under this section unless the alleged offender has had at least seven (7) days' warning notice by certified mail that a violation exists, as required under the Act [§4451]. The notice of violation also shall be recorded in the land records of the municipality. The notice shall state that a violation exists; that the alleged offender has an opportunity to cure the violation within the seven-day notice period, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days. Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of the regulations after the seven-day notice period and within the next succeeding 12 months.

614.02 **Limitations on Enforcement:** An action, injunction or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required or duly recorded municipal land use permit may be instituted against the alleged offender if the action, injunction or other enforcement proceeding is instituted within 15 years from the date the alleged

violation first occurred, and not thereafter, in accordance with the Act [§4454]. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted. No enforcement proceeding may be instituted to enforce an alleged violation of a municipal land use permit unless the permit or a notice of the permit has been recorded in the land records of the municipality.

ARTICLE 7: AMENDMENTS, INTERPRETATIONS, EFFECTIVE DATE

§701: Amendments

This bylaw may be amended according to the requirements and procedure established in 24 VSA, §§4441 and 4442.

§702: Interpretation

- 702.01 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 and general welfare. If any bylaw is enacted with respect to any land development subject to regulation under state statutes, the more stringent or restrictive bylaw applicable shall apply.
- 702.02 When the Administrative Officer cannot definitely determine the meaning or applicability of one or more sections of this bylaw, he or she shall refuse action, and the Planning Commission shall interpret the meaning or applicability of such sections based upon the Town Plan and the purposes set forth in all relevant provisions of this bylaw.

§703: Effective Date

This bylaw shall take effect 21 days after adoption by the Town of Westfield according to the procedures contained in 24 VSA, §4442.

§704: Separability

The invalidity of any article or section of this bylaw shall not invalidate any other article or section.

§705: Repeal

The existing zoning bylaw, adopted on November 14, 2005, together with all amendments thereto is hereby repealed as of the effective date of this bylaw.