



Pomfret Zoning Ordinance

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The Pomfret Zoning Ordinance was prepared by the Pomfret Planning Commission with assistance from the Two Rivers-Ottawaquechee Regional Commission.

**Pomfret Planning
Commission**

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ARTICLE 1 - OVERVIEW

1.1 ENACTMENT

The Town of Pomfret has adopted this zoning ordinance (this “ordinance”) in accordance with the Pomfret Town Plan and pursuant to the Vermont Municipal and Regional Planning and Development Act, 24 V.S.A, Chapter 117 (“the Act”).

1.2 PURPOSE

It is the purpose of this ordinance to further the goals, polices and recommendations of the Pomfret Town Plan and the goals of Section 4302 of the Act, including but not limited to:

- 1) Encouraging and providing for the appropriate and orderly use and development of all waters, lands and buildings in the Town in a manner which will promote and protect the public health, safety, prosperity, comfort, convenience, and general welfare of its citizens and residents;
- 2) Protecting soil, forests, waters, wildlife, and other natural resources;
- 3) Preserving rural character, working landscapes and open space;
- 4) Protecting the public health and environment against all forms of pollution and other hazards, such as explosions, fires and floods;
- 5) Reducing the harm that one land use might have on another;
- 6) Ensuring that the rate of growth and development does not exceed the town’s ability to provide services, nor place an undue burden on taxpayers
- 7) Allowing for a diversity of housing types to meet the needs of residents across age and income groups.

Purposes for individual zoning districts can be found in Section 2.2. Certain terms used in this ordinance are defined in Article 8. The reader is encouraged to read Article 8 alongside other provisions of this ordinance.

This ordinance also governs actions of the Pomfret Planning Commission (PPC), Zoning Administrator (ZA), and Zoning Board of Adjustment (ZBA) for the Town of Pomfret.

1.3 ADMINISTRATION AND ENFORCEMENT

1.3.1 ZONING ADMINISTRATOR (ZA)

The ZA shall be responsible for carrying out the administration and enforcement of this ordinance, as required by the Act. The ZA shall be nominated by the PPC and appointed by the Selectboard for a term of three (3) years upon expiration of a term or when a vacancy exists. The ZA shall administer this ordinance literally, and shall not have the power to permit any land development which is not in conformance with this ordinance. The ZA may be removed for cause at any time by the Selectboard after consultation with the PPC.

The ZA’s principal duties shall be to:

- 1) Receive applications for zoning permits and issue same, administering this ordinance and the statutes of Vermont literally, with no power to permit any nonconforming land use or development.
- 2) After determining that an application is complete, take action (i.e., issue permit for permitted use, refer to the ZBA or PPC in accordance with Sections 1.3.2 and 1.3.3 of this ordinance, or deny) on the permit application within 30 days of receipt of same. Failure to act within said period shall constitute a decision in favor of the applicant.
- 3) Issue zoning permits only after approval and authorization by the ZBA or PPC, as applicable, according to Sections 1.3.2 and 1.3.3 of this ordinance.
- 4) Post issued permits (per Section 6.4) in at least one public place, and provide one copy to the applicant, the Town Clerk, the Board of Listers, and the Town Office archives.
- 5) Be aware, to the best of his or her ability, of any violation of this ordinance and the applicable statutes, and in the name of Pomfret, take any appropriate action to prevent or correct such violation.
- 6) Submit an Annual Report of Proceedings to the Selectboard and PPC.

1.3.2 ZONING BOARD OF ADJUSTMENT (ZBA)

The ZBA shall consist of three (3) to nine (9) persons, appointed by the Selectboard, pursuant to Section 4460 of the Act. The number and terms of office of its members shall be so fixed by the Selectboard that not more than 1/3 of its members shall be reappointed or replaced during any future calendar year. Vacancies shall be filled by the Selectboard for the un-expired terms. The ZBA shall elect its own officers consisting of a chair and clerk, and adopt rules of procedure and of ethics pursuant to Section 4461 of the Act.

In addition to those specifically provided for elsewhere in Subchapters 10 or 11 of the Act, the ZBA has the following powers pursuant to Sections 4460, 4465, and 4469 of the Act:

- 1) Hear and decide appeals from rulings by the ZA. Forms for appeals can be obtained at the Town Clerk's office.
- 2) Receive, hold hearings, and decide upon applications for variances.
- 3) Hear and grant or deny a request for conditional use approval.
- 4) Hear and grant or deny a request for a waiver.

1.3.3 PLANNING COMMISSION (PPC)

The PPC shall consist of three (3) to nine (9) persons, appointed by the Selectboard, pursuant to Section 4322 of the Act. The number and terms of office of its members shall be fixed by the Selectboard. Vacancies shall be filled by the Selectboard for the un-expired terms. The PPC shall elect its own officers consisting of a chair and clerk, and adopt rules of procedure pursuant to Section 4323 of the Act.

In addition to those specifically provided for Section 4325 of the Act, the PPC has the following powers pursuant to Section 4325(13) of the Act, to the extent of the PPC’s jurisdiction under the Zoning Regulations for Ridgeline and Hillside Conservation Areas (Appendix B of this ordinance) and the Subdivision Regulations (distinct from this ordinance):

- 1) Receive, hold hearings, and decide upon applications for major subdivisions and for development in the Ridgeline and Hillside Conservation Overlay District (RHO).
- 2) Review and approve or reject preliminary and final plans.
- 3) Hear and grant or deny a request for a waiver.

1.3.4 GENERAL PROCESS

Several kinds of uses, structures and development are exempt, or partially exempt, from application of this ordinance, either as required by state or federal law, or as a decision by the Town. A list of these exempt uses, structures and development is found in Section 1.4. It is advisable to check with the ZA to ensure that any contemplated use, structure or development meets the requirements of Section 1.4. The ZA may request additional information to confirm an exemption, and can issue a written decision regarding exemption. Uses, structures and development, even when exempt from this ordinance, may require other local, state or federal permits or approvals, and the ZA is the starting point for information regarding those additional permitting processes (see Section 6.2).

For land development that does require a zoning permit, sometimes such a permit can be issued by the ZA directly or after a waiver issued by the ZA per Section 3.1 of this ordinance. At other times an approval, variance, or waiver from the ZBA or PPC (as applicable, according to Sections 1.3.2 and 1.3.3 of this ordinance) is required before such a permit can be issued. See Article 6 for more details on the general permitting process.

1.4 DEVELOPMENT EXEMPT FROM A PERMIT

The uses, structures and development listed in this Section 1.4 shall be required to meet all setback and dimensional requirements, but are otherwise exempt from the requirement to obtain a zoning permit or any other approval under this ordinance, except in the RHO. Uses, Structures and Development that are exempt under this ordinance may not be exempt from the requirements of the Subdivision Regulations or Flood Hazard Area Regulations, and the reader is encouraged to consult those documents for more information. It is also advisable to check with the ZA to ensure that any contemplated use, structure or development meets the requirements of this Section 1.4.

- 1) Temporary structures such as storage containers, construction trailers, and event structures, provided that such structures shall not be used for dwelling purposes and are on site for a period of time not to exceed one (1) year.
- 2) Temporary shelters such as campers, tents, travel-trailers, teepee and yurts in campgrounds or, with the consent of the landowner, on other properties, provided that no such shelter is occupied or used for more than 60 days within any calendar year. Other than in campgrounds, no more than one such shelter may be permitted per lot.

- 3) Fuel or propane storage tanks used for agriculture or single or two family purposes.
- 4) The construction or placement of conforming new unattached accessory structures or other structures incidental to residential uses (such as doghouses, playhouses, tree houses, etc.), not larger than 576 square feet (for example, 24 feet x 24 feet), nor taller than 15 feet.
- 5) Normal maintenance and repair to the exterior of existing structures or utilities which does not result in alterations in dimension, or an expansion or change of use.
- 6) Interior alterations to a structure that do not result in an increase in the number of bedrooms or a change in use.
- 7) Temporary events (such as public auctions, garage/yard sales, immediate family member weddings, church suppers, fairs, concerts, festivals, cultural events, trade and antique shows, etc.) not exceeding four (4) consecutive days or more than twelve (12) days in a calendar year. Temporary events cannot be the principal use of land or structures, and adequate off-street parking, circulation, and sanitary and trash collection facilities must be provided. A public gathering permit from the town and/or state police may be required.
- 8) On-premise signs visible from outdoors, provided they meet the requirements of Section 4.1(10) and are placed outside of the State or Town right of way, and meet the following criteria:
 - a. One (1) non-illuminated sign, affixed or free-standing, which shall not exceed six square feet and shall be limited to identifying a private residence, a permitted use or a use or activity exempt under this Section 1.4;
 - b. Non-illuminated signs, affixed or free-standing, which shall not exceed two (2) square feet per side and shall be limited to the direction, instruction or convenience of the public (i.e. signs identifying restrooms, freight entrances, posted areas, danger areas, postings relating to hunting and trespassing, etc.);
 - c. Temporary, non-illuminated signs not exceeding 6 square feet in area, to be maintained for not more than two (2) weeks in connection with temporary events as under part 7) above and are removed immediately following the event;
 - d. One (1) portable, non-illuminated temporary “sandwich board” sign associated with a business, with a maximum area of 6 square feet which shall be removed when the business or activity is not in operation;
 - e. Temporary signs may be located on the owner’s property for thirty (30) days prior to an election involving candidates for federal, state or local office or involving an issue on the ballot of an election, to be removed within one (1) week following the election;
 - f. One (1) temporary sign may be located on the owner’s property, when the owner consents, and the property is offered for sale through a licensed real estate agent or is offered for sale by the owner. Such sign shall be removed within one (1) week following the date on which the closing of such sale has been consummated; and
 - g. One (1) temporary sign may be located on the owner’s property, when the owner consents, and the property is the subject of construction or landscaping activity, identifying the

contractor or landscaper involved. Such sign shall be removed within one (1) week following completion of such activity.

- 9) Power generation and transmission facilities and networked telecommunications which are regulated under 30 V.S.A. § 248 or § 248a by the Vermont Public Utility Commission. Such facilities should conform to the policies and objectives specified therefor in the Town Plan, such as preferred siting on rooftops or, where rooftop siting is not feasible, utilizing setbacks for commercial development within this ordinance. Such facilities also should be screened as viewed from the road or adjoining properties.
- 10) Fences, berms, manmade earthen structures, stone or retaining walls, any of which are up to 4.5 feet high and are placed outside of the right-of-way. Placement inside of the right-of-way requires a waiver under Section 3.1.
- 11) Installation of a roof- or wall-mounted antenna, satellite dish or similar device to provide on-site communication service if:
 - a. The area of the largest face of the device does not exceed 15 square feet, and
 - b. The device and any mast, pole or support structure does not extend more than 12 feet above the roofline of the portion of the building to which it is attached.
- 12) Work incidental to the development of non-commercial trails.
- 13) Grading, filling, excavation, and removal associated with road, parking area, and driveway maintenance (e.g., including culvert replacement and resurfacing); operation of a cemetery; clearing for lawn and yard maintenance (e.g., for gardening or landscaping); or other activities that are otherwise incidental to an existing approved use. This specifically does not include site work incidental to construction or activities within a riparian buffer.
- 14) Hunting, fishing, and trapping (as specified under 24 V.S.A. § 2295) on private or public land. This permit exemption does not include the development of hunting, fishing, and trapping facilities such as firing ranges or rod and gun clubs.
- 15) Installation, modification, maintenance, or removal of a project permitted by a state Potable Water Supply and Wastewater Permit.
- 16) Required agricultural and forestry practices (including the construction of farm structures, operation of riding stables, and processing or sale of agricultural or forestry products primarily (more than 50 percent) produced on the premises) as exempted by 24 V.S.A. § 4413(d). The reader is encouraged to consult Section 8.2 for further information about qualifying activities.
 - a. While no town permits are required for construction of a farm structure, a farm operator shall submit a zoning permit application, per Article 6, so that the ZA can determine whether the proposed structure qualifies as a farm structure and whether it meets the setback requirements of the zoning district in which it will be located, per the Secretary of Agriculture's policy. The Secretary may grant a waiver to the setback requirements upon written request and after notifying the town. No application fees or further action by applicant shall be required if the ZA determines that the proposed structure qualifies as a compliant farm structure.

- b. Temporary accesses for forestry operations may require an access permit by the Selectboard and a bond to insure protection of public roads.
- 17) Amateur radio towers less than 50 feet in height and set back at least 150% of their height from lot lines or rights-of-way.
- 18) Clotheslines or other energy devices based on renewable resources for on-site use, provided that they meet the setbacks specified in this ordinance.
- 19) The stabilization of a damaged structure to prevent hazards to public health and safety, or to adjoining properties, structures or uses, or for the prompt repair or reconstruction of a damaged structure to the extent of its prior condition and use, provided that such structure is outside the FHO, the repair begins within one year of the damage, and there is no change in structural dimensions or a change of use.
- 20) Public road, sidewalk, bridge, infrastructure, and utility improvements and maintenance and related appurtenances within public rights-of-way.
- 21) Chimneys; patios, terraces, and similar unroofed structures at grade; entry stairs (excluding decks and porches), handicap ramps, railings and walkways that do not obstruct public rights-of-way; arbors, trellises, pergolas, raised beds and similar unroofed structures not to exceed 10 feet in height.
- 22) Home occupations as defined in Section 5.4.
- 23) De minimus structures or uses not specifically mentioned in this ordinance that are incidental and customary to the use on the lot, are consistent with policies of the Town Plan, and so temporary or minimal in their impact on the public that regulation of them is not required to protect health, safety, welfare or environment. Such uses or structures include but are not limited to play equipment, unpaved trails and paths, and seasonal decorations.

1.5 INTERPRETATION OF ZONING REGULATIONS

The ZA shall administer this ordinance literally. Matters required to be reviewed by this ordinance or by Section 4460 of the Act will be referred by the ZA to the ZBA (or the PPC as applicable, according to Sections 1.3.2 and 1.3.3 of this ordinance), or may be appealed to the ZBA in accordance with Section 4465 of the Act, which shall interpret and apply such terms or provisions. Such interpretations shall be kept on file for use in subsequent proceedings.

1.6 LIMITATIONS

The following uses may be regulated herein 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 this ordinance does 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.

ARTICLE 2 - Zoning Districts

2.1 ESTABLISHMENT OF ZONING DISTRICTS AND MAP

For the purposes stated in the Pomfret Town Plan and Section 2.2, the following zoning districts are established within the Town of Pomfret:

- South Pomfret Village District (VD)
- Rural District (RD)
- Flood Hazard Overlay District (FHO)
- Ridgeline and Hillside Conservation Overlay District (RHO)

The boundaries of the zoning districts, except the FHO, are established as shown on the Zoning Map for the Town of Pomfret attached as Appendix A and made a part of this ordinance, together with all future amendments. The FHO covers all lands identified as areas of special flood hazard in and on the most current flood insurance studies and maps published by the Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA), National Flood Insurance Program (NFIP), as provided by the Secretary of the Agency of Natural Resources pursuant to 10 V.S.A. § 753, which are hereby adopted by reference and declared to be part of these regulations. The map titled Flood Insurance Rate Map (FIRM), Town of Pomfret, Vermont and any revisions thereto, shall be considered the official FHO map, together with all explanatory matter thereon and attached thereto, and is hereby adopted by reference and declared to be part of this ordinance.

The official Zoning Map will include all zoning districts and shall remain on file with the Town Clerk. In the event of any question of the limits or boundaries of any district, the ZBA or PPC (as applicable) shall have the authority and power, upon request of a landowner and after a public hearing, to determine where such lines actually fall on the ground.

2.2 ZONING DISTRICTS, USES, AND REQUIREMENTS

2.2.1 SOUTH POMFRET VILLAGE DISTRICT (VD)

2.2.1.1 *Purpose*

The purpose of the VD is to encourage a mix of small commercial, civic, municipal, and residential development at a scale that fits the surrounding context and is consistent with historical settlement patterns. To this end, in the VD, setbacks from public rights-of-way are smaller and waivers are available for such setbacks and for lot sizes (see Section 3.2). As a result, densities may be higher in the VD than in the RD, in keeping with the built environment in the VD. However, due to lack of public sewer and water, high density is not appropriate at this time. By allowing for more commercial development in the VD, the VD supports the Town's goal to reduce the impact of growth on the more rural areas of the Town and thereby retain the Town's rural character.

2.2.1.2 *Dimensional Requirements*

Minimum Lot Area	2 acres*
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Minimum Setback from Centerline of a Public Right-of-Way	45 feet*
Minimum Setback from an Adjacent Lot Line	20 feet*
Maximum Building Height	35 feet

* Some dimensional/size requirements may be reduced by waivers as specified in Article 3. See also Section 4.2(7) for required setbacks for commercial structures.

2.2.1.3 *Prohibited Uses*

The following uses are prohibited in the VD:

- 1) Commercial kennel
- 2) Outdoor shooting range
- 3) Junkyard/salvage yard
- 4) Contractor yards
- 5) Landfill
- 6) Cemetery
- 7) Heavy Industrial
- 8) Commercial mining
- 9) Recreational vehicle / travel trailer park
- 10) Mobile home park
- 11) Golf course
- 12) Racetrack
- 13) Uses that create dangerous, injurious or noxious conditions that adversely affect the reasonable use of adjoining or nearby properties, or that constitute a public nuisance, including but not limited to slaughterhouse, rendering plant, fertilizer plant, and hazardous materials/chemical storage facility.

2.2.1.4 *Uses Requiring a Zoning Permit (Permitted Uses)*

The following uses require a zoning permit in the VD:

- 1) Single-family dwelling unit
- 2) Two-family dwelling unit
- 3) Accessory dwelling units
- 4) Accessory structures not exempt per the provisions of Section 1.4
- 5) Accessory on-farm business
- 6) Family child care home

- 7) Group home
- 8) Home Business as defined in Section 5.5
- 9) Swimming pools
- 10) Ponds meeting the standards set forth in Section 5.2 and which will impound or be capable of impounding less than 500,000 cubic feet of liquid

2.2.1.5 Uses Requiring Conditional Use Approval Prior to a Permit (Conditional Uses)

Any use that is not exempt, permitted, or prohibited is a conditional use.

2.2.2 RURAL DISTRICT (RD)

2.2.2.1 Purpose

The purpose of this zoning district is to preserve Pomfret’s rural character and working lands. The RD consists primarily of small-scale residential, forestry, and agricultural land uses, with some business, outdoor recreational and natural resource uses. Service businesses (including those with an ancillary retail component), home businesses, professional offices, and inns are appropriate land uses for the RD provided that such uses are in keeping with surrounding development, do not unduly conflict with existing or planned residential, forestry or agricultural uses, and do not unduly affect rural character.

2.2.2.2 Dimensional Requirements

Minimum Lot Area	2 acres*
Minimum Setback from Centerline of a Public Right-of-Way	65 feet*
Minimum Setback from an Adjacent Lot Line	20 feet*
Maximum Building Height	35 feet

* Some dimensional/size requirements may be reduced by waivers as specified in Article 3. See also Section 4.2(7) for required setbacks for commercial and industrial structures and Section 5.1 for kennels.

2.2.2.3 Prohibited Uses

The following uses are prohibited in the RD:

- 1) Junkyard/salvage yard
- 2) Landfill
- 3) Heavy industrial
- 4) Commercial mining
- 5) Primary retail
- 6) Golf course
- 7) Racetrack

- 8) Uses that create dangerous, injurious or noxious conditions that adversely affect the reasonable use of adjoining or nearby properties, or that constitute a public nuisance, including but not limited to slaughterhouse, rendering plant, fertilizer plant, and hazardous materials/chemical storage facility.

2.2.2.4 *Uses Requiring a Zoning Permit (Permitted Uses)*

The following uses require a permit in the RD:

- 1) Single-family dwelling unit
- 2) Two-family dwelling unit
- 3) Accessory dwelling units
- 4) Accessory structures not exempt per the provisions of Section 1.4
- 5) Accessory on-farm business
- 6) Family child care home
- 7) Group home
- 8) Home Business as defined in Section 5.5
- 9) Swimming pools
- 10) Ponds meeting the standards set forth in Section 5.2 and which will impound or be capable of impounding less than 500,000 cubic feet of liquid

2.2.2.5 *Uses Requiring Conditional Use Approval Prior to a Permit (Conditional Uses)*

Any use that is not exempt, permitted, or prohibited is a conditional use.

2.2.3 FLOOD HAZARD OVERLAY DISTRICT (FHO)

2.2.3.1 *Purpose*

It is the purpose of this overlay district to:

- 1) Minimize and prevent the loss of life and property, the disruption of commerce, the impairment of the tax base, and the extraordinary public expenditures and demands on public services that result from flooding and other flood related hazards;
- 2) Ensure that the design and construction of development in flood and other hazard areas are accomplished in a manner that minimizes or eliminates the potential for flood and loss or damage to life and property;
- 3) Manage all flood hazard areas designated pursuant to 10 V.S.A. § 753; and
- 4) Ensure eligibility for federal flood insurance and other federal disaster recovery and hazard mitigation funds as may be available.

2.2.3.2 *Districts Covered*

The FHO shall cover those areas or districts also regulated under the separate Flood Hazard Area Regulations.

2.2.3.3 *Regulation*

Prior to any zoning permit being issued in the FHO, a Flood Hazard permit under the town's separate Flood Hazard Area Regulations shall be required by the Town, or the ZA shall determine that no such permit is required.

2.2.4 RIDGELINE AND HILLSIDE CONSERVATION OVERLAY DISTRICT (RHO)

2.2.4.1 *Purpose*

It is the purpose of this overlay to achieve the purposes in Appendix B.

2.2.4.2 *Districts Covered*

The RHO shall cover those areas or districts described in Appendix B.

2.2.4.3 *Regulation*

Prior to any zoning permit being issued in the RHO, a Visual Impact Approval by the PPC shall be required, as more particularly described in Appendix B, and for conditional uses, a separate conditional use approval by the ZBA shall also be required prior to issuance of a zoning permit.

2.3 LOTS IN MORE THAN ONE ZONING DISTRICT

If a lot is located in two or more zoning districts, the portion of land in each zoning district shall be governed by the rules of that zoning district, provided that there is sufficient acreage in such zoning district to allow for a conforming lot. When lots have sufficient acreage to allow for a conforming lot in only one zoning district, the entire lot shall be treated as being in that zoning district. Lots without sufficient acreage in any zoning district will be treated as being entirely in the zoning district with the majority of the lot acreage. In lots within the FHO, the overlay requirements shall supersede those of the underlying zoning district when more strict.

2.4 MIXED USES

A mixed use (a combination of principal uses within a single structure or lot) is allowed as a conditional use.

ARTICLE 3 - WAIVERS

Waivers from dimensional requirements of this ordinance may be granted as provided in this section. Waivers may not be granted on types of use.

3.1 WAIVERS BY ZA

In all zoning districts, waivers for setbacks may be granted by the ZA, without a hearing by the ZBA or PPC, for:

- 1) Reductions in setbacks or other dimensional requirements, as necessary to reasonably accommodate a person with a disability (as defined in the ADA), provided that the waiver will be the minimum necessary to provide relief and, if related to a setback, will be to the side and rear unless no reasonable alternative exists; and
- 2) Placement of fences, berms, manmade earthen structures, stone or retaining walls, or signs, any of which are up to 4.5 feet high and are placed within the State or Town right-of-way, provided these are first authorized by the applicable Vermont state agency or the Selectboard, respectively;

3.2 WAIVERS BY ZBA

In all zoning districts, waivers under this section for alterations in dimensional requirements may be granted by the ZBA using the same notice and hearing process used for conditional use approval. Before granting a waiver the ZBA shall make written findings for each review criteria including the rationale for each finding.

Waivers may be granted by the ZBA as long as they do not result in a greater than 50% decrease in any zoning district dimensional requirement, provided that no development shall encroach on the public right-of-way; the proposed development is at least 10 feet from the edge of the travelled way; and the development is found to satisfy criterion (1) and at least one other criterion (2-6):

- 1) The proposed development is consistent with the Town Plan
- 2) The proposed development is consistent with existing development patterns of the zoning district or of neighboring properties;
- 3) The proposed development will cluster development and more effectively preserve open land, forestland, or protect water quality or natural areas in perpetuity;
- 4) The proposal will result in permanently affordable housing units;
- 5) In the VD, reductions of lot size to 1 acre is appropriate to enable greater density where potable water supply and wastewater permits allow.
- 6) In all zoning districts, locating more than one principal structure per lot may be allowed by the ZBA by waiver if the placement of the structures could not be subdivided in a manner compliant with Section 4.6, provided the entire lot contains the otherwise required total area for all principal structures, all setbacks are met, the fire department approves the building layout, and that the proposal will cluster development and more effectively preserve open land, forestland,

or protect water quality or natural areas. Undeveloped lands used in the density calculation will be precluded from future development by a permit condition.

In granting a waiver, the ZBA may require landscaping and screening in order to compensate for smaller setbacks or a smaller lot.

3.3 WAIVERS BY PPC

The PPC may waive certain requirements under the Zoning Regulations for the Ridgeline and Hillside Conservation Overlay District, as more particularly described in Appendix B. The reader is encouraged to consult that document for more information.

ARTICLE 4 - GENERAL STANDARDS

This article outlines general standards for all uses.

4.1 GENERAL STANDARDS FOR ALL LAND DEVELOPMENT

1) **Setbacks**

- a) Any freestanding or guyed structure other than a building (e.g. radio tower, windmill, etc.) shall be no closer to property lines than 150% of its height.
- b) Above grade projections from a building such as roof overhangs, balconies, sills, cornices or similar architectural features may extend up to 36 inches into required setbacks, except that no projection shall extend over a public or private right-of-way unless approved by the ZBA and, in the case of the use of public right-of-way, the Selectboard (pursuant to 19 V.S.A. § 1111).

- 2) **Maximum Height.** No structure or part thereof, except farm buildings, antennae, chimneys, cupolas, steeples or similar roof structures; windmills; or telecommunications towers shall exceed 35 feet as measured from the average elevation of the proposed finished grade around a structure to the highest point of the roof. The distance measured is exclusive of chimneys, lightning rods, antennas, or rooftop solar collectors less than 10 feet high. Average grade is determined by dividing the perimeter of the structure into two or more equal sections, determining the proposed finished grade of each section, and calculating the average.

- 3) **Wetlands.** No permit for land development that involves filling, excavating, or altering a wetland and its buffer designated or regulated by the State of Vermont shall be issued without prior review and wetlands approval by the Agency of Natural Resources, unless the land development constitutes an allowed use under the Vermont Wetlands Rules or is otherwise exempt from such review and approval. Applicants shall demonstrate compliance with state and federal regulations by submitting approved state permits or letters from state authorities indicating compliance.

4) **Riparian Buffers**

- a) United States Geological Survey mapped streams will have a minimum building setback measured 50 feet horizontally from top of bank, and no ground disturbance within 35 feet (measured horizontally) from top of bank. When siting commercial uses, the aforementioned riparian buffers will be doubled.
- b) Outside of the FHO, no land disturbance is allowed within a riparian buffer except for the following uses:
 - i) Required agricultural practices as defined by the Secretary of Agriculture, Food and Markets in accordance with Section 4413(d) of the Act. Written notification, including a sketch plan showing structure setback distances from surface waters shall be submitted to the ZA prior to any construction, as required under the Required Agricultural Practices Rule. Such structures shall meet the setback requirements of this ordinance, unless waived by the Secretary of Agriculture.

- ii) Accepted silvicultural practices as defined by the Commissioner of Forests, Parks, and Recreation, or forestry operations, in accordance with Section 4413(d) of the Act.
 - iii) Removal of invasive species and buffer re-establishment projects.
 - iv) Stream restoration projects in accordance with a plan approved by the Vermont Agency of Natural Resources.
 - v) Unpaved recreation paths located at least 10 feet above top of bank.
 - vi) Roadways or access drives for purposes of crossing a riparian buffer to gain access to land on the opposite side of the buffer, or for purposes of providing safe access to an approved use, in cases where there is no feasible alternative for providing safe access. A roadway crossing or access drive shall occur at a right angle to the stream channel.
 - vii) Utility crossings.
 - viii) Parked recreational vehicles that are at least 35 feet from the top of bank.
 - ix) The removal of a structure or building in whole or in part.
 - x) At-grade parking areas that are at least 50 feet from the top of bank.
- c) Existing trees within the riparian buffer may be pruned and dead, diseased or hazardous trees may be removed as long as the overall forest canopy is maintained. Stumps shall not be removed.
 - d) The creation of new lawn areas within riparian buffers is not permitted.
 - e) Any areas within a riparian buffer that are not vegetated or that are disturbed during construction shall be seeded with a naturalized mix of grasses rather than standard lawn grass, and shall not be mowed more than 2 times per calendar year after establishment.
 - f) All work below top of bank on all streams requires a State Stream Alteration Permit.
 - g) Any land disturbance taking place within the FHO must also comply with the provisions of the Flood Hazard Area Regulations.

5) Lot Creation or Modification

- a) In accordance with Section 4412(3) of the Act, no lot may be created without frontage on a public road or public waterbody unless accessed by a permanent easement or right-of-way at least 50 feet in width.
- b) Subdivisions or boundary line adjustments must comply with the provisions of the Subdivision Regulations.
- c) Frontage requirements for lots served by private roads shall be the same as the requirements for lots served by public roads.
- d) Private roads and driveways must be constructed in accordance with Section 8.6.3 of the Subdivision Regulations and Section 4.1(13) of this ordinance.

6) **Hazardous Materials**

- a) No storage or use of hazardous materials shall be permitted that unduly endangers other property owners or environmental quality, or that results in a undue increased burden on municipal facilities or services.
- b) The storage of any petroleum product in above-ground or below-ground tanks shall comply with all applicable state and federal regulations.

7) [Intentionally Omitted.]

8) **Solid Waste and Refuse.** Solid waste or refuse shall not be stored in a manner or in quantities that are detrimental to public health, safety and welfare. This restriction does not apply to lawfully operated farms.

9) **Accessory Structures.** Accessory structures customary, incidental and subordinate to the principal use of the lot will follow the permitting process and standards of the principal use. For example, where a house requires only a zoning permit, a garage for that house also only requires a zoning permit. An accessory structure for a conditional use also requires a conditional use approval prior to permitting.

10) **Signs.** The erection, construction, relocation, or enlargement of a sign visible from outdoors, other than those specified as exempt under Section 1.4, shall require conditional use approval by the ZBA prior to permitting. Signs, including exempt signs, shall conform to the requirements listed below:

- a) No sign shall be lit outside of one-half hour before and after open hours of the associated business.
- b) Indirectly illuminated signs may be lighted with constant lighting provided:
 - i) The lighting shall be shielded and shall not be directed beyond the extent of the sign.
 - ii) The lighting shall not be directed at neighboring properties or public ways.
 - iii) The intensity of sign lighting shall not adversely affect the neighborhood or streets and highways, especially the drivers of vehicles.
 - iv) Light fixtures used for signs on or near buildings, if visible, should be of a style compatible with the overall building façade.
- c) No sign shall contain string lighting, pennants, moving parts or similar attention gathering devices. No sign shall be internally illuminated, or illuminated by a neon, flashing, moving, or intermittent light.
- d) No sign shall be erected, attached, or maintained upon any tree or drawn or painted on any rock or other natural feature or upon any utility pole or town sign post.
- e) No sign shall be erected which is not on the lot where the activity served by the sign is located.

- f) The height of a sign shall not be more than ten (10) feet above grade level in the RD and twenty (20) feet in the VA.
- g) The face of a sign shall not exceed 16 square feet in any zoning district.
- h) Placement of signs within the State or Town right-of-way may be waived under Section 3.1, provided such signs are authorized by the applicable Vermont state agency or the Selectboard, respectively.
- i) Any sign for a business no longer conducted or product no longer sold on the premises upon which such sign is located shall be removed within 90 days.
- j) No sign may be so designed, erected, illuminated, operated or maintained and be in such a location that it conflicts with or detracts from the effectiveness of an official traffic signal or sign, prevents a clear and unobstructed view of traffic, or otherwise impairs traffic safety.
- k) Signs located on motor vehicles that are used primarily as a support or foundation are prohibited. Any of the following shall be considered evidence that a vehicle is being used primarily as a sign:
 - i) The vehicle is inoperable or unregistered.
 - ii) The sign would interfere with or prevent the vehicle from being legally driven on the road.
 - iii) The vehicle is not regularly driven.

11) **State Energy Standards.** New residential and commercial construction will conform to applicable building energy standards, per 30 V.S.A. § 51, and the required certifications shall be filed in the Town land records.

12) **Parking.** For every building erected, extended or substantially changed in use, there shall be provided, at a minimum, off-street parking as described below. In the VD, reasonable steps shall be taken to locate parking to the side or rear of structures, whenever feasible.

- a) Residential Uses: One parking space for every new dwelling unit or accessory dwelling unit.
- b) Restaurant and Lodging Uses: One parking space for every three seats/unit, plus one additional space for every employee. Where no seats are provided for patrons, one space for every 300 square feet of floor area is required.
- c) Other Uses: One parking space for every business and employee, plus one space for every 300 square feet of commercial floor area, plus sufficient area to safely accommodate off-street loading by delivery vehicles.

During permit review and approval, the ZBA or PPC (as applicable, according to Sections 1.3.2 and 1.3.3 of this ordinance) may alter the requirements above as needed to provide a reasonable amount of parking. The ZBA or PPC may allow parking spaces to be (i) located on lands not part of the lot on which the principal building is situated, (ii) shared between uses if the amount of parking to be provided would satisfy the requirements of each use, and

(iii) increased or decreased due to the particular circumstances of the project or when the applicant has demonstrated that the parking requirements are not applicable to the project. Such alterations and the reasons supporting them shall be written as findings of fact and contained in any approval decision.

13) Driveways and Private Roads. All driveways and private roads shall conform to the following standards, which shall apply to both private roads and driveways:

- a) The travel lane of private roads serving 1 to 3 lots or principal residences shall be a minimum of 12 feet in width. The travel lane of private roads serving 4 to 8 lots or principal residences shall be a minimum of 14 feet in width. The travel lane of private roads serving more than 8 lots or principal residences shall be a minimum of 16 feet in width.
- b) The maximum centerline grade of private roads serving 1 to 3 lots or principal residences shall be 16%. The maximum centerline grade of private roads serving more than 3 lots or principal residences shall be 12%.
- c) The horizontal road curve centerline radius of a private road shall be a minimum of 40 feet.
- d) On private roads, turnoffs adequately sized to allow a fire apparatus to park outside the travel lane shall be provided every 500 feet or less if sight lines require.
- e) On private roads, the deeded right-of-way shall be a minimum of 50 feet wide.
- f) Cut side slopes on private roads shall not exceed 2:1 (horizontal-to-vertical). Fill side slopes on private roads shall not exceed 4:1 (horizontal-to-vertical).
- g) Private road bases, driveway bases, and any bridges shall be capable of supporting a design wheel load of 18,000 pounds and a minimum gross vehicle weight of 80,000 pounds.
- h) Driveways shall be designed to allow an emergency vehicle to park within 100 feet of the house that the driveway serves. Houses located more than 1,000 feet from a public or private road shall provide a turnout or staging area within 100 feet of the house for multiple emergency vehicles.

14) Outdoor Lighting and Reflection. All outdoor lighting shall conform to the requirements listed below:

- a) Outdoor lighting shall not have an undue adverse impact on the character of the area, other property owners or tenants, impair the vision of a driver of any motor vehicle, or otherwise endanger public health, safety and welfare.
- b) Outdoor light fixtures shall be shielded and shall not direct light upward or onto adjacent properties or public roads. Lights shall be designed to minimize glare.
- c) Exterior building facades shall not be illuminated unless otherwise approved by the ZBA or PPC (as applicable, according to Sections 1.3.2 and 1.3.3 of this ordinance).

- d) The maximum height of freestanding lights should be no higher than 16 feet.
- e) Outdoor light fixtures associated with commercial, industrial, and mixed use developments shall be illuminated only during business hours and/or when employees are on-site, unless the ZBA or PPC (as applicable, according to Sections 1.3.2 and 1.3.3 of this ordinance) determines that lighting is required during other times of day or night for safety and security purposes.

4.2 GENERAL CONDITIONAL USE APPROVAL STANDARDS

Conditional uses are uses that may be allowed in a particular zoning district only by approval of the ZBA, if general and specific standards to which each allowed use must conform are satisfied and if the ZBA, under the procedures set forth herein, determines that the proposed use will conform to those standards. To grant approval the ZBA must find that the proposed development will not create an undue adverse effect on any of the following:

- 1) **Consistency with Town Plan.** The proposed development must be consistent with applicable mandatory provisions of the Pomfret Town Plan.
- 2) **The capacity of existing or planned community services or facilities.** The ZBA shall consider the demand for community services and facilities resulting from the proposed development in relation to the capacity of such services and facilities including, but not limited to, schools, emergency services, transit services and road maintenance. Conditions may be imposed to ensure that demand does not exceed available or planned capacity.
- 3) **The character of the area** as defined by the purposes in applicable zoning districts in this ordinance and specific policies and standards in the Pomfret Town Plan. Conditions may be imposed to ensure project compatibility with these purposes and policies.
- 4) **Traffic on roads and highways in the vicinity.** The ZBA shall consider the potential impact of traffic projected to result from the proposed development in relation to the condition, capacity, safety, and function of affected roads and associated infrastructure (e.g., bridges, culverts, sidewalks). Conditions may be imposed to ensure that the condition, capacity, safety, and function of roads and associated infrastructure are maintained over the long-term, and that delivery and operations of the proposed use do not create safety hazards.
- 5) **Bylaws and ordinances in effect.** The ZBA shall consider whether the proposed development complies with all bylaws and ordinances in effect at the time of application. Conditions may be imposed or incorporated to ensure compliance with municipal bylaws and ordinances.
- 6) **The utilization of renewable energy resources.** The ZBA shall consider whether the proposed development will interfere with the sustainable use of renewable energy resources, including access to, direct use or future availability of such resources. Development may not adversely affect the use of renewable energy, principally by blocking solar access to adjacent properties. Conditions may be imposed to ensure long-term access, use and availability of such resources.
- 7) **Commercial Buffers.** For commercial or light industrial structures, the setbacks from lot lines that abut residential uses shall be double the required setback specified in Sections 2.2.1.2 and

2.2.2.2. At a minimum, a strip of not less than ten (10) feet from lot lines shall be maintained only for a fence or trees or shrubs to lessen visual and noise impacts on adjacent uses.

- 8) **Waste removal.** Refuse collection areas and provisions for snow removal shall be sufficient for the principal use.
- 9) **Dust/smoke and odor.** No visible dust/smoke or discernable objectionable odor beyond the property line is permitted, excepting as is incidental and customary to residences, farms or permitted occasional burning.
- 10) **Loading and storage areas.** The design and operation of loading and storage facilities must not create pedestrian or vehicular hazards or congestion.
- 11) **Accessibility.** Adequate access from the parking area and walkways to the building(s) that are open to the public shall be provided for people with disabilities and mobility impairments in accordance with applicable state and federal laws.
- 12) **Outdoor Storage and Display.** No vehicles, equipment, parts, products, goods or other materials associated with a nonresidential use shall be stored, parked, or placed outdoors that would unduly adversely affect the character of the area and aesthetic quality as viewed from any public or private road or adjoining properties. The ZBA may:
 - a) Further limit the portions of a lot visible from any public or private road or adjoining properties that may be used for outdoor storage or display.
 - b) Require that outdoor storage or display areas be located behind a building or otherwise screened as viewed from any public or private road or adjoining properties.
- 13) **Additional Information.** The ZBA may request additional information during the review process if needed to adequately review technical issues, at the applicant's expense. Supplemental information requests may include, but are not limited to:
 - a) Information pertaining to archeological resources and historic features or structures.
 - b) Architectural elevations of proposed structures and samples of finish materials and/or colors.
 - c) Draft legal documents such as easements, open space agreements, private road agreements, or maintenance agreements.
 - d) Construction staging plan and schedule, including the sequence and timing of proposed site development and related improvements.
 - e) Landscaping and screening plan, including maintenance.
 - f) Lighting plan.
 - g) Storm water management and erosion control plan.
 - h) Analysis of impacts on vehicular traffic, parking, roads and associated infrastructure (e.g., bridges, culverts, sidewalks), and alternative transportation modes that reduce driving and traffic (e.g., pedestrian, bicycle, transit).

- i) Environmental impact analysis, including information pertaining to conservation areas, critical wildlife habitat, and important agricultural or forest soils.
- j) Public Safety.
- k) Visual impact analysis.
- l) Noise impact analysis.
- m) Fiscal impact analysis, including a capital budget and program providing for phasing of development
- n) Input from appropriate municipal, county or state officials, staff, and other qualified professionals regarding the available or planned capacity of community services or infrastructure

14) Natural Resources

- a) The land to be developed will be able to support the intended use without undue adverse impacts on important natural resources, including high priority forest blocks, high priority wildlife corridors, deer yards, significant natural communities, and threatened and endangered species' habitat.
- b) Development shall be planned and sited to preserve crop and pasture land and managed woodlands. Non-agricultural uses shall be sited on less productive agricultural soils or at the edges of woodlands and fields, close to roads.

15) Impacts on Surrounding Uses. No land or structure shall be used in any manner as to create dangerous, injurious or noxious conditions that adversely affect the reasonable use of adjoining or nearby properties.

16) Emergency service access. Emergency vehicle access shall be satisfactory to town emergency services.

17) Historic and Cultural Resources

- a) The proposed development will not have any undue adverse impact on historic, archaeological or cultural resources.
- b) Historic features, including stonewalls and cellar holes, shall be preserved and integrated into project design to the greatest extent feasible.
- c) In the event of adaptive re-use of a historic building, the exterior appearance and architectural details of the building shall be retained to the greatest extent feasible. Any exterior modifications necessary to accommodate new uses shall be compatible with the scale, materials and design of the historic building. Elements such as service doors and building-mounted equipment needed to accommodate the new uses shall be located, designed and screened to minimize their visibility, particularly from public vantage points.

18) Drainage

- a) Drainage must control and minimize storm water runoff and sedimentation, prevent erosion, and protect neighboring land and roads from undue impacts. Proposed developments should minimize the increase in off-site storm water runoff in terms of volume, peak discharge, and discharge of any hazardous substances. Development shall use controls conforming to the *Vermont Low Risk Site Handbook for Erosion Prevention and Sediment Control*. Applicants are strongly encouraged to use low impact development techniques as described in the *Vermont Low Impact Development Guide*.
- b) Sites creating more than half an acre of impervious surface will be required to submit an engineered stormwater plan. Sites disturbing 1 or more acres or development creating 1 or more acres of impervious surface require a state stormwater permit in addition to local permits. Applicants required to get a state storm water permit shall submit a copy of that permit, which shall be deemed compliance with the requirements of this section.

19) Parking areas. If parking areas are provided, they must be located outside of the traveled portion of the public road, and the parked vehicles must not create traffic safety or visibility concerns. Minimum dimensions of parking spaces shall be 9 feet wide and 18 feet long (for straight-in or diagonal parking) or 8 feet wide and 22 feet long (for parallel parking). Spaces shall be reasonably level. ADA compliant parking spaces shall be of dimensions/grades as are required by the most recent ADA guidelines. Sufficient parking shall be provided such that full occupancy or maximum expected use will not create an unsafe condition. Parking areas shall be located to the side and rear of the buildings unless no reasonable alternative exists.

20) Visual impacts

- a) Trees shall be planted or preserved to interrupt the facades of buildings, visually reduce the scale and bulk of large buildings, and integrate the site into the surrounding landscape. If required for the purposes of reducing visual impacts, vegetation shall be diversified for sufficient screening that is effective year-round.
- b) Reasonable efforts shall be made to save existing mature trees, especially those along property lines and roads. The removal of native vegetation shall be minimized and the replacement of vegetation and landscaping shall be compatible with the vegetation of the designated area.
- c) Landscaping, screening, or the retention of vegetation is required to minimize visibility of garbage collection and utility areas, outdoor storage, loading areas, and other outdoor utilities and facilities.
- d) Development shall not have an undue adverse visual effect as viewed from public right-of-ways or adjoining properties, through the use additional landscaping, screening, or retention of vegetation.
- e) Where new development is planned, it must be compatible with the predominant architectural character of existing buildings and streetscape in the immediate area, particularly with regard to lot size, setbacks, height, scale, massing, exterior finish and treatment, color, reflectivity, roof shape, site features, and placement and orientation of structures.

21) **Burying of Utilities.** All utility systems shall be located underground throughout the project site unless the ZBA finds that burying the lines is unreasonable and prohibitively expensive.

4.3 ABANDONMENT AND DISCONTINUANCE

4.3.1 ABANDONED STRUCTURES

Structures which (a) are not substantially complete within three (3) years of the issuance of a zoning permit; (b) are unoccupied and (x) deemed uninhabitable by the Health Officer or (y) deemed a fire hazard by the Fire Chief or a State Fire Marshall; (c) lack any major structural element customary to the type of building involved, such as a roof, windows, water supply, etc.; or (d) exhibit other reasonable evidence of abandonment by the owner, shall be considered abandoned for the purposes of this ordinance. Abandoned structures shall require new zoning permits and approvals, as applicable, under this ordinance before the use of, or construction on, such structures may resume. For such abandoned structures, the owner shall be notified in writing via certified mail by the ZA that the structure in question has been deemed abandoned and that the owner must:

- 1) apply for new permits and approvals in order to undertake any use of or construction on the structure, thereby confirming the owner's intent not to abandon the structure; and
- 2) immediately fence and sign the property to prevent access and, as soon as possible, take all reasonable steps to secure the site, as the ZA and other authorities having jurisdiction may require, including but not limited to removing all materials and equipment from the site, restoring the site to a normal grade, if necessary, and establishing ground cover sufficient to prevent erosion. In the event the owner, following notice, fails to take the foregoing steps, the Town may take such steps on the owner's behalf and at the owner's expense, with such costs constituting a lien upon the property recoverable in the same manner as a tax lien on real property under Title 32. In addition, the Town may take such other actions as authorized by law to insure the safety and security of the property and protect the public.

An abandoned non-conforming structure shall be subject to Section 4.4.

4.3.2 DISCONTINUED USES

Any non-residential use that ceases operation for more than two consecutive years shall be deemed discontinued by the ZA under this ordinance and the owner notified via certified mail of this decision in writing. Discontinued uses shall not be resumed until the owner has obtained new zoning permits and approvals, as applicable, under this ordinance. However, upon a request for deferral by the owner and a written finding by the ZA that the property has been maintained and the owner has been actively pursuing reestablishment of the use, use may cease for up to two additional consecutive years before the use is deemed discontinued.

A discontinued non-conforming use shall be subject to Section 4.4.

4.4 NON-CONFORMING USES AND NON-CONFORMING STRUCTURES

4.4.1 APPLICABILITY

The following provisions shall apply to all lawfully existing structures and uses which do not conform to the requirements set forth in this ordinance and to all buildings and uses that in the future do not conform by reason of any subsequent amendment to this ordinance.

4.4.2 STANDARDS FOR CHANGES TO NON-CONFORMING USES/STRUCTURES

Any non-conforming structure or use may be continued indefinitely except under the following conditions:

- 1) A non-conforming structure may not be moved, enlarged, altered, or extended in such a way that increases the degree of nonconformance. Routine maintenance is permitted.
- 2) A non-conforming structure or non-conforming use that has been abandoned or discontinued, as defined in Article 8, shall not be re-established or resumed.
- 3) A non-conforming structure shall not be reconstructed or restored after damage from any cause, unless such work is substantially complete within two years of such damage and the degree of non-conformity is not increased. The ZA may grant a one-year extension for situations beyond the applicant's control.
- 4) A non-conforming use shall not be changed to another non-conforming use without first receiving conditional use approval from the ZBA, and then only to a use which is of the same or of a more restricted nature. In no case shall external evidence of such non-conforming use be increased.
- 5) A non-conforming use shall not be reestablished or resumed if such use has been changed to, or replaced by, a conforming use.

4.5 EXISTING SMALL LOTS

Any lot that is legally subdivided, is in individual and separate and nonaffiliated ownership from surrounding properties, and is in existence on the date of enactment of any zoning ordinance, including an interim zoning ordinance, may be developed for the purposes permitted in the district in which it is located, even though the small lot no longer conforms to minimum lot size requirements of the new ordinance or interim ordinance. If such development cannot be accomplished in compliance with dimensional requirements other than lot size, then a variance or waiver may be required.

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

- 1) The lots are conveyed in their preexisting, nonconforming configuration; and
- 2) each lot has a functioning water supply and wastewater disposal system; and

- 3) The deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems in case a wastewater system fails.

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

4.6 MORE THAN ONE PRINCIPAL BUILDING PER LOT

Only one principal building (not including an accessory dwelling unit or accessory structure) may be placed on a lot, unless any additional principal buildings (and any accessory buildings) are positioned such that the lot could be subdivided in accordance with all applicable Town and State regulations. Dimensional requirements can be waived per Article 3 of this ordinance.

ARTICLE 5 - SPECIAL STANDARDS

This article outlines special standards for the uses described below.

5.1 KENNELS

As part of conditional use review, owners of kennels may be required to install fencing, landscaping, have increased setbacks and other measures to minimize off site impacts to adjacent properties. At a minimum, no structure or outside area used by animals shall be closer than 100 feet to any property line or surface water. An annual inspection by a licensed veterinarian or humane society official certifying that the site is in compliance with applicable state laws, standards and regulations may be required.

5.2 PONDS

In addition to all other applicable Town and State regulations, all ponds and other impoundments shall meet the following standards:

- 1) Ponds and other impoundments shall comply with the setback requirements in the applicable district, as measured from the toe of the bank.
- 2) To reduce the possibility of overflow, the maximum water level shall be two feet below the dam berm.
- 3) Dry hydrant installation is encouraged where feasible. Contact the Fire Chief for additional information.
- 4) Dams and ponds impounding or be capable of impounding 500,000 or more cubic feet of liquid must also be authorized by the state pursuant to 24 V.S.A. § 1079 *et seq.*

5.3 ACCESSORY DWELLING UNITS

In addition to other applicable standards set forth in this ordinance, all accessory dwelling units shall meet the following standards:

- 1) An accessory dwelling unit shall be an efficiency or one-bedroom apartment that is located within or appurtenant to an owner-occupied single-family dwelling.
- 2) The unit shall have facilities and provisions for independent living, including sleeping, food preparation, and sanitation.
- 3) The unit shall be provided with one off-street parking space that complies with the standards of Section 4.1(12).
- 4) The permit for the accessory dwelling unit shall clearly state that it is an accessory structure/use to the single-family residence and shall be retained in same ownership. The owner shall live in either the principal dwelling or accessory dwelling unit.

5.4 HOME OCCUPATION

This ordinance provides the right of any resident to use an area less than 50% of the finished floor area of the principal dwelling for a home occupation without the issuance of a permit where:

- 1) The use is entirely within the dwelling and/or accessory structure and is not evident from the exterior of the dwelling and/or accessory structure.
- 2) The occupation is conducted at the site solely by the occupants of the dwelling, and has no non-resident employees.
- 3) There is no outside display of stock or merchandise and no outdoor storage of equipment or supplies.
- 4) The use does not involve retail sales of on-site stock unless:
 - a. Such is assembled or produced on the premises; or
 - b. Is in used condition (e.g., antiques); or
 - c. Sales are incidental and commonly associated with a home occupation that is a service use and represent a minor portion of business income.
- 5) The use does not regularly generate customer or delivery traffic in excess of what is typical of single-family residences.
- 6) The use is customary in residential areas and does not have an undue adverse effect upon the character of the residential area in which the dwelling is located.

Notwithstanding the foregoing, the following are not considered home occupations and require conditional use approval by the ZBA:

- 1) Family child care homes that must be licensed or registered per state regulations and that serve more than 6 full-time and more than 4 part-time children.
- 2) Residential care or group homes that must be licensed or registered per state regulations and that serve more than 8 adults.

5.5 HOME BUSINESS

In addition to other applicable standards set forth in this ordinance, all Home Business development shall meet the following standards:

- 1) The use is entirely within the dwelling and/or accessory structure and is not evident from the exterior of the dwelling and/or accessory structure.
- 2) Is operated by one or more residents of the dwelling and has not more than 5 non-resident employees working on site at any one time.
- 3) Does not involve retail sales of on-site stock unless:
 - a) Such is assembled or produced on the premises; or
 - b) Is in used condition (e.g., antiques); or

- c) Sales are incidental and commonly associated with a home business that is a service use and represent a minor portion of business income.
- 4) The use does not regularly generate customer or delivery traffic in excess of what is typical of single-family residences.
- 5) The use is customary in residential areas and does not have an undue adverse effect upon the character of the residential area in which the dwelling is located.

5.6 WIND ENERGY SYSTEMS

5.6.1 STANDARDS

Wind turbines that are not subject to the jurisdiction of the Public Utility Commission under 30 V.S.A. § 248, must receive conditional use approval by the ZBA. In addition to other applicable standards set forth in this ordinance, approval is subject to compliance with the following standards:

- 1) **Bonding.** As a condition of approval, the ZBA may require the applicant to provide a performance bond or similar form of surety payable to the town in an amount sufficient to cover the full costs of removal of the wind turbine in the event that the facility is declared abandoned.
- 2) **Setbacks.** A wind turbine for a wind system shall be set back a distance equal or greater to 150% of its height from:
 - a. Any public road right-of-way, unless written permission is granted by the governmental entity with jurisdiction over the road;
 - b. Any overhead utility lines; and
 - c. All property lines.
- 3) **Height.** Wind turbine tower height (as measured to the highest tip of the rotor) cannot exceed the tree canopy by more than 30 feet.
- 4) **Visual Impacts.** All reasonable measures have been taken to minimize any undue adverse visual impact of the system.

5.6.2 EXPIRATION AND ABANDONMENT

The permit for a wind energy system shall expire if the system is out-of-service or otherwise unused for a continuous 12-month period in accordance with the following:

- 1) The ZA may issue a Notice of Abandonment to the owner of a wind energy system that is deemed to have been abandoned. The owner shall have the right to respond to the Notice of Abandonment within 30 days from the receipt date. The ZA shall withdraw the Notice of Abandonment and notify the owner that the notice has been withdrawn if the owner, within the 30-day period, provides information that demonstrates the wind energy system has not been abandoned. Failure to provide such information within 30 days of receiving notice shall render the ZA's Notice of Abandonment final.

- 2) If the wind energy system is determined to be abandoned, the owner of a wind energy system shall remove the wind energy system at the owner's sole expense within 3 months of receipt of Notice of Abandonment. If the owner fails to remove the wind energy system, the ZA may pursue legal action to have the wind energy system removed at the owner's expense.

5.7 TELECOMMUNICATIONS TOWERS AND FACILITIES

5.7.1 NEW TELECOMMUNICATIONS TOWERS AND FACILITIES

Telecommunications towers, including their related facilities, that are not subject to the jurisdiction of the Public Utility Commission under 30 V.S.A. § 248a, must receive conditional use approval by the ZBA. In addition to other applicable standards set forth in this ordinance, approval is subject to compliance with the following standards:

- 1) **Adequate Coverage.** The ZBA shall not grant conditional use approval for a new tower unless it finds that there is no other existing facility that can provide adequate coverage in Pomfret.
- 2) **Co-Location Required.** The ZBA shall not grant conditional use approval for a new tower unless it finds that there is no reasonable site for co-location that would achieve that same coverage. Any approvals granted for a new tower shall include a condition stating that other telecommunication service providers shall be allowed to co-locate subject to reasonable terms and conditions.
- 3) **Setbacks.** No tower, guy wire, foundation, accessory building or other associated structure, except fences, shall be located within required setback areas.
- 4) **Tower Setbacks.** Towers shall be set back a distance equal or greater to 150% of the total height, including the tower and the height of mounted antennas, from:
 - a) Any public road right-of-way;
 - b) Any overhead utility lines; and
 - c) All property lines.
- 5) **Height.** Total height, as measured from ground level at the base of tower to the highest point of the structure including any mounted antennas, shall not be permitted to extend more than 30 feet above the average height of the surrounding vegetation as measured within 500 feet of the tower. The ZBA may waive this limitation upon finding that the additional height is necessary in order to provide reasonable service or to allow for co-location and that the additional height shall not cause an undue adverse visual impact.
- 6) **Mounting Height.** No antennas or other equipment shall be mounted closer than 25 feet from the ground.
- 7) **Visibility.** The ZBA may require the applicant to fly a test balloon and document the visibility of the proposed tower from specified locations in order to assess the degree to which a proposed tower will be visible from public vantage points and/or nearby properties.
- 8) **Ridgelines and Hilltops.** Tower installations in the RHO must also obtain a separate permit under the Ridgeline and Hillside Conservation Overlay District standards.

- 9) **Screening and Clearing.** The ZBA may require screening as deemed necessary to reduce the visibility of the tower or associated accessory structures and utilities from public vantage points on public highways. On forested sites, the amount of tree clearing shall be kept to the minimum necessary to accommodate the tower and any associated accessory structures, roads or utilities. Access roads and utility corridors shall be designed to follow natural contours and reduce their visibility from public vantage points to the greatest extent feasible.
- 10) **Design.** Towers, antennas and any necessary support structures shall be designed to blend into the surrounding environment to the greatest extent feasible through the use of color, material, finish and structural design. Use of reflective materials shall be avoided. Use of a matte gray finish is preferred when a tower will be silhouetted against the sky. The ZBA may require the use of camouflage and/or a naturally appearing structure if deemed necessary to blend the facility into the surrounding landscape. No commercial signs or lettering shall be placed on a tower.
- 11) **Lighting.** Towers requiring lighting shall be prohibited, unless the ZBA finds it the only viable alternative to meet reasonable facility requirements of a communications service provider. The only tower lighting that may be permitted is that required by FAA regulation. All other lighting on the site shall be shielded and downcast to minimize or prevent glare onto adjoining properties, public highways, and into the night sky to the greatest extent feasible.
- 12) **Security.** Access to the tower and associated accessory structures shall be restricted through a suitable fence. Warning signs shall be posted and a gate may be required at the entrance to any access road.

5.7.2 ANNUAL REPORT

The permittee shall submit an annual report to the ZA, prepared by an independent radio frequency engineer jointly selected by the town and permittee, documenting that the facility complies with all FCC standards and that the facility continues to operate. The report shall also contain a list of all antennas and equipment in use during the previous calendar year, including identification of any companies/entities renting space and/or equipment.

If the required annual report is not received within 15 days of its due date, the structure is found to be unsound, or the facility is out-of-service or otherwise unused for a continuous 12-month period, a permit issued for such facility shall be revoked. All structures associated with the facility shall be removed within 6 months of the permit expiration or revocation.

5.7.3 BONDING

As a condition of approval, the ZBA may require the applicant to provide a performance bond or similar form of surety payable to the town in an amount sufficient to cover the full costs of removal of a tower and antenna as is estimated by the ZBA.

5.7.4 COMPLIANCE WITH EXISTING LAW

Nothing in this Section 5.7 shall be construed to violate the provisions of the Communications Act of 1934, the Telecommunications Act of 1996, or other applicable provisions of federal or state law

pertaining to telecommunications towers and facilities. Instead, the ZBA shall comply with existing law in the interpretation and administration of this provision.

5.8 MOBILE HOME PARKS

Mobile home parks require conditional use approval by the ZBA and individual lots within mobile home parks are not required to comply with the minimum lot size specified for the zoning district. Mobile home parks must also meet the following standards:

- 1) Interior dimensions for mobile home parks shall be not less than 50 by 80 feet per lot and homes shall be set back at least 10 feet from lot lines.
- 2) Exterior setbacks along the perimeter of mobile home parks shall meet requirements for the zoning district(s) where they are to be located.
- 3) An area of contiguous common space equal to half of all lot acreage shall be kept open or have recreational amenities.
- 4) At least one 3 inch (diameter at breast height) deciduous tree shall be planted/or retained for every two mobile homes.

ARTICLE 6 - PERMITS AND APPROVAL PROCESSES

The uses, structures and development listed in Section 1.4 shall be required to meet all setback and dimensional requirements, but are otherwise exempt from the requirement to obtain a zoning permit or any other approval under this ordinance, except in the RHO. Permitted uses require only issuance of a zoning permit by the ZA. Conditional uses require conditional use approval by the ZBA prior to the issuance of a zoning permit by the ZA. Projects located in the RHO require Visual Impact Approval by the PPC prior to the issuance of a zoning permit by the ZA. The Selectboard may establish reasonable fees to be charged with respect to the administration of this ordinance and for the administration of development review. These fees shall be payable upon submission of an application.

6.1 PRE-APPLICATION AND APPLICATION

Potential applicants are encouraged to discuss their project with the ZA prior to application in order to understand the requirements of this ordinance and the process of obtaining a permit.

The purpose of such a pre-application meeting is to familiarize the applicant with the requirements of this ordinance, answer basic questions of procedure, and acquaint the applicant with likely submittal requirements based on the applicant's proposal. No written decision will be issued and no comments by either the applicant or the ZA at this meeting are binding.

All applications requiring a zoning permit and any other prerequisite approval under this ordinance shall be submitted to the ZA on approved forms, and accompanied by the applicable fee as set by the Selectboard. Applications without appropriate fees will be deemed incomplete, returned to the applicant, and no further action taken. Fees are non-refundable and do not guarantee issuance of a permit.

6.2 PERMIT COORDINATION

The ZA shall inform any person applying for municipal permits or authorizations that the person should contact the regional permit specialist at the Vermont Agency of Natural Resources (<https://dec.vermont.gov/ps-springfield>) to assure timely action on any related state and/or federal permits. It is the applicant's sole obligation to identify, apply for, and obtain relevant local, state, and/or federal permits. The ZA shall also assist with any local permits/approvals that may be needed.

No zoning permit shall be issued by the Town of Pomfret for a structure for human occupation/use that requires a water/wastewater permit or stormwater permit until such permits have been received and approved by the State.

New accesses or modifications to an existing access onto a state or town road must be permitted separately by VTrans or the Town, pursuant to 19 V.S.A. § 1111.

6.3 TIME FOR ACTION ON A PERMIT

The ZA shall take action on a complete application within 30 days of receipt (or, if incomplete upon submission, within 30 days of the date that the application becomes complete) by denying, approving,

or referring to the ZBA or PPC as applicable, according to Sections 1.3.2 and 1.3.3 of this ordinance. Applications that cannot be approved in conformance with applicable ordinances shall be denied.

If the ZA fails to act with regard to a complete application for a permit within 30 days, whether by issuing a decision or by making a referral to the ZBA or to the PPC (as applicable) a permit shall be deemed issued on the 31st day.

If the ZA determines that any permit application is incomplete, he or she shall notify the applicant and the applicant shall be given a period not to exceed 90 days from the date of such notice to supply the required information. If the applicant fails to provide such information within the specified period, the application shall be denied and the application fee forfeited.

6.4 ZONING PERMITS

6.4.1 NEW LAND DEVELOPMENT AND CHANGES TO PRIOR DEVELOPMENT

All zoning permits for land development under this ordinance shall be issued subject to and in conformance with Section 4449 of the Act. Except as may have been previously approved under prior regulations or exempted under this ordinance, none of the following activities may commence without a zoning permit first being issued by the ZA:

- 1) Division of a parcel into two or more parcels (see also the Subdivision Regulations);
- 2) Construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure;
- 3) Any mining, excavation or landfill;
- 4) Change in the use of any building or other structure;
- 5) Change in the use of land; and
- 6) Extension of use of land.

No zoning permit may be issued by the ZA, except in conformance with this ordinance.

6.4.2 PRIOR DEVELOPMENT

A permit or approval shall not be required for any development which has lawfully begun, received a permit, or within which a use has been lawfully established, prior to the adoption of this ordinance provided that the construction is substantially completed for its intended use within the expiration date of any permit, or if none, three years from the date of adoption of this ordinance.

6.4.3 EFFECTIVE DATE

No zoning permit issued shall take effect until the time for taking an appeal has passed (see Section 6.7.1), or in the event that a notice of appeal is properly filed, no such zoning permit shall take effect until final adjudication of that appeal by the ZBA. Unless the permit specifies otherwise, it shall remain in effect indefinitely and run with the land (meaning that the rights and obligations of the permit remain with the land regardless of ownership).

6.4.4 NOTICE OF PERMIT

- 1) Each zoning permit issued under this section shall contain a statement of the period of time within which an appeal may be taken and shall require prompt posting of a Notice of Permit document provided by the ZA within view from the public right-of-way most nearly adjacent to the subject property until the time for appeal has passed.
- 2) Within three days following the issuance of a permit, the ZA shall:
 - a) Deliver a copy of the permit to the listers of the Town; and
 - b) Post a copy of the permit in the Town Office for a period of 15 days from the date of issuance of the permit.

6.4.5 RECORDING REQUIREMENTS

Within 30 days after a zoning permit has been issued or within 30 days of the issuance of any notice of violation, the ZA shall:

- 1) Deliver the original or a legible copy of the permit, conditional use approval, waiver, variance, Notice of Violation, or notice of same in the form set forth in subsection 1154(c) of the Act to the Town Clerk for recording as provided in subsection 1154(a) of the Act; and
- 2) File a copy of that permit in the Town offices in a location where all land use permits shall be kept.

The Town Clerk may charge the applicant for the cost of the recording fees as required by law. Such records shall be open to inspection.

6.4.6 PERMIT EXPIRATION DATES AND EXTENSIONS

If the zoning permit authorizes only a change or establishment of a use of any building or other structure, or in the use of land, the change in use must occur prior to the two-year expiration date of the permit, or it shall become null and void.

If the zoning permit authorizes construction (construction, reconstruction, conversion, relocation, alteration or enlargement of any building or structure), said construction activity must begin within two years and substantially completed by the end of the third year or the permit shall become null and void.

The expiration of a zoning permit under this subsection shall include the expiration of all associated town approvals under this ordinance, and at its expiration, any land development on the lot related to the permit must cease. If construction authorized by a permit is not substantially completed within the time authorized above, the permit shall expire and the landowner must reapply and comply with this ordinance then in effect.

6.5 Conditional Use Approval Processes

In any zoning district certain uses may only receive a zoning permit by the ZA following approval of the ZBA. General and specific standards to which each conditional use must conform are prescribed in this ordinance.

The ZBA as applicable, shall grant approval if and only if, after public notice and public hearing, a concurring vote of a majority of the members of the ZBA determines that the proposed use will conform to the aforementioned standards. In granting approvals, the ZBA may attach reasonable conditions and safeguards as are necessary to implement this ordinance.

For all relevant criteria applicable to the requested use, the applicant has the burden of proof. This means that the applicant must prove to the ZBA, as applicable, that the use complies with this ordinance. This can be by written or oral testimony provided by the applicant at the hearing. The applicant shall provide sufficient evidence that all relevant criteria have been met even if no party actually opposes that project. Evidence must be credible and clear enough for the ZBA to make written findings and conclusions that ensure the public health, safety, and welfare, and that all relevant criteria applicable to the requested use have been met.

6.5.1 APPLICABILITY

No permit shall be approved by the ZA for any use or structure that requires conditional use approval until the ZBA grants such approval in accordance with this ordinance and the following standards and procedures.

6.5.2 APPLICATION REQUIREMENTS

An applicant for conditional use review shall submit one (1) original and one (1) complete copy of an application.

6.6 HEARINGS AND DECISIONS

6.6.1 HEARINGS

Upon a determination by the ZA that an application is complete and is of a type requiring a public hearing, the ZA shall notice a public hearing on the development. Public hearings, unless recessed to a date certain prior to the close of the hearing, shall have at least 15 days' warning notice describing the date, place and purpose of the hearing. Such a public hearing notice shall be published, posted and otherwise provided according to Section 4464 of the Act.

The purpose of the public hearing is for the ZBA or PPC (as applicable, according to Sections 1.3.2 and 1.3.3 of this ordinance) to fully understand the proposal and how it addresses all requirements of this ordinance, waive or vary requirements under Section 6.2, review all special studies, identify significant issues or concerns associated with the proposal, establish all potential interested persons, provide abutters and other persons an opportunity to comment on the proposal, and provide the ZBA or PPC (as applicable) with sufficient information to base its approval, approval with conditions or denial. The ZBA or PPC (as applicable) shall take such testimony as will enable them to reach a decision supported

by findings of fact. If the ZBA or PPC (as applicable) reasonably determines that additional information is needed from any person or party, it shall continue the hearing process until it is ready to proceed to a decision. As part of this continuance the ZBA or PPC (as applicable) shall set a time by which such additional information is due. Failure to produce needed information by the applicant may result in denial.

When sufficient testimony has been taken for the ZBA or PPC (as applicable) to address each general and specific standard that applies to that use in that zoning district, the ZBA or PPC (as applicable) shall close the final hearing and deliberate. Deliberations may be done in private, subject to the requirements of the Vermont Open Meeting Law, 1 V.S.A. § 310 *et seq.*

6.6.2 COMBINED REVIEW

Where a proposed use or structure will require more than one type of development review, the ZBA and the PPC may warn and hold a single, combined joint hearing for the purpose of reviewing and acting on such proposal. The ZBA shall identify proposed uses and structures 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 Section 6.6.1. The hearing notice shall include a statement that the hearing will be a combined review and list each review process that will be conducted at the hearing.

All hearing and decision requirements, and all deadlines applicable to each review process shall apply. The ZBA and PPC may issue separate written decisions for each review conducted as part of the combined review, but they should be coordinated where appropriate.

6.6.3 DECISIONS

Within 45 days of the date of adjournment of the final public hearing, the ZBA or PPC (as applicable, according to Sections 1.3.2 and 1.3.3 of this ordinance) shall issue a written decision, with any conditions, approving, or disapproving the application. Decisions shall be issued in writing and shall contain findings of fact and conclusions on each relevant standard, any conditions, and provisions for appeal. Action by the ZBA or PPC (as applicable) shall be taken by a concurrence of at least a majority of the members of the board.

Failure to act within this 45-day period shall be deemed approval on the 46th day. Decisions shall be promptly communicated by the ZBA to applicants and all interested parties.

Where the approval is the final step prior to issuing the zoning permit, the ZBA shall promptly issue the zoning permit upon receipt of the approval, provided that no zoning permit issued shall take effect until the time for appeal has passed (see Section 6.7.1), or in the event that a notice of appeal is properly filed, no such zoning permit shall take effect until final adjudication of that appeal by the ZBA.

6.6.4 AMENDMENTS TO APPROVED PERMITS

Zoning permits and approvals may be amended in appropriate circumstances, and non-material changes may be made to prior permits and approvals as a matter of course, subject to applicable zoning requirements. To determine whether it is appropriate to allow an amendment to an otherwise final permit or approval that proposes to alter, eliminate, avoid or contradict one or more material terms or conditions of a final permit or approval, the ZBA or PPC (as applicable) shall evaluate such amendment request in light of the competing policies of flexibility and finality in the permitting process. For the purpose of this section, “material terms or conditions” include all written terms and conditions in a prior permit or approval, and elements of a recorded plat or plan, that formed or significantly contributed to the basis for granting the prior permit or approval.

In balancing the competing policies of flexibility and finality three kinds of changes may justify altering or eliminating a material term or condition of a permit or approval:

- 1) Changes in factual or regulatory circumstances beyond the control of a permittee;
- 2) Changes in the construction or operation of the permittee’s project, not reasonably foreseeable at the time the permit was issued; or
- 3) Changes in technology.

Even where the ZBA or PPC finds such a change as described above, there are certain situations where an amendment may not be justified, for instance, where the change was reasonably foreseeable at the time of the original permit application.

6.7 APPEALS AND VARIANCES

6.7.1 APPEALS AND APPEAL PROCEDURES

Prior to expiration of the relevant appeal period, the applicant, an interested person or the person or body that issued a decision may request that the ZA, ZBA, or PPC, as the case may be, reopen and reconsider a decision.

Pursuant to Section 4465 of the Act, an interested person may appeal any decision or act taken by the ZA, or any failure to act, under this ordinance, by filing a notice of appeal with the clerk of ZBA. Such notice of appeal must be filed within 15 days of the date of such decision or act, and a copy of the notice of an appeal shall be filed with the ZA. A publicly warned hearing on the appeal shall take place within 60 days of the filing and conducted per Section 4468 of the Act.

Appeals of ZBA or PPC decisions, including any appeals granting or denying a waiver, shall be made to the Environmental Division within 30 days of a decision per Section 4471 of the Act and 10 V.S.A. § 8504.

6.7.2 VARIANCES

Following a permit application denial or referral by the ZA, the ZBA shall grant a variance from the provisions of this ordinance, and render a decision in favor of the appellant, if and only if, all the following facts are found to be true and such findings are specified in its decision:

- 1) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that the unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of this ordinance in the neighborhood or zoning district in which the property is located;
- 2) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of this ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;
- 3) That such unnecessary hardship has not been created by the applicant;
- 4) That the variance, if authorized, will not alter the essential character of the neighborhood or zoning district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare; and
- 5) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of this ordinance and of the plan.

In rendering a decision in favor of an appellant, under this ordinance, the ZBA may attach such conditions to the variance as it may consider necessary and appropriate under the circumstances to implement the purposes of this ordinance and the Town Plan.

6.8 CERTIFICATE OF COMPLIANCE

All permits obtained upon a conditional use approval shall require a certificate of compliance before use of the approved structure or commencement of the approved use is authorized. The certificate shall show that the premises comply with all applicable provisions of this ordinance and the conditions of the permit as issued.

A certificate of compliance shall be issued or denied within 15 days after written notice of completion by the applicant to the ZA, and shall remain in effect as long as such building or use is in compliance with the standards and conditions authorized by the permit. If the ZA does not respond within the 15-day period, the certificate shall be deemed issued on the 16th day but shall not be conclusive evidence that the premises comply with the provisions of this ordinance.

If the ZA denies a certificate of completion, the ZA shall state the reasons for such denial in writing and immediately mail notice of such denial to the applicant at the address indicated on the permit application. See Section 6.7 for appeals from decisions of the ZA.

6.9 VIOLATIONS AND ENFORCEMENT

6.9.1 ENFORCEMENT; PENALTIES

Any person who violates this ordinance shall be subject to the enforcement provisions and penalties of 24 V.S.A. §§ 4451 and 4452.

6.9.2 ENFORCEMENT; REMEDIES

The ZA shall institute in the name of the town any appropriate action, injunction, or other proceeding to prevent, restrain, correct or abate a violation. If legal action is needed, then the town may pursue enforcement through the Environmental Division or the Judicial Bureau as allowed in Section 4452 of the Act. The imposition of a penalty shall not bar resort to other administrative or legal remedies or methods for preventing or correcting the violation or offense that the ZA is authorized to use under Section 4452 of the Act.

ARTICLE 7 - GENERAL PROVISIONS

7.1 EFFECTIVE DATE

This ordinance shall take effect in accordance with the procedures contained in Section 4442 of the Act.

7.2 AVAILABILITY OF DOCUMENTS

Current copies of the Pomfret Town Plan, permit application forms, and this ordinance shall be available to the public during normal business hours at the Town Clerk's office.

7.3 AMENDMENT OR REPEAL

This ordinance may be amended according to the requirements and procedures established in Sections 4441 and 4442 of the Act.

7.4 STATUS OF PRIOR REGULATIONS

This ordinance, upon taking effect, shall replace the Pomfret Zoning Ordinance, as amended on December 11, 1973, March 4, 1975 and July 21, 2010, and shall incorporate the Pomfret Zoning Regulations for Ridgeline and Hillside Conservation Areas adopted March 7, 1989, amended and restated on July 2, 2008, and attached as Appendix B and made a part of this ordinance, including the Ridgeline and Hillside Protection Area map dated November 28, 2007. This ordinance is distinct from and does not alter the applicability of the Pomfret Subdivision Regulations adopted December 20, 2011, or the Pomfret Flood Hazard Area Regulations adopted May 2, 2007.

7.5 PRECEDENCE AND CONFLICTS

The provisions of this ordinance shall not in any way impair or remove the necessity of compliance with any other applicable local, state or federal laws or regulations. Where this ordinance imposes a greater restriction, however, the provisions of this ordinance shall take precedence. In the event of any conflict between provisions within this ordinance, or between a provision of this ordinance and a provision of any other applicable local, state or federal laws or regulations, the more restrictive provision shall take precedence.

7.6 VALIDITY AND SEVERABILITY

If any section or provision of this ordinance is held to be unenforceable or otherwise invalid, such decision shall not affect the validity of the ordinance as a whole or of any part other than the portion so adjudicated.

7.7 WARNING OF DISCLAIMER OF LIABILITY

This ordinance does not imply that land outside the areas of special flood hazard or land uses permitted within other zoning districts will be free from flooding or flood damage. This ordinance shall not create liability on the part of the Town of Pomfret or any town official or employee thereof for any

flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

ARTICLE 8 - DEFINITIONS AND RULES OF CONSTRUCTION

8.1 GENERAL DEFINITIONS

All words and terms used in this ordinance shall have their customary and normal meanings except as defined in Section 8.2.

8.2 SPECIFIC DEFINITIONS

Abutting - Lots which have a common boundary or edge.

Accessory Dwelling Unit - (see “*Dwelling*”)

Accessory On-Farm Business - Activity that is accessory to a farm and comprises one or both of the following, per Section 4412 of the Act:

- 1) The storage, preparation, processing, and sale of qualifying products, provided that more than 50 percent of the total annual sales are from qualifying products that are principally produced on the farm at which the business is located.
- 2) Educational, recreational, or social events that feature agricultural practices or qualifying products, or both. Such events may include tours of the farm, farm stays, tastings and meals featuring qualifying products, and classes or exhibits in the preparation, processing, or harvesting of qualifying products. “Farm stay” means a paid, overnight guest accommodation on a farm for the purpose of participating in educational, recreational, or social activities on the farm that feature agricultural practices or qualifying products, or both. A farm stay includes the option for guests to participate in such activities.

Accessory Use or Structure - A use or structure that is customarily incidental and subordinate to the principal use or structure on the same lot.

ADA - The Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101 *et seq.*).

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.

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.

Applicant - A person who applies for a zoning permit or any other prerequisite approval under this ordinance.

Boundary Line Adjustment - A division of land for the purpose of adjusting boundaries between adjacent lots or parcels where no new lot is created.

Building - A type of structure having a roof supported by columns or walls and intended for the shelter or enclosure of persons, animals or personal property. (See also Structure).

Co-location - Locating wireless communications equipment from more than one provider on a single site.

Commercial - Any building, structure, or land which is used for business or service and is conducted for financial gain, but excluding a home occupation, home business, or industrial.

Conditional Use - Uses that may be allowed in a particular zoning district only by approval of the ZBA, if general and specific standards to which each allowed use must conform are satisfied and if the ZBA, under the procedures set forth in this ordinance, determines that the proposed use will conform to those standards.

Conforming Lot - A lot that is in conformance with the requirements specific to the zoning district in which it is located, as well as with all other applicable requirements of this ordinance.

Contractor Yards - An area owned, controlled or operated by a contractor for the parking, maintenance or storage of large equipment, vehicles, or other materials commonly used in the individual contractor's type of business, components of which may include storage of scrap materials for repair and maintenance of contractor's own equipment and buildings or structures for ancillary, uses such as offices and repair facilities.

Density - The number of dwelling units or structures on a given area of land.

Dish Antenna - A dish-like antenna used to link communications sites together by wireless transmission of voice or data. Also called microwave antenna or microwave dish antenna.

Dwelling Unit - A building or portion thereof, designed, constructed or used as living quarters, and which includes facilities for residential use, including food preparation, sleeping, and sanitary facilities.

Dwelling Unit, Accessory - A dwelling unit in an attached or detached building which is secondary or subordinate to a primary single family dwelling on the same lot and meets the requirements of Section 5.3.

Dwelling, Multi-Unit - A building designed for, or occupied solely as, a dwelling of six (6) unit or less, each having independent dwelling spaces.

Dwelling Unit, Single-family - A building designed for, or occupied solely as, a dwelling for one household.

Dwelling Unit, Two-family - A building designed as a dwelling for two households living independently of each other in separate spaces with separate facilities for residential use.

FAA - Federal Aviation Administration

Facility - A structure and/or building or system of same providing the means by which something can be done.

Family - One or more persons living, sleeping, cooking, and eating on the same premises as a single housekeeping unit.

Family Child Care Home - Licensed or registered child day care facility serving no more than 6 full-time and 4 part-time children, regulated by the Department for Children and Families pursuant to 33 V.S.A. § 3502.

Farming - (A) The cultivation or other use of land for growing food, fiber, Christmas trees, maple sap, or horticultural and orchard crops; or (B) the raising, feeding or management of livestock, poultry, fish, or bees; or (C) the operation of greenhouses; or (D) the production of maple syrup; or (E) the on-site storage, preparation and sale of agricultural products principally produced on the farm; or (F) the on-site storage, preparation, production, and sale of fuel or power from agricultural products or wastes principally produced on the farm; or (G) 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. See 10 V.S.A. § 6001(22).

Farm Structure - For the purposes of this Bylaw, “farm structure” means a building or structure for housing livestock, raising plants, or carrying out other practices associated with agricultural or farming practices, including a silo, as “farming” is defined in 10 V.S.A. § 6001(22), but excludes a dwelling for human habitation.

FCC - Federal Communications Commission. The government agency responsible for regulating telecommunications in the United States.

Fence - A structure serving as an enclosure, a barrier, or a boundary, usually made of posts or stakes joined together by boards, wire, or rails.

Filling - The placement of earth material (namely: soil, sand, gravel, or stone) on a lot.

Forestry Practices - Forestry practices include:

- 1) Accepted silvicultural practices as defined by the Commissioner of Forests, Parks and Recreation, including practices which are in compliance with the Acceptable Management Practices for Maintaining Water Quality on Logging Jobs in Vermont, as adopted by the Commissioner of Forests, Parks and Recreation. These rules are available at: <https://fpr.vermont.gov/forest/managing-your-woodlands/acceptable-management-practices>.
- 2) Forestry operations, as defined in 10 V.S.A. § 2602: activities related to the management of forests, including a timber harvest; pruning; planting; reforestation; pest, disease, and invasive species control; wildlife habitat management; and fertilization. "Forestry operation" includes the primary processing of forest products of commercial value on a parcel where the timber harvest occurs.

Frontage - That portion of a lot that is adjacent and parallel to a public road or street.

Group Home - A residential care or group home that must be licensed or registered per state regulations and serves not more than 8 adults who have a disability as defined in 9 V.S.A Section 4501.

Hazardous Material - All petroleum and toxic, corrosive or other chemicals and related sludge included in any of the following:

- 1) any substance defined in section 101(14) of the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980;
- 2) petroleum, including crude oil or any fraction thereof; or
- 3) hazardous wastes, as defined in this section;

"Hazardous material" does not include herbicides and pesticides when applied consistent with good practice conducted in conformity with federal, state and local laws and regulations and according to manufacturer's instructions. "Hazardous material" does not include livestock wastes.

Hazardous Waste - Any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form, including, but not limited to those which are toxic, corrosive, ignitable, reactive, strong sensitizers, or which generate pressure through decomposition, heat or other means, which in the judgment of the Secretary of the Vermont Agency of Natural Resources may cause, or contribute

to, an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, taking into account the toxicity of such waste, its persistence and degradability in nature, and its potential for assimilation, or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms, or any matter which may have an unusually destructive effect on water quality if discharged to ground or surface waters of the state.

Heavy Industrial - The processing or assembly of natural or man-made materials or products where such activity generally results in off-site impacts, such as noise, and where such activity and storage of materials or products are typically not fully enclosed inside a building or screened from the abutting properties. Examples include rail and truck terminals, concrete, asphalt or brick plants, bulk fuel storage and distribution facilities, solid waste facilities, foundries, etc.

Historic Building - Any building that is: (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register; (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) Individually listed on a State inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; (d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either: (i) By an approved State program as determined by the Secretary of Interior or (ii) Directly by the Secretary of the Interior in states without approved programs.

Home Business - An accessory use, typically of a service, trade, or artisan character, conducted within a dwelling and/or accessory structure by residents thereof which is clearly secondary to the use of the dwelling and/or accessory structure for living purposes and that meets the standards of Section 5.5.

Home Occupation - The use of a minor portion of a dwelling unit, by a resident thereof, for an occupation that is customary in residential areas and that does not have an undue adverse impact on the character of the residential area in which the dwelling is located and that meets the standards of Section 5.4.

Household - All the people, whether related or not, who occupy a dwelling unit as their place of residence.

Impervious Surface - Artificial structures, such as pavements, roads, sidewalks, driveways, and parking lots, as well as industrial areas such as airports, ports, and logistics and distribution centers, all of which use considerable paved areas that are covered by impenetrable material such as asphalt, concrete, brick, stone and rooftops. Soil or gravel that is highly compacted by development may also be considered an "impervious surface".

Industrial - Includes light industrial and heavy industrial.

Inn - A building with up to 10 overnight lodging units that may also serve meals. Includes Bed and Breakfast.

Interested Person - Interested persons are those persons who, under the Act, have the right to appeal an act or decision made by the ZA, ZBA or PPC. Interested persons must participate in a hearing in order to protect their right to appeal the decision. Interested Persons include:

- 1) A person owning title to property affected by a by-law who alleges that such regulation imposes on such property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.
- 2) The municipality in which the plan or a by-law of which is at issue in an appeal, or any municipality which adjoins such municipality.
- 3) A person owning or occupying property in the immediate neighborhood of a property which is the subject of any decision or act, 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 by-law of that municipality.
- 4) Any ten persons (being any combination of voters or real property owners within Pomfret) who, by signed petition to the ZBA or PPC, alleged that any relief requested by a person, if granted by the ZBA or PPC, will not be in accord with the plan or by-law of the municipality. This petition to the ZBA or PPC 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 the State of Vermont owning property or any interest in property within Pomfret, and the Agency of Development and Community Affairs of the State of Vermont.

Kennel - An establishment in which domestic animals, including but not limited to dogs, wolf-hybrids, and cats, are housed, bred, boarded, trained, or sold for commercial purposes, but excluding farm structures for housing or keeping livestock.

Land Development - The carrying out of any material change to improved or unimproved land, including but not limited to the division of a parcel into 2 or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any building or other structure, or of 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. See also, 24 V.S.A. § 4303(10).

Light Industrial - A use involving research and development, assembly, processing, manufacturing, packaging of products, or storage and warehousing of materials or goods, conducted primarily within a building with few off-site impacts other than trucking. Examples include cabinetry or woodworking shop, food processing, electronics high-tech manufacturing or assembly, machine shop, sewing, printing, research and testing laboratory, warehousing, and similar uses.

Lodging - Any building providing temporary public lodging. Includes motels, hotels, campgrounds and bed and breakfast facilities (B&Bs).

Lot - A designated parcel, tract, or area of land established by plat, subdivision, or as otherwise permitted by law; to be used, developed or built upon as a unit, which is not divided by a public highway as defined by 19 V.S.A. § 1.

Lot Area - Total area within the property lines of a lot, excluding any part thereof lying within the boundaries of a public street or road, actual or proposed, and within the municipal boundaries.

Lot Depth - The average distance measured perpendicularly from the front lot line to the back lot line.

Lot Width - The average distance measured between the side lot lines parallel to the front lot line.

Maximum Height - Vertical distance measured from the lowest point of the average proposed finish grade at the edge of the structure to the highest point of the roof.

Merchandise - Things bought and/or sold; goods, commodities and personal property.

Microwave Antenna - A dish-like antenna manufactured in many sizes and shapes used to link communication sites together by wireless transmission of voice or data.

Mobile 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 attached to the required utilities. The term "mobile home" does not include a "recreational vehicle".

Mobile Home Park or Subdivision - Also called a trailer park. Any parcel of land under single or common ownership or control which contains, or is designed, laid out, or adapted to accommodate, more than two mobile homes. Also the use of land for the placement of mobile homes as defined in 10 V.S.A § 6201.

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.

Multi-unit Dwelling (*see "Dwelling"*)

Municipal Building and Facility - A building or facility owned or controlled by the Town of Pomfret, or similar municipal entity, for the purpose of providing local public services including the following uses: schools, town hall, town offices, public library, police station, fire houses, town garages, parks, recreation areas, cemeteries, parking areas, and solid waste disposal or transfer stations.

Non-Conforming Structure - A structure or part thereof that is not in compliance with the present zoning ordinance, as it relates to building bulk, dimensions, height, area, setbacks, off-street parking or loading requirements, but was in conformance with all applicable laws, ordinances and regulations prior to the enactment of this zoning ordinance or amendments hereto, including a structure improperly authorized as a result of an error by the zoning administrator.

Non-Conforming Use - A use of a structure or land that does not conform to the present zoning ordinance or amendments thereto but did conform to all applicable laws, ordinances and regulations prior to the enactment of the present zoning ordinance, including a use improperly authorized as a result of an error by the zoning administrator.

Non-Permanent Structure - A structure or vehicle not affixed to the ground by a foundation, not hooked up to permanent septic or water service, and that can be dismantled or removed from the lot without the use of heavy equipment.

Parking Space - A defined space used for the parking of one motor vehicle which is surfaced or paved sufficiently to permit year-round use.

Permitted Use - A use allowed by right in a zoning district and requiring a zoning permit.

Permittee - The recipient of a permit from the ZA, ZBA or PPC.

Person - An individual, a corporation, a partnership, a limited liability company, an association, and any other incorporated or unincorporated organization or group.

Primary Retail - a use whose primary use is the supply of merchandise or wares to the end consumer for use off site. Examples include (but are not limited to) supermarkets, hardware stores (without lumberyards), dry-goods stores, pharmacies, big box stores, etc. Primary retail does not include online sales with no product on site, land-intensive and resource-based commercial or industrial uses, restaurants, or retail as a home occupation.

Principal Building or Structure— The dominant or primary building or structure on a lot in terms of size and use. An accessory building or structure cannot be a principal building.

Prohibited Use - Uses that are not permitted under any circumstances in the applicable zoning district.

Property or Lot Line - A line of bounding a lot that divides it from abutting property or from a public or private right-of-way.

Public Road or Street - A road, highway or street open and available to public use including the entire right-of-way. Public roads and streets shall be “highways” as defined by 19 V.S.A. § 1, and shall include such related facilities as identified therein.

Recreational Vehicle - A vehicle which is: (a) built on a single chassis; (b) 400 square feet or less when measured at the largest horizontal projection; (c) designed to be self-propelled or permanently towable by a vehicle; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreation, camping, or travel.

Required Agricultural Practices - Activities regulated under the Required Agricultural Practices Rule published by the Vermont Agency of Agriculture, Food, and Markets (available at: <https://agriculture.vermont.gov/rap>).

Right-of-Way - A legal right, established by usage or grant, to pass along a specific route through grounds or property belonging to another.

Riparian - Relating to or situated on the bank of a river or stream.

Salvage Yard - Any place of outdoor storage or deposit for storing, keeping, processing, buying, or selling junk or as a scrap metal processing facility. "Salvage yard" also means any outdoor area used for operation of an automobile graveyard.

Self-Supporting Tower - Any tower that is constructed without guy wires.

Setback - The minimum distance between any part of any structure and (1) the centerline of a public right-of-way, (2) any adjacent lot line, or (3) public waters

Sign - Any structure, display, device, or representation designed or used to call attention to any object, person, business, activity, or place that is visible from a public road. A sign does not include the flag, pennant, or insignia of the any nation, state, or town, or official announcements or similar signs of government.

Single-Family Dwelling Unit - (see "*Dwelling*")

Structure - An assembly of materials for occupancy or use, including (but not limited to) a building, mobile home or trailer.

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.

Telecommunications Provider - An entity licensed by the FCC to provide telecommunications services to individuals or institutions.

Telecommunications Tower - A guyed, monopole, or self-supporting tower, constructed as a free standing structure or in association with a building, other permanent structure or equipment, containing one or more antennas intended for transmitting and/or receiving television, AM/FM radio, digital, microwave, cellular, telephone, or similar forms of electronic communication.

Two-Family Dwelling Unit - (see "*Dwelling*")

Violation - Non-compliance with the requirements of this ordinance, as determined by the ZA in the first instance, or with the terms, conditions or requirements of any applicable permit, order, or provision of law.

Waiver - An official act of the ZBA granting a reduction in dimensional requirements, upon application and subject to certain specific standards, set forth in the ordinance.

Wall - An architectural partition with a height and length greater than its thickness that is used to divide or enclose an area or to support another structure. A retaining wall is a wall that is built to resist lateral pressure (especially a wall built to prevent the advance of a mass of earth).

Yard Sale - A casual sale of used goods by a private individual on his or her own property, in which the seller is not required to obtain a business license or collect sales tax. Also known as a tag sale, garage sale, barn sale or moving sale.

8.3 RULES OF CONSTRUCTION

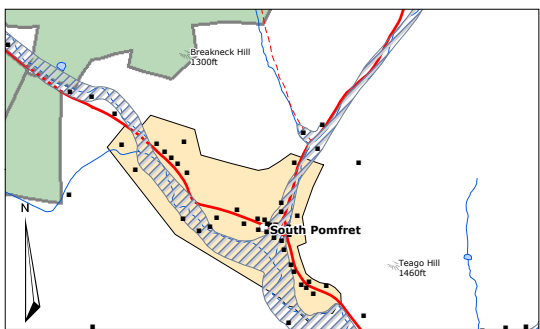
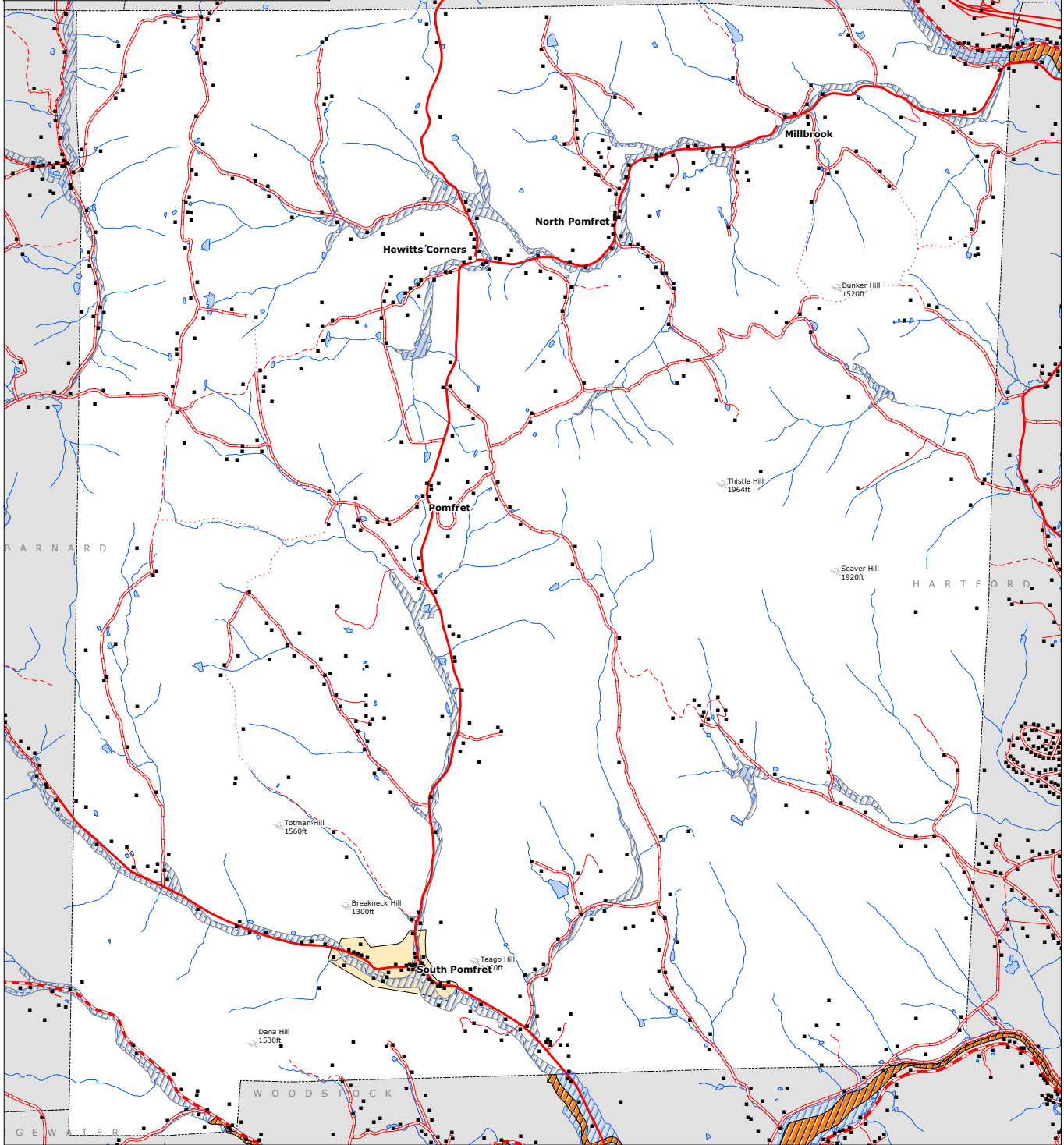
For the avoidance of doubt, uncertainty and ambiguity, the following rules of construction shall be used to interpret the meaning of the terms and provisions of this ordinance.

- 1) Words used in the present tense shall include the future and vice-versa.
- 2) Words in the singular number shall include the plural and vice-versa.
- 3) The words “shall” and “must” are mandatory.
- 4) The words “may” and “should” are permissive.
- 5) The word “person” includes an individual, firm, association, corporation, partnership, trust, company or other organization, governmental body or agency, and any other legal entity.
- 6) The word “lot” includes the words parcel, plot, tract of land, or piece of land.
- 7) The words “used” or “occupied” include the words intended, designed or arranged to be used or occupied, employed for, constructed for, altered for, converted for, rented for, leased for, maintained for, utilized for, or occupied for.
- 8) The word “includes” shall not limit a term to the specified examples, but is intended to extend its meaning to all other instances or circumstances of like kind or character.
- 9) A “building” or “structure” includes any part thereof. “Building” shall have the same meaning as “structure.”
- 10) The word “built” includes “erected,” “constructed,” “reconstructed,” “altered,” “enlarged,” or “moved.”
- 11) The word “premises” shall include land and buildings thereon.
- 12) The masculine gender shall include the feminine and genderless, and vice-versa.
- 13) The words “adjacent” shall have the same meaning as “abut.”
- 14) The words “regulation,” “these regulations,” “ordinance,” “this ordinance,” or “this bylaw” means the “Pomfret Zoning Ordinance.”
- 15) Any word or phrase which is defined in this Section 8.3, or elsewhere in these regulations, shall have the meaning as so defined whenever the word or phrase is used in these regulations, unless such definition is expressly limited in its meaning or scope or the context clearly and unambiguously indicates a different meaning.

- 16) Any word or phrase that is not defined in this Section 8.3, or elsewhere in these regulations, shall have its plain and commonly accepted meaning.
- 17) Definitions contained in the Act shall be applicable throughout these regulations.

APPENDIX A:
DRAFT Zoning Map
for the Town of Pomfret

1:39,500
 1 inch = 3,292 feet
 0 1 2
 Miles



1:24,000
 1 inch = 2,000 feet
 0 1,000 2,000
 Feet

South Pomfret

Zoning Areas

- Rural Area
- South Pomfret Village Area
- Flood Hazard Overlay Area

- VT route/TH cls 1
- TH cls 2 gravel
- TH cls 3
- TH cls 3 gravel
- TH cls 4 gravel
- VT forest hwy
- trail
- private
- US route
- US interstate
- e911 structures
- surface water

Pomfret Zoning Regulations Ridgeline and Hillside Conservation Areas

PART 15 – RIDGELINE AND HILLSIDE CONSERVATION AREAS

15.1 Existing Scenic Qualities.

The principal scenic qualities in Pomfret, as viewed from its Public Highways, are typical of the Vermont rural scene; probably no other township has so many fine examples. These principal scenic qualities can be broadly defined as follows:

The valley floors and much of the lower hillsides are predominantly open meadows with occasional farm buildings and often a line of trees along a brook. The upper hillsides, while predominantly wooded, usually have an alternating pattern of woods and open fields, which provides diversity and interest. The ridgetops are dramatic and presently are predominantly wooded. These ridgetops, visible from most of the valleys, provide two long parallel high and quite steep hillsides capped by fairly flat ridgetops. The ridges are presently pristine and undeveloped and provide unbroken and uncluttered skylines when viewed from the valley floors; they act as a powerful and essential framework for the pastoral setting of the valleys. The special characteristics of Pomfret scenery emphasize these typical features of Vermont and the height of the ridges serves to make the scenic qualities more dramatic. The dramatic nature of the usually unobstructed views is often emphasized by a natural focal point farther down the valley.

15.2 Purposes and Intent.

15.2.1 The ridges and hillsides of Pomfret are one of Pomfret's principal scenic qualities; they contribute significantly to the maintenance and enjoyment of Pomfret's rural and pastoral character and personality. Preservation and conservation of Pomfret's ridges and hillsides are essential to maintain Pomfret's rural and pastoral character and personality and are vital for the current and future well-being of the town's permanent and part-time residents. Preservation and conservation of Pomfret's ridges and hillsides and the resulting protection of the beauty of Pomfret's landscape are matters of public good.

15.2.2 This Part 15 is intended to implement the philosophy and intent of a) Section 3.16 Ridgelines and Hillsides which was added to Article III - LAND USE of the Pomfret Town Plan as it was adopted by the Town of Pomfret on December 16, 1987, and b) the subsection "Conservation of Pomfret's Ridgelines and Hillsides" of Chapter 5 NATURAL, HISTORIC AND SCENIC RESOURCES of the Pomfret Town Plan as it was adopted by the Town of Pomfret on November 21, 2007 and said section and subsection are hereby made a part of this Section 15.2.2 as if specifically set forth.

15.2.3 The development and uses of Pomfret's ridges and hillsides need to be regulated in a fair and consistent fashion in order to allow development and use of these areas in a manner which will not detract from, nor adversely affect, the principal scenic qualities of the town. It is not the purpose of this Part 15 of the Zoning Ordinance to prohibit development of Pomfret's ridges and hillsides, but to assure that such development takes place in a manner which is compatible with the important natural environmental assets of the town: its ridges and hillsides.

15.2.4 The steep slopes associated with Pomfret's hillsides require a higher sensitivity and concern for a) properly designed and constructed sewage disposal systems located on or near such steep slopes, b) soil erosion, c) surface water runoff areas located below steep slopes, and d) their associated problems. This Part 15 is intended to give added protection to the delicate environment associated with these steep slopes, including deer habitats, watersheds, water supplies and plants.

15.2.5 It is the intention that this Part 15 of the Zoning Ordinance shall be effective only for the primary ridgelines and hillsides as specifically identified in Section 15.4 and referred to herein as the Ridgeline and Hillside Conservation Areas. The other provisions of this Zoning Ordinance shall, however, also fully apply to these Ridgeline and Hillside Conservation Areas in addition to the provisions of this Part 15 of the Zoning Ordinance. In the event there is a direct conflict between the other provisions of this Zoning Ordinance and the provisions of this Part 15 dealing with the Ridgeline and Hillside Conservation Areas, the more restrictive provisions shall apply.

15.3 Objectives.

This Part 15 of the Zoning Ordinance has the following objectives:

15.3.1 To allow development in Pomfret's Ridgeline and Hillside Conservation Areas primarily below the skylines so that no development shall break the skyline nor a ridgeline near the proposed development when viewed from Pomfret's Public Highways at any time of the year.

15.3.2 To allow development in Pomfret's Ridgeline and Hillside Conservation Areas primarily in existing wooded areas outside of existing or created open areas; and if not practical or possible to do so, to have such development properly and adequately screened, all so as not to have an undue adverse effect on the current and existing pristine views of the Ridgeline and Hillside Conservation Areas from Pomfret's Public Highways.

15.3.3 Not to affect by this Part 15 of the Zoning Ordinance those lands located within three hundred feet (300) from the center line of any Class 1, 2, or 3 Town Highway.

15.3.4 To keep and maintain the Ridgeline and Hillside Conservation Areas, as viewed from Pomfret's Public Highways, in their present condition to the maximum extent possible.

15.3.5 To allow outside the perimeter of any existing or planned building site the following activities without application of its provisions or involvement of the Pomfret Planning Commission, **provided that** all cutting associated with such activities constitutes the practice of Good Forestry Management and all cutting associated with such activities does not 1) involve a clear cutting of a forest stand (sometimes referred to as "Liquidation"); nor 2) cause an obvious visual modification to the forest overstory as viewed from a Public Highway:

- a) Restoration of existing pastureland or meadows.
- b) Logging operations.
- c) Cutting of firewood.
- d) Woodlot or sugar bush management.
- e) Low brush cutting or other practices which are a part of good forestry management or good agricultural practices.
- f) Maintenance of existing recreational trails for hiking, skiing, snowmobiling, or horseback riding.

15.3.6 To allow, with a minimum of involvement of the Pomfret Planning Commission for its approval, activities or development which will not have

- 1) a substantial effect on the current and existing views of the Ridgeline and Hillside Conservation Areas as viewed from Pomfret's Public Highways; nor
- 2) a substantial effect on the environment of the area in or around the proposed activity or development.

15.4 Description of Ridgeline and Hillside Conservation Areas.

15.4.1 The Ridgeline and Hillside Conservation Areas shall generally consist of all land within seven hundred fifty feet (750') distant (measured horizontally) from any of those specific lines connecting a series of the primary ridges in the Town of Pomfret, but in any event shall consist of those Ridgeline and Hillside Conservation Areas specifically depicted and set forth on a map entitled "Ridgeline and Hillside Protection Area" which has a notation of "On screen digitized in 2007 from the November 1987 Ridgeline and Hillside Protection Area Map" and is dated "11/28/2007 @ 3:33:37 PM".

15.4.2 Specifically excepted from all Ridgeline and Hillside Conservation Areas and the provisions of this Part 15, regardless of the depictions set forth on the said map are all those lands located within three hundred feet (300') (measured horizontally) of the centerline of any

Class 1, 2 or 3 Public Highway in the Town of Pomfret.

15.4.3 In the event of any question of the limits or boundaries of any Ridgeline and Hillside Conservation Area, the Pomfret Planning Commission shall have the authority and power, upon request of a landowner and after a public hearing, to determine where such lines actually fall on the ground. Any landowner requesting the Pomfret Planning Commission to make such a determination shall be obligated to pay the costs and expenses of the Pomfret Planning Commission related to such determination, including the costs and expenses of a surveyor who may be employed by the Pomfret Planning Commission.

15.5 Conditions necessary for Visual Impact Approval.

15.5.1 Notwithstanding the other provisions of this Zoning Ordinance, except as hereinafter provided, no development shall take place within any Ridgeline and Hillside Conservation Area until the owner of the land obtains written Visual Impact Approval from the Planning Commission.

For the purposes of this Part 15, "Development" shall be defined as any of the following:

- a) Construction or placement of any building, including any preparatory work related to construction such as clearing of land or excavating;
- b) Construction of an addition to or any alteration of a building which increases the square footage of the building, whether enclosed or not, including porches, decks or other similar structures;
- c) Alteration to a roof of a building which increases the height of the building by more than one foot (1');
- d) Construction, modification or improvement of an access road, driveway or parking area, including any preparatory work related to an access road, driveway or parking area such as the clearing of land or the moving or disruption of soil;
- e) Construction of a tower, satellite dish or any other type of antenna , except for antennas exempt from local regulations by FCC Regulations including antennas one meter (3 feet, 3 3/8 inches) or less in diameter or diagonal measurement designed: for direct-to-home satellite service, to receive or transmit fixed wireless signals via satellite, to receive video programming services via broadband radio service (wireless cable), to receive or transmit fixed wireless signals other than via satellite, or to receive local television broadcast signals. Exempt antennas may be mounted on "masts" to reach the height needed to receive or transmit an acceptable quality signal (e.g. maintain line-of-sight contact with the transmitter or view the satellite) that are 12' or less above the roofline.;

- f) Construction of a windmill or any other type of instrument to make use of the wind;
- g) Construction of any improvements for any commercial or industrial purpose;
- h) Any excavating, drilling or surface or subsurface extraction of any gas, liquid or solid matter of any kind for any purpose, including test purposes (See Section 7.3 of the Pomfret Zoning Regulations for additional requirements for any of these activities);
- i) Any installation of any above-ground power or telephone utility lines, including any creation or widening of any cleared portion of a right of way related to any proposed or existing power or telephone lines;
- j) Any major timber cutting, as defined in Section 15.6.9;
- k) Any cutting of a tree or trees, as defined in Section 15.6.15, within an existing or planned Building Site.

15.5.2 **Lands within 300 feet of a Class 1, 2 or 3 Town Highway are Exempt.** As stated in Section 15.4.2, this Part 15 exempts from its provisions lands located within 300 feet (measured horizontally) of a Class 1, 2 or 3 Town Highway.

15.5.3 **Change of Use Exempt under this Part 15:** A change in use of a building or in the type of occupancy shall not require Visual Impact Approval for Ridgeline and Hillside Conservation Areas under this Part 15, except as may be incidental to any development as defined above.

15.5.4 Certain Cutting Activities Exempt under this Part 15:

15.5.4.1 The following cutting activities in the Ridgeline and Hillside Conservation Areas are exempt under this Part 15 **provided that:** 1) the cutting is not within an existing or planned Building Site or within any restricted area set forth in any Permit issued under this Part 15; 2) all cutting associated with such activities constitutes the practice of Good Forestry Management; 3) all cutting associated with such activities does not involve a Major Timber Cutting; and 4) all cutting associated with such activities does not cause an obvious visual modification to the forest overstory as viewed from a Public Highway:

- a) Restoration of existing pastureland or meadows.
- b) Logging operations.
- c) Cutting of firewood.

- d) Woodlot or sugar bush management.
- e) Low brush cutting or other practices which are a part of good forestry management or good agricultural practices.
- f) Maintenance of existing recreational trails for hiking, skiing, snowmobiling, or horseback riding.

15.5.4.2 Pursuant to 24 V.S.A. §4413 (d)(3) Requirements of this ordinance imposing forest management practices resulting in a change in a forest management plan for land enrolled in the use value appraisal program pursuant to 32 V.S.A. chapter 124 are permitted only to the extent that those changes are silviculturally sound, as determined by the commissioner of forests, parks and recreation, and protect specific natural, conservation, aesthetic, or wildlife features in properly designated zoning districts. These changes also must be compatible with 32 V.S.A. § 3755.

15.5.5 The Zoning Administrator for the Town of Pomfret is authorized to issue an advisory opinion as to whether or not any planned or ongoing cutting activity is exempt as set forth above, which advisory opinion will be reviewed and either approved or disapproved within thirty (30) days of issuance by the Pomfret Planning Commission at a regular or special meeting. If the Zoning Administrator issues an advisory opinion that any planned or ongoing cutting activity is not exempt, any such activity shall constitute a violation of this Part 15 until otherwise found exempt or approved by the Pomfret Planning Commission. Such advisory opinions of the Zoning Administrator may be issued upon request or upon the initiative of the Zoning Administrator.

15.6 The following definitions shall apply to this Part 15 of the Zoning Ordinance:

15.6.1 **Access Road** Any privately owned road or strip of land designed, constructed, used or maintained for the purpose of providing access by automobiles or other motorized vehicles to private property.

15.6.2 **Building** Any structure or structures (on a commonly owned parcel of land) which exceed in bulk volume a combined total volume of two thousand four hundred (2,400) cubic feet and which are designed or used for a) the use or habitation by persons or animals; or b) the shelter or placement of property. The term "building" shall include mobile homes, motor homes, trailers and other movable objects whether or not they are permanently affixed or attached to the ground.

15.6.3 **Building Height** The vertical distance measured from the elevation of the highest point of the building structure of the proposed building (excluding any non-structural chimneys, weathervanes and antennas) to the elevation of the lower of a) the lowest finished

ground level at the building's exterior walls which face Critical Public Vantage Points on Pomfret's Public Highways; or b) the lowest original ground level at the building's exterior walls which face Critical Public Vantage Points on Pomfret's Public Highways.

15.6.4 ***Building Site*** The land around a proposed or existing house consisting of a circle with a radius of one hundred sixty-seven feet (167') (an area containing approximately two (2) acres of land) with the center of the proposed or existing house being located in the center of the circle.

15.6.5 ***Critical Public Vantage Point*** A point or place located on or immediately adjacent to a Class 1, 2 or 3 Public Highway from which the proposed development is visible as such point or points are selected by the Pomfret Planning Commission under the provisions of Section 15.9.3 or as such point or points may be selected by an applicant. The Significant Viewpoints on Pomfret's Public Highways are simply reference points to be used and referenced in an application and are not meant to limit the Critical Public Vantage Points which may be used by the Planning Commission in actually evaluating an application (See Definition of Significant Viewpoints on Pomfret's Public Highways set forth in Section 15.6.14). In selecting or determining a particular Critical Public Vantage Point, consideration should be given to:

- a) the duration of the view of the proposed development to the traveling public;
- b) the frequency of the view of the proposed development as experienced by the traveling public;
- c) the degree of obstruction to the view of the proposed development as affected by existing vegetation, the topography of the land, and existing structures;
- d) contributing or detracting background features in the view of the proposed development;
- e) the distance to the view from the vantage point; and
- f) the number of cars traveling on the public highway at or near the Critical Public Vantage Point.

15.6.6 ***Development*** See Section 15.5.1.

15.6.7 ***Driveway*** Same definition as for "Access Road" set forth in Section 15.6.1.

15.6.8 ***Good Forestry Management*** Management practices which reflect a long-term forest management goal for the purpose of growing and harvesting repeated forest crops and which are in accordance with minimum acceptable standards which are established by the commissioner of the department of forests, parks and recreation pursuant to the terms of Section

3752 (13) of Title 32 of the Vermont Statutes Annotated dealing with Agricultural and Forest Lands and use value appraisals. The land in question does not need to be qualified for use value appraisal, but the standards for such qualification are to be the standards under this Ordinance.

15.6.9 **Major Timber Cutting** Total or partial removal of trees, over any period of time, from a site involving more than one (1) acre of land and which results in: a) a clear cutting of a forest stand (sometimes referred to as "Liquidation"); or b) an obvious visual modification to the forest overstory as viewed from a Public Highway.

15.6.10 **Public Highway** Any Town Highway located within the Town of Pomfret which has a designation of Class 1, Class 2, or Class 3.

15.6.11 "Ridgeline and Hillside Conservation Areas" See Section 15.4.1

15.6.12 **"Ridgeline"** The crest of any of the primary ridges (including any trees thereon) in the Town of Pomfret depicted on the map described in Section 15.4.1 as viewed from Significant Viewpoints on Pomfret's Public Highways and/or Critical Public Vantage Points.

15.6.13 **Screening** Natural or newly planted trees or shrubs which at the time of approval or at the time of planting would have the effect of properly and adequately concealing from view as of the initial completion of the proposed Land Development and at all times of the year any building or part thereof located in a Ridgeline and Hillside Conservation Area as viewed from a Public Highway. Such screening may allow views through it from the building being concealed.

15.6.14 **Significant Viewpoints on Pomfret's Public Highways** Points or places located on or immediately adjacent to Pomfret's Class 1, 2 or 3 Public Highways from which the proposed development is visible as such point or points may be considered by the Pomfret Planning Commission in evaluating a formal application. In selecting or determining particular Significant Viewpoints on Pomfret's Public Highways, the Pomfret Planning Commission shall give consideration to:

- a) the duration of the view of the proposed development to the traveling public;
- b) the frequency of the view of the proposed development as experienced by the traveling public;
- c) the degree of obstruction to the view of the proposed development as affected by existing vegetation, the topography of the land, and existing structures;
- d) contributing or detracting background features in the view of the proposed development;

- e) the distance to the view from the vantage point; and
- f) the number of cars traveling on the Public Highway at or near the significant viewpoint.

15.6.15 ***Skyline*** The natural outline (of trees when wooded and of land when open) of a range of hills or mountains against the background of the sky as viewed from a Public Highway.

15.6.16 ***Tree*** Any live tree having a trunk diameter, or caliper, of greater than two inches (2") measured at its base next to the ground level. This definition shall exclude any tree which has been substantially damaged by natural elements and which constitutes a danger to property or persons.

15.6.17 ***Undue Adverse Effect*** There is a two step process in determining whether or not a proposed Land Development constitutes an "undue adverse effect":

- 1) Is the proposed land development in harmony with the existing scenic and natural beauty (the pleasing qualities that emanate from nature and from Pomfret's ridges and hillsides) of the land proposed to be developed as viewed from Critical Public Vantage Points? If the answer to this question is in the negative, then the proposed land development is deemed to be "adverse" or unfavorable or hostile.
- 2) If the proposed land development is determined to be "adverse", then the next question is: Is the "adverse" effect on the land proposed to be developed more than is necessary or appropriate as viewed from Critical Public Vantage Points? If the answer to this question is in the affirmative, then the proposed development is deemed to have an "undue adverse effect." In making this determination, the Planning Commission is to determine whether or not the "adverse" effect of the proposed land Development offends the sensibilities of the average person; that is, does the proposed Land Development significantly diminish the existing scenic qualities of the land proposed to be developed as viewed from Critical Public Vantage Points? The Planning Commission members, being a cross section of the Pomfret population, are deemed to collectively represent the "average person" and their collective decision on this question shall be controlling.

15.7 Procedures Available under Part 15

There are three distinct procedures available to a land owner under this Part 15. The Prehearing and Expedited Hearings are alternative procedures which are made available to avoid unnecessary or unreasonable costs to a landowner and, when possible, to expedite a decision desired or required from the Planning Commission under the provisions of this Part 15. Landowners and potential applicants are encouraged to contact the Chairman of the Planning

Commission for clarification of these available procedures and for suggestions as to which procedure may be best suited. These procedures are as follows:

15.7.1 Pre-Hearing Conference. A Pre-Hearing Conference is an informal conference between a landowner and the Planning Commission (or its duly authorized representative(s)) for the general purposes of obtaining nonbinding clarification of the provisions of this Part 15, obtaining nonbinding suggestions for amendments or changes to any proposed land development, and obtaining approval to provide less than the normally required information to accompany an application for an Expedited Hearing or a Formal Hearing. These purposes are more specifically defined as follows:

- a) To obtain an initial nonbinding Visual Impact Review by the Planning Commission of the general nature, extent and characteristics of the proposed land development and to obtain from the Planning Commission nonbinding suggestions for possible amendments or changes to the proposed land development to lessen its impact upon the existing scenic qualities of the town and to reduce the extent of information and material which may be necessary or desirable for an Application for an Expedited Hearing or a Formal Hearing for the proposed land development.
- b) To obtain an initial nonbinding Visual Impact Review by the Planning Commission of the general nature, extent and characteristics of the proposed land development and to obtain from the Planning Commission: 1) a determination of the extent and content of the information and material necessary or desirable for an application in order to allow the Planning Commission to properly review and evaluate the proposed land development; and 2) the number and locations of suggested Critical Public Vantage Points from which the proposed Land Development is to be viewed pursuant to Section 15.11(f).

15.7.2 Expedited Hearing. An Expedited Hearing is an abbreviated alternative to a Formal Hearing. It is a formal noticed Hearing by the Planning Commission which can be held at the request of a landowner for the general purposes of deciding whether or not a proposed land development is exempt under the provisions of Part 15; reviewing a proposed land development that is believed not to have any substantial or adverse effects on either the views of the Ridgeline and Hillside Conservation Areas nor on the Environment of the area in and around the proposed development; or to obtain a formal clarification of the provisions of this Part 15. These purposes are more specifically defined as follows:

- a) To obtain a finding from the Planning Commission as to whether or not the proposed land development is exempt from the provisions of Part 15 of the Pomfret Zoning Regulations by virtue of the provisions of 15.3.5, that is, a decision that the proposed activities are not within an existing or planned Building

Site, that all of the proposed cutting constitutes the practice of good forestry management, that the proposed activity is one of those specifically set forth in Section 15.3.5 of this Part 15 of the Pomfret Zoning Regulations and that all of the cutting related to such proposed activity does not 1) involve a clear cutting of a forest stand; nor 2) cause an obvious visual modification to the forest overstory as viewed from a Public Highway.

- b) To obtain a written Visual Impact Approval from the Planning Commission for those activities set forth in Section 15.3.6, that is, a decision that the proposed activities or development will not have a substantial effect on the current and existing views of the Ridgeline and Hillside Conservation Areas as viewed from Pomfret's Public Highways nor have a substantial effect upon the environment of the area in and around the proposed land development; with approval or disapproval of the proposed land development as presented or amended by the Pomfret Planning Commission.
- c) To obtain clarification of the provisions of this part 15 as it may apply to any proposed land development, including a finding of the exact location of the boundaries of a Ridgeline and Hillside Conservation Area as it affects a proposed land development. The granting of an Expedited Hearing for this purpose shall be under the discretion of the Chairman of the Planning Commission.

15.7.3 Formal Hearing. A Formal Hearing is a formal noticed Hearing by the Planning Commission to review any proposed land development within a Ridgeline and Hillside Conservation Area of the provisions of this Part 15 and to obtain Visual Impact Approval for the proposed land development or to obtain clarification of the provisions of this Part 15 as it may apply to any proposed land development, including a finding of the exact location of the boundaries of a Ridge and Hillside Conservation Area as it effects a proposed land development.

15.8 Applications for Pre-Hearing Conferences or Expedited Hearings.

An Application by a Landowner for a Pre-Hearing Conference or an Expedited Hearing under this Part 15 shall be completed on the Form provided by the Planning Commission and shall include at least the following information:

- a) The name and address of the record landowner or landowners and all other parties with an interest in the property where the proposed land development is to take place. Other interested parties would include any prospective purchaser of the property, any person or entity who or which will be performing any substantial work on or for the proposed land development, and any duly appointed agents or attorneys of any party.

- b) A map or sketch of the town with the property proposed to be developed marked or a statement of sufficient detail to locate the property within the Town of Pomfret.
- c) A map or sketch of the property proposed to be developed drawn approximately to scale and with the area to be developed suitably marked or indicated and with all abutting property owners clearly indicated. The site shall also be designated on the ground with flags or stakes.
- d) The names and addresses of the record owners of all property abutting the property proposed to be developed.
- e) A general statement on the principal elements of the proposed land development including information as to the type and extent of the proposed development. This shall include a description of the residence, structure, garage, tower, etc., all existing and proposed exterior lighting, exterior finish and color of proposed buildings, and any change of use proposed.
- f) A statement as to what action is requested of the Planning Commission. Applicants are encouraged to ask the Chairman of the Planning Commission for help in completing the Application for a Pre-Hearing Conference or an Expedited Hearing.

15.9 Procedures for Pre-Hearing Conferences.

15.9.1 A Pre-Hearing Conference shall be conducted by the Planning Commission or by its duly authorized representative or representatives within thirty (30) days following receipt by the Planning Commission of an Application for a Pre-Hearing Conference (as defined in Section 15.8).

15.9.2 A Pre-Hearing Conference may be conducted by a member representative(s) of the Pomfret Planning Commission who may be specifically appointed by the Chairman of the Planning Commission.

If specifically requested by an applicant, the Pre-Hearing Conference shall be with the Planning Commission rather than by its duly authorized representative(s); otherwise it shall be at the discretion of the Chairman of the Planning Commission as to who conducts and participates in a Pre-Hearing Conference.

There shall be no requirement for any public notice for a Pre-Hearing Conference, except for the meeting requirements for any regular or special meeting of the Planning Commission, with no requirement for any special notice of the actual Pre-Hearing Conference if it is conducted during any regular or special meeting of the entire Planning Commission. The Chairman of the

Planning Commission may, however, decide to provide formal notice of the Pre-Hearing Conference in the same manner as for a Formal Hearing.

Unless waived by the Applicant, the Applicant shall have at least seven (7) days written notice of any Pre-Hearing Conference.

15.9.3 A Pre-Hearing Summary shall be issued by the Planning Commission, or its duly appointed representative(s), if so conducted, stating the results of the Pre-Hearing Conference and specifically setting forth:

- a) any information and material not required to be provided in any Application for a Formal Hearing which may be filed by the landowner for the proposed land development;
- b) a determination of the extent and content of the information and material necessary or desirable for a formal application in order to allow the Planning Commission to properly review and evaluate the proposed land development; and
- c) a determination of the number and locations of the Critical Public Vantage Points to be used for the Application for a Formal Hearing described in Section 15.11(f).

Copies of the Pre-Hearing Summary shall be mailed or delivered to the Applicant within fifteen (15) days following the Pre-Hearing Conference unless such time requirement has been waived by the Applicant.

15.10 Procedures for Expedited Hearings.

15.10.1 An Expedited Hearing shall be conducted by the Planning Commission within thirty (30) days following receipt by the Planning Commission of a complete Application for an Expedited Hearing (as defined in Section 15.8).

15.10.2 There shall be formal public notice for an Expedited Hearing in the same manner as for a Formal Hearing.

Unless waived by the Applicant, the Applicant shall have at least twenty-one (21) days written notice of an Expedited Hearing.

15.10.3 An Expedited Hearing Order shall be issued by the Planning Commission, stating the findings made by the Planning Commission and its Decision on the item or items requested to be addressed in the Application.

A finding by the Planning Commission that the proposed land development will have a substantial effect on the current and existing views of the Ridgeline and Hillside Conservation

Areas as viewed from Pomfret's Public Highways, or will have a substantial effect upon the environment of the area in and around the proposed land development will require the Planning Commission, in its discretion, to either

- a) Require changes to the proposed land development and/or landscaping which will have the effect of negating the substantial effect; or
- b) Require the landowner to file an Application for a Formal Hearing under this Part 15.

Copies of the Expedited Hearing Order shall be mailed or delivered to the Applicant within thirty (30) days following the closing of evidence and time for providing of any Memorandum or Requested Findings unless such time requirement has been waived by the Applicant.

15.11 Applications for Formal Hearings.

An Application by a Landowner for a Formal Hearing under this Part 15 shall be completed on the Form provided by the Planning Commission. An Application may include maps, plans, drawings, and sketches. Unless the Applicant has received a Pre-Hearing Summary from the Planning Commission which limits the information and materials necessary, all Applications shall include at least the following information:

- a) The name and address of the record landowner or landowners and all other parties with an interest in the property where the proposed land development is to take place. Other interested parties would include any prospective purchaser of the property, any person or entity who or which will be performing any substantial work on or for the proposed land development, and any duly appointed agents or attorneys of any party.
- b) A map or sketch of the town with the property proposed to be developed marked, or a statement of sufficient detail to locate the property within the Town of Pomfret.
- c) A map or sketch of the property proposed to be developed drawn approximately to scale and with the area to be developed suitably marked or indicated and with all abutting property owners clearly indicated. The site shall also be designated on the ground with flags or stakes.
- d) The names and addresses of the record owners of all property abutting the property proposed to be developed.
- e) A general statement on the principal elements of the proposed land development including information as to the type and extent of the proposed development.

- f) An accurate drawing of the proposed land development in its finished state as viewed from at least three (3) separate Significant Viewpoints on Pomfret's Public Highways within the town of Pomfret (or from the Critical Public Vantage Points if determined by the Pomfret Planning Commission in a Pre-Hearing Order) depicting the site proposed and including all buildings, alterations, additions, access roads and other uses. The drawings shall show the treatment of the scenic resources present on the proposed site as related to those resources which are adjacent to the proposed site. An application shall include photographs of the land proposed to be developed taken from each of the Significant Viewpoints on Pomfret's Public Highways (or taken from the Critical Public Vantage points if chosen by the Pomfret Planning Commission in a Pre-Hearing Order) with respect to the Building Site. All Applicants are urged to submit an Application for a Pre-Hearing Conference so that the Pomfret Planning Commission can determine the number and locations of the Critical Public Vantage Points to be used for the Application for a Formal Hearing and the Pomfret Planning Commission has the information necessary for it to make a decision. Applicants who choose their own Significant Viewpoints on Pomfret's Public Highways risk delays or denial of the Application if those Significant Viewpoints on Pomfret's Public Highways are not adequate for the Planning Commission.
- g) The placement, building height, and physical characteristics of all existing buildings and proposed buildings, alterations, additions, and other improvements or structures located in or proposed for the project site. This shall include a description of the residence, structure, garage, tower, etc., all existing and proposed exterior lighting, exterior finish and color or proposed buildings, and any change of use proposed.
- h) A detailed landscaping plan of existing vegetation, vegetation proposed to be removed, and all proposed landscaping improvements including plans depicting the type, bulk and height of trees and shrubs at the time of planting.
- i) The locations, slopes, and dimensions of existing and proposed driveways and parking areas serving or to serve the proposed land development, including details of all entrance and exit points on Town Highways.
- j) The size and location of existing and proposed above ground and below ground utility lines serving or to serve the proposed land development.
- k) The existing and finished topography of the project site, including existing and proposed drainage systems and erosion control plans.
- l) A diagram and description of all existing and proposed wastewater disposal

systems designed to serve the project site, including any related plans, drawings, tests, or charts relevant to the systems. See Section 15.12 for additional requirements.

- m) Any other information that is relevant or necessary for the proper consideration of the Application by the Planning Commission, including any specific information or materials required by any Pre-hearing Summary issued by the Planning Commission.
- n) A statement as to what action is requested of the Planning Commission. Applicants are encouraged to ask the Chairman of the Planning Commission for help in completing the Application for a Formal Hearing.

15.12 Requirements for Wastewater Permit.

In the event that an Application for a Formal Hearing contemplates, necessitates or requires that a proposed structure be served by a wastewater disposal system which is subject to the standards or requirements of one or more permits from the State of Vermont, all such required permits or certificates of compliance must be obtained prior to issuance of final approval of the Application by the Planning Commission.

15.13 Procedures for Formal Hearings.

15.13.1 A Formal Hearing shall be conducted by the Planning Commission within thirty (30) days following receipt by the Planning Commission of a complete Application for a Formal Hearing (as defined in Section 15.11).

15.13.2 There shall be formal public notice for a Formal Hearing as set forth in Section 15.14.

Unless waived by the Applicant, the Applicant shall have at least twenty-one (21) days written notice of a Formal Hearing.

15.13.3 A Final Hearing Order shall be issued by the Planning Commission, stating the findings made by the Planning Commission and its Decision on the item or items requested to be addressed in the Application.

Copies of the Final Hearing Order shall be mailed or delivered to the Applicant within thirty (30) days following the closing of evidence and time for providing of any Memorandum or Requested Findings unless such time requirement has been waived by the Applicant.

15.14 Requirements for Public Notice.

Upon filing of an Application for an Expedited Hearing or a Formal Hearing with the Clerk of the Planning Commission, the Commission shall promptly give notice for and conduct a Hearing in accordance with the rules of procedure as set forth in 24 V.S.A., Section 4464. These rules of procedure currently require:

15.14.1 Public Notice for a Hearing shall be given not less than 15 days prior to the date of the public hearing by the following:

- a) Publication of the date, time, place, and purpose of the hearing in a newspaper of general circulation in Pomfret.
- b) Posting of the date, time, place, and purpose of the hearing in three or more public places within the town of Pomfret in conformance with location requirements of 1 V.S.A. Section 312(c)(2).
- c) Posting of the date, time, place, and purpose of the hearing within view from the public right-of-way most nearly adjacent to the property for which an application is made.
- d) Written Notification of Hearing to the applicant and to owners of all properties adjoining the property subject to development, without regard to any public right of way. The notification shall include a description of the proposed project and shall be accompanied by information that clearly informs the recipient where the additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal.

15.14.2 The Planning Commission shall prepare the above notices, shall cause to be published and post the notices specified in 15.14.1(a) & (b) & (c), and shall forward the written notice specified in 15.14.1(d) to the applicant with instructions that it is the responsibility of the applicant to deliver the Notice of Hearing to the adjoining property owners either by written notice mailed to their last know address or by written notice hand delivered to them or to their last known address. The applicant shall provide proof of such delivery by a Sworn Certificate of Service at or before the time of the Hearing.

15.15 Criteria for Visual Impact Approval.

15.15.1 In addition to the other provisions or standards as prescribed in this Ordinance, the Planning Commission shall, before granting Visual Impact Approval, find that the proposed Land Development shall substantially satisfy the following general criteria:

- a) the proposed Land Development will not have an undue adverse effect on the

scenic and natural beauty of the land proposed to be developed as viewed from Significant Viewpoints on Pomfret's Public Highways and/or Critical Public Vantage Points; and

- b) the proposed Land Development will not cause unreasonable soil erosion so that a dangerous or unhealthy condition may result.

15.15.2 Prior to granting Visual Impact Approval and in the evaluation of the general criteria above, the Planning Commission shall find that any proposed Land Development shall substantially satisfy the following specific criteria, where applicable:

- a) **Building Characteristics.** Building Height shall not exceed thirty-five (35) feet (See definition of Building Height at 15.6.3);
- b) **Building or Structure Placement.** The placement of buildings, alterations or additions thereto, and other structures shall not detract from the visual setting or obstruct significant views. Buildings, alterations, or additions thereto and structures shall be placed downgrade of the ridgeline and shall be constructed and maintained in a manner as not to break the view or exceed the elevation of the skyline or a ridgeline as viewed from Significant Viewpoints on Pomfret's Public Highways and or from Critical Public Vantage Points. In planning a site for a building, alteration or addition thereto or other structures, the applicant, where applicable, shall consider placement of such structures within or adjacent to forest areas for the purpose of maintaining the scenic attractiveness of open spaces;
- c) **Landscaping.** The removal of native vegetation, especially large timber, shall be minimized and the replacement of vegetation and landscaping shall be compatible with the vegetation of the designated area. Landscaping and plants shall be utilized to properly and adequately screen buildings in open or prominent areas from Significant Viewpoints on Pomfret's Public Highways and/or from Critical Public Vantage Points, both when installed and when mature;
- d) **Above Ground Utilities.** Where economically feasible, utility lines in open areas, or where natural vegetation prevents screening or partial screening shall be constructed and routed underground;
- e) **Grading.** The alteration of the natural topography of the project site shall be minimized and shall avoid detrimental effects to the visual setting of the Land Development. Major alterations of the natural topography shall be screened from Significant Viewpoints on Pomfret's Public Highways and/or Critical Public Vantage Points; and

- f) **Access Roads.** Construction or improvement to access roads, to the extent possible, shall follow the contour of the land. The finished center line grade shall not exceed fourteen (14%) for a private road serving three or fewer lots and shall be not more than ten percent (10%) for a private road serving four or more lots.. A waiver of this requirement may be granted after consultation with Emergency Services personnel to allow a steeper grade for portions of a private road. Access roads, when consistent with the intent of these Regulations and economically feasible, shall be constructed or improved within existing forest or forest fringe areas and not in open fields or meadows.

15.15.3 The Planning Commission shall have full authority to impose conditions consistent with the intents and objectives of this Part 15 upon any Visual Impact Approval granted; such conditions may include, but are not be limited to, the following:

- a) A requirement to plant and maintain for the life of the structures erected trees and other landscaping to screen the proposed Land Development.
- b) A prohibition of trimming, pruning, thinning or cutting any trees located within the perimeter of an existing, proposed or approved Building Site, and/or within any of the land owned by the applicant when such trees provide or will provide screening of the proposed Land Development, without the prior approval of the Planning Commission. Such a prohibition may specifically exclude minimum trimming to maintain a power or telephone line right of way.
- c) A requirement to replace with like trees any existing trees or trees specifically required to be planted which may die in the future.
- d) A requirement to submit reports on completion of any planting required.
- e) Notice that any violation of any condition of a Visual Impact Approval will constitute a violation under the terms of the Pomfret Zoning Regulation.
- f) A requirement to record in the Pomfret Land Records a Notice of Visual Impact Approval and its conditions along with notice that such conditions run with the land and therefore are binding upon all future owners of the property.
- g) A requirement that any buyer of the land subject to the Visual Impact Approval be given a copy of the full decision of the Planning Commission including its conditions prior to the time of entering into a binding purchase and sale agreement for the property.

15.16 Independent Technical Review.

The Planning Commission may hire consultants for independent technical review of any application and may further require the applicant to pay for reasonable costs of such, as may be authorized by procedures and standards established by the Selectmen.

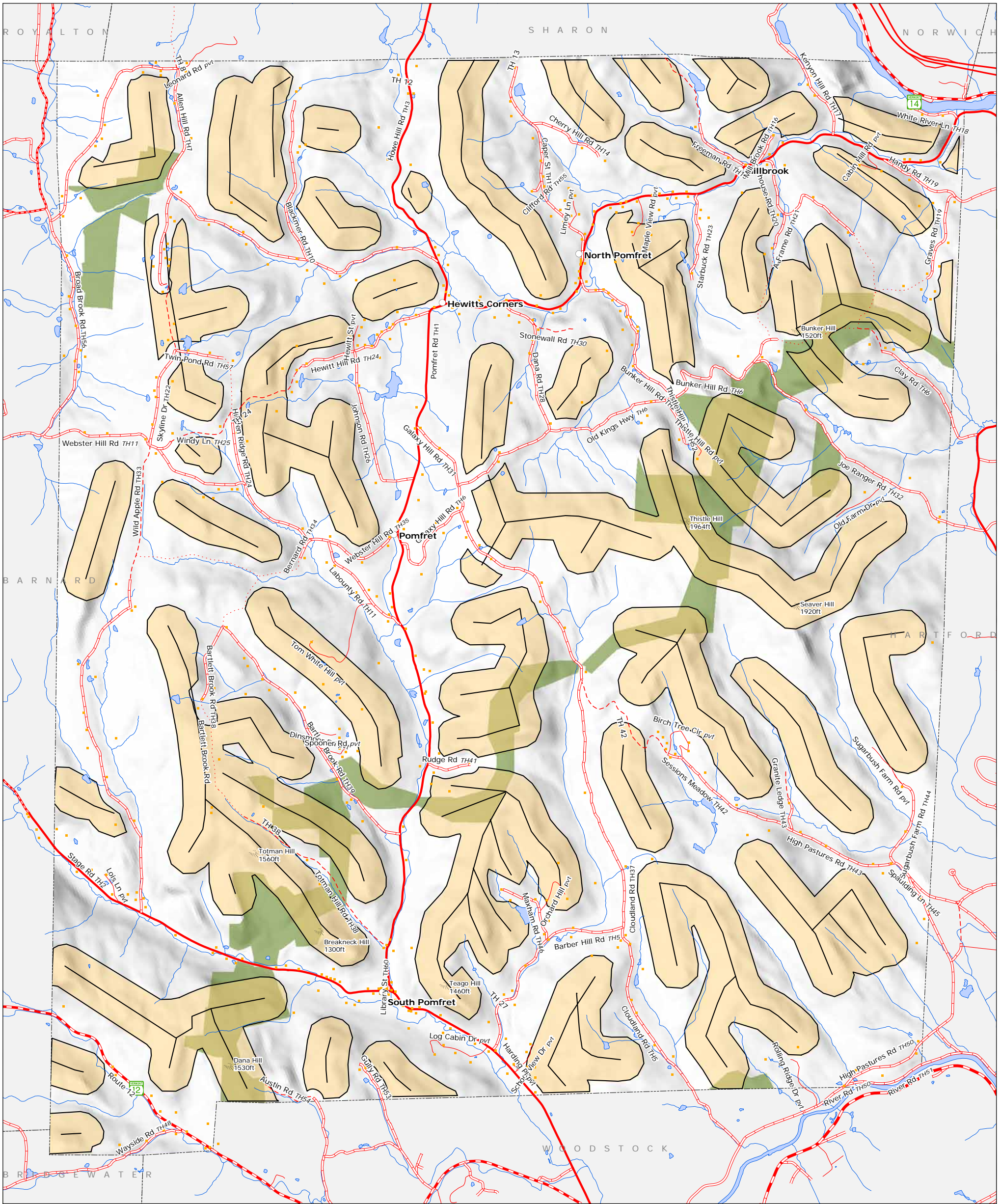
15.17 Special Provisions for Violations of Part 15.

In addition to the other penalties and remedies available in the event of a violation of the Pomfret Zoning Regulations, as such penalties and remedies may be set forth in these Zoning Regulations and the Vermont Statutes Annotated, any person or entity who or which violates any provision of this Part 15 in relation to removal, cutting, trimming or pruning of any tree or other landscaping planted in accordance with any land development submitted to the Planning Commission or required to be planted or maintained by any Visual Impact Approval shall subject the person or entity violating such provision, and the owner of the property, to an order and requirement to promptly replace such tree or other landscaping with a similar species of at least the same size and shape as those removed, cut, trimmed or pruned and at the same location, all at the discretion of the Planning Commission. Any failure to comply with the terms of any such order or requirement of the Planning Commission shall be deemed to be a separate violation of the Pomfret Zoning Regulations and may be enforced by the Planning Commission.

Original Adoption: *The original Part 15 – Ridgeline and Hillside Conservation Areas of the Pomfret Zoning Ordinance was adopted by a vote of the Town of Pomfret on March 7, 1989.*

Amendment and Restatement in its Entirety: *Part 15–Ridgeline and Hillside Conservation Areas of the Pomfret Zoning Ordinance was amended and restated in its entirety by the Pomfret Board of Selectmen at a meeting duly warned for that purpose on July 2, 2008.*

Amendment: *Section 15.4.1 was further amended by the Pomfret Selectboard following a public hearing on May 4, 2020 at a meeting duly warned for that purpose on May 6, 2020.*



Ridgeline and Hillside Protection Area

Pomfret, Vermont

2007

- TH cls 1 (village VT rt)
- TH cls 2
- TH cls 2 gravel
- TH cls 3
- TH cls 3 gravel
- TH cls 4 gravel
- TH cls 4 primitive
- TH cls 4 impassable
- VT forest hwy
- trail
- private
- VT route
- US route

- structures
- surface water
- primary ridges
- 750' ridge line zoning area
- public lands

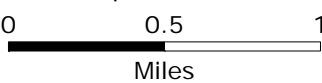
Definition:

Zoning district is the areas 750' from primary ridges AND NOT including areas 300' from the centerline of class 1, 2, and 3 town highways.

On screen digitized in 2007
from the November 1987
**Ridgeline and Hillside
Protection Area Map**
1"=1000'.

1:39,000

1 inch equals 3,250 feet



VT State Plane,
Meters, NAD 83

for info & data
www.vcgi.org

For planning purposes only.
Not for regulatory interpretation.

**TWO RIVERS-OTTAUQUECHEE
REGIONAL COMMISSION**

**GIS Service Center
Municipal Planning**

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