

**Village of Old Bennington
Vermont**

Zoning Bylaws

Adopted February, 1973

Revised July 13, 1989

Further revised and re-adopted February 2, 1999, effective February 23, 1999

Amended April 4, 2000, effective April 25, 2000

Amended December 6, 2005, effective December 27, 2005

ZONING BYLAWS OF THE VILLAGE OF OLD BENNINGTON

A 1989 revision and re-adoption of the Zoning Bylaws first adopted in February 1973 under the Vermont Planning and Development Act of 1968 and further revised and adopted in 1999. Minor amendments were made in 2000. Amended to conform with Act 115 in 2005.

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ARTICLE I - PURPOSE

SECTION 10 - PURPOSE

- A. The purpose of amending and re-enacting the zoning bylaws is to make them compatible with the Village Plan.
- B. The purpose of the regulations applicable to this district is to limit commercial activity to the few existing commercial uses, to protect the historical and cultural sites, to preserve the existing appearance of the Village as a community predominantly composed of older, single-family dwellings of eighteenth and nineteenth century design, to ensure that any future development complies with Design Review provisions, to preserve the existing low population density and ample open space, to provide adequate public facilities for present and future growth, to maintain the tax rolls and property values, to provide for public safety, well-being and convenience and to channel future development towards these purposes.

ARTICLE II - DEFINITIONS

SECTION 20 - DEFINITIONS

For the purpose of this bylaw, the following terms or words shall have the meaning stated below:

ABUTTING NEIGHBORS - Neighbors sharing a common property line, and neighbors within a direct line of sight which may be separated by a road.

ACCESSORY STRUCTURES - Any structure which is subordinate to and whose use is incidental and accessory to the use of the principal structure on the same lot or an adjoining lot under the same ownership. A detached accessory structure shall be one that is not attached to the principal structure by any covered porch, breezeway, or other roofed structure.

ACCESSORY USE - A use customarily incidental and subordinate to a principal use on the same lot. For the purposes of this bylaw, accessory uses shall include, but not be limited to garages, terraces and patios, swimming pools, tennis courts, storage sheds, gazebos, stables, and greenhouses.

BUILDING - A structure.

BUILDING AREA - The ground area enclosed by the walls of a structure, together with the area of all covered porches and other roofed portions.

BUILDING COVERAGE - The ratio that the aggregate building area of all structures on the lot bears to the area of the lot.

BUILDING HEIGHT - the vertical distance from the average finished grade within 10 feet of the walls of the structure to the highest point of flat or mansard roofs including the top of a parapet or to the mean level between the eaves and ridges for gable, hip or gambrel roofs.

BUILDING LINE - A line parallel to a street at a distance equal to the required front yard, or at a greater distance when otherwise established by the municipality or by private covenant.

DISTRICT - A district established by the provisions of Section 30 of this bylaw.

DWELLING, MULTIFAMILY - A structure containing separate dwelling units for three families having separate or joint entrances, services, or facilities.

DWELLING, ONE-FAMILY - A detached structure designated for or occupied solely as a dwelling by one family.

DWELLING, TWO-FAMILY - A detached structure designated for or occupied solely as a dwelling by two families living independently of each other.

DWELLING UNIT - A dwelling or part of a dwelling occupied or intended to be occupied by one family for residential purposes, containing full housekeeping facilities for the exclusive use of the occupants. A house trailer or mobile home shall not be deemed to be a dwelling unit.

DWELLING UNIT, ACCESSORY - An efficiency or one bedroom dwelling unit located within or appurtenant to an owner-occupied one-family dwelling that is clearly subordinate to the one-family dwelling, which has facilities and provisions for independent living, including sleeping, food preparation, and sanitation, provided that the property has sufficient wastewater capacity and that the unit does not exceed 30 percent of the total habitable floor area of the one-family dwelling, but is at least 400 square feet in floor area.

ERECTION OF A STRUCTURE - Any construction designed to create a structure or to modify an existing edifice so that it becomes a structure.

FAMILY - Any number of individuals related by blood, marriage or adoption, living together as a single housekeeping unit provided that a group of not more than three persons keeping house together, but none related by blood or marriage to each other, may be considered a family.

FAMILY CHILD CARE HOME OR FACILITY - A home or facility where the owner or operator is licensed or registered by the State for childcare.

HOME OCCUPATION - A business customarily conducted in a minor portion of a dwelling involving one non-resident employee and not changing the residential character and appearance of the dwelling.

INN - A structure providing lodging for persons with or without meals, and intended for the accommodation of transients, and so designated that normal ingress and egress are controlled from a central point. An inn is not a dwelling unit.

INOPERATIVE MOTOR VEHICLE - An automobile, motorcycle, truck or other such vehicle or parts of said vehicles, which is mechanically incapable of self-propelled motion or is not currently registered.

LOT - A plot or parcel of land occupied or capable of being occupied by one principal structure and any accessory structures or uses customarily incident to it, including such open spaces as are required by this bylaw. In the case of multiple dwellings and public, institutional, commercial or agricultural structures, a group of structures on the same or contiguous premises all under the same ownership, may be considered as occupying the same lot.

LOT, CORNER - A lot at the intersection of and abutting on, two or more streets where the angle of intersection is not more than 135 degrees or where the intersection is rounded by a curve having a radius of less than one hundred feet.

LOT, INTERIOR - A lot other than a corner or through lot.

LOT, THROUGH - A lot other than a corner lot which abuts two or more streets which do not intersect at the lot.

LOT LINE - The established division line between lots or between a lot and a street.

LOT LINE, FRONT - All dividing lines between a street and the lot shall be considered front lot lines.

LOT LINE, REAR - The line or lines bounding a lot at the rear and approximately parallel to and at the maximum distance from the front lot line.

LOT LINE, SIDE - The line or lines bounding a lot extending from the street toward the rear in a direction approximately perpendicular to the street. In the case of corner lots, or through lots, all lines extending from streets shall be considered side-lot lines.

LOT-MINIMUM WIDTH OF - The distance between the side lot line measured in a straight line at right angles to the mean direction of such side lot lines, which line of measurement shall touch, but not be in front of, the building line. In the case of a corner lot, the minimum width shall be similarly measured and for the purpose of this measurement only, the front lot line which has the least distance shall be considered the front lot line, and the lot lines adjacent thereto shall be considered as side lot lines.

MOBILE HOME - Any vehicle or object on wheels and having no motor power of its own, but is drawn by or used in connection with a motor vehicle, and which is so designed and constructed, or so added to so as to permit the use and occupancy thereof for human habitation whether resting on wheels, jacks or other foundation. Those provisions shall also be applicable to any motor vehicle that is designed or added to so as to permit its use and occupancy for human habitation.

NEW OR CHANGED USE - Any proposed use that differs from the present use of a lot.

NONCONFORMING STRUCTURE - A structure, the location, size, height or construction of which does not conform to all the applicable provisions of this bylaw, but was legally existing at the effective date hereof, or of any pertinent amendment hereto.

NONCONFORMING USE - A use of land, structure, or premises which is not a use permitted by the provisions of this bylaw for the district in which such land, structure or premises are situated, but which was legally existing at the effective date thereof, or any pertinent amendment hereto.

OPEN SPACE - A space not occupied by a structure, on the same or adjoining lot occupied by a principal structure.

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

PREMISES - A lot as defined in this section.

PRINCIPAL STRUCTURE - The structure on the lot containing the major permitted use of the lot.

PUBLIC SEWER - A system of sanitary sewers owned and operated by a municipality or other governmental unit.

PUBLIC WATER SUPPLY - A system of water supply owned and operated by a municipality or other governmental unit or by a corporation authorized and regulated by the State of Vermont for purposes of public water supply.

STREET - A town or state highway, a street of an incorporated Village or a street shown on a subdivision plan approved by the planning commission. The word "street" shall include the entire right-of-way thereof. If a boundary of the right-of-way has not been surveyed and so recorded, and is not marked by fence line or other physical feature, the boundary shall be deemed to be 25 feet from the center of the traveled way.

STREET LINE - The line dividing the street and the lot.

STRUCTURE - An assembly of materials for occupancy or use, including but not limited to a building, mobile home or trailer, billboard, sign, wall or fence, except a wall or fence on an operating farm and not more than 8 feet high.

SUBSTANTIAL ALTERATION OF A STRUCTURE - Any modification of an existing structure designed to alter its height, change the distance of its outside walls to any lot line, increase the building coverage or change the architectural style of the structure.

TAG SALE - The sale of used articles including household effects, clothing, furnishings, and other such items that belong to residents.

YARD, FRONT - An open space between a structure and the front lot line extending the full width of the lot, or in the case of a corner lot or through lot, extending along all streets.

YARD, REQUIRED FRONT, REAR OR SIDE - So much of the front, rear or side yard as required by the applicable provisions of this bylaw.

YARD, SIDE - An open space between a structure and a side lot line, extending the full length of the lot.

YARDS, DEPTH OR WIDTH OF - The depth of front and rear yards and the width of side yards shall be measured perpendicular to the perspective lot lines.

ARTICLE III - CREATION OF DISTRICT

SECTION 30 - CREATION OF DISTRICT

There shall be only one zoning district in the Village of Old Bennington, which is designated as a residential district.

SECTION 31 - ZONING MAP

The boundaries of said district are set forth on the Zoning Map, which map is hereby declared to be part of this bylaw.

SECTION 32 - ZONING OF STREETS

The zoning district shall include the beds of streets lying within the Village boundaries.

SECTION 33 - LAND UNDER WATER

The zoning district shall include any land under streams, wetlands or ponds lying within it.

ARTICLE IV - GENERAL REGULATIONS

SECTION 40 - COMPLIANCE WITH BYLAWS

No structure or part hereof shall be constructed, reconstructed, extended, and enlarged, moved or altered, except in conformity with this bylaw.

SECTION 41 - CREATION OF SUBSTANDARD LOTS

No lot shall be created or diminished in size nor shall any open space be reduced, except in strict conformity with Section 53 of these bylaws.

SECTION 42 - PRE-EXISTING SUBSTANDARD LOTS

Any lot which has an area less than the required minimum lot size specified in Section 53 of these bylaws, may be developed for purposes permitted by Article V of these bylaws, as set forth by 24 VSA 4406(1) provided that:

- A. Said lot has remained in separate and distinct ownership from adjoining lots since a time before the adoption of the original bylaws in 1973; and
- B. Said lot has a minimum lot size of one-eighth acre in area; and
- C. Said lot has a minimum width of forty feet.
- D. If a pre-existing substandard lot subsequently comes under common ownership with one or more contiguous lots, the nonconforming lot shall be deemed merged with the contiguous lot. However, the nonconforming lot shall not be deemed merged and may be separately conveyed if all of the following apply:

1. The lots are conveyed in their preexisting, nonconforming configuration;
2. Each lot was developed with a water supply and wastewater disposal system prior to the adoption of the original bylaws in 1973;
3. At the time of transfer, each water supply and wastewater system is functioning in an acceptable manner;
4. The deeds of conveyance create appropriate easements on both lots for replacement of one or more wastewater systems, potable water systems, or both, in case there is a failed system or failed supply as defined in 10 V.S.A. Chapter 64.

SECTION 43 - ADDITIONAL DWELLINGS ON A LOT and ACCESSORY DWELLING UNITS

If more than one principal dwelling is to be placed on any lot, such additional dwelling(s) shall be placed so that each dwelling, and accessory structures to each, could be set off as a separate lot, with separate electric, water and septic utilities and shall conform to the applicable dimensional requirement of these bylaws. No structures shall be sold into separate ownership unless a valid subdivision permit is obtained from the Planning Commission.

Pursuant to 24 V.S.A. Section 4412(1)(E) and (F), an accessory dwelling unit, as defined in this bylaw, is permitted as a use subordinate to a one-family dwelling, provided such accessory dwelling unit meets all applicable setback, coverage, wastewater, and parking requirements. The accessory dwelling unit may be located in the one-family dwelling structure or in an existing or new accessory structure. If creation of the accessory dwelling unit involves the construction of a new accessory structure, an increase in the height or floor area of any existing structure, or an increase in the dimension of a parking area, conditional use review shall be required pursuant to Section 84 of this bylaw.

SECTION 44 - REQUIRED STREET FRONTAGE

Land development will be permitted only on lots which have a front lot line of at least one hundred fifty (150) feet in length, or with approval of the Planning Commission, have access to such a street by a permanent easement or right-of-way not less than twenty feet wide.

SECTION 45 - HEIGHT LIMITATION EXCEPTION

The height limitation set forth in Section 51 B(1) for certain conditional uses and in Section 53 for all other uses shall not apply to spires, cupolas, chimneys or similar parts of a structure not used for human occupancy and occupying in the aggregate not more than 10% of the area of such structure. Flagpoles, radio or television aerials, satellite dishes, wind turbines, or similar structures shall not exceed the height limitation.

ARTICLE V - RESIDENTIAL DISTRICT

SECTION 50 - PERMITTED USES

The following uses are permitted and no other:

- A. One-family dwellings
- B. Accessory structures to one-family dwellings and accessory dwelling units

- C. Home occupations subject to the following provisions:
1. Seventy (70%) percent of the gross floor area of the dwelling, exclusive of the basement or cellar, must remain exclusively in residential use; and
 2. All activities associated with the home occupation must be carried on by residents of the premises, with not more than one employee or associate who is not a resident therein; and
 3. No trading in merchandise may be carried on; and
 4. No sign or other outward evidence of the occupation may be displayed on the premises; and
 5. No occupation shall be carried on which causes more than one automobile of customers or clients to be parked on the premises at a time; and
 6. Adequate off-street parking must be provided; and
 7. Physical alterations in conjunction with the home occupation shall not change the exterior appearance of the dwelling and shall meet the requirements of the design review provisions of this bylaw; and
 8. No overnight lodging of guests for payment shall be permitted, except under emergency conditions when commercial accommodation is not available.

- D. Tag sales or auctions are permitted in any dwelling or accessory structure when conducted by the occupant. Prior to the sale, a permit shall be obtained from the Zoning Officer. Such sales are subject to the following provisions:
1. Articles offered for sale must be displayed within the dwelling, an accessory building, or a tent erected for the period of the sale.
 2. Sales shall not exceed two days in duration.
 3. One on-premise sign is permitted. Such sign will not exceed six square feet in area and is to be removed immediately upon the conclusion of the sale. No off premise signs shall be displayed.
 4. A deputy sheriff or parking attendant shall supervise parking. For an auction, a deputy sheriff is mandatory.
 5. Merchandise to be sold in such sales must meet one of the following conditions:
 - a. Is owned by a resident who is moving out of the dwelling within sixty days thereafter, or
 - b. Was owned previously by a resident who is recently deceased, or
 - c. Is owned by a resident who has not conducted such a sale within the last three years.

Notwithstanding the above, any nonprofit eleemosynary organization may hold a tag sale for not more than two consecutive days at the Old First Church barn located on Monument Circle. Prior to the sale, permission must be obtained from the Old First Church, as well as a permit from the Zoning Officer. The provisions of Section D4 above apply to these sales.

- E. A family childcare home or facility serving six or fewer children. A family child care home or facility serving no more than six full-time children and four part-time children, as defined in 33 V.S.A. Section 4902(3)(A) is permitted, but requires site plan approval pursuant to Section 83 of this bylaw.
- F. A residential care home or group home operated under state licensing or registration, serving not more than eight persons who have a handicap or disability as defined in 9 V.S.A. Section 4501, except that no such home shall be permitted if located within 1,000 feet of another existing or permitted such home.

SECTION 51 – CONDITIONAL USES

The following may be permitted as conditional uses in conformity with the provisions of section 84 of this bylaw:

- A. Two-family dwellings and multifamily dwellings provided the following conditions are met:
 - 1. The dwelling shall be at least twenty-five years old; and
 - 2. The conversion shall be made without major changes to the exterior of the dwelling, and shall comply with the design review provisions of this bylaw; and
 - 3. The dwelling shall contain at least 1600 square feet for a two-family dwelling and 2200 square feet for a multifamily dwelling, exclusive of additions made within two years of the application; and
 - 4. One dwelling unit in each such two-family or multifamily dwelling shall have a floor area of at least 1000 square feet. Each additional dwelling unit shall have a floor area of at least 400 square feet.
 - 5. Each dwelling unit shall be connected to the sanitary sewer system or conform to the sanitary code, if any; and
 - 6. Adequate off-street parking shall be provided for all dwelling units; and
 - 7. No signs shall be erected advertising the dwelling in any way; and
 - 8. At least one of the dwelling units shall be owner-occupied.

- B. Cultural, religious or eleemosynary institutions operated by a government unit, non-profit corporation, or foundation or community association under the following conditions:
 - 1. All structures shall conform to the dimensional requirements set forth in Section 53; and
 - 2. Maximum building height shall be forty feet; and
 - 3. Off-street parking shall be provided as required by Section 55; and
 - 4. Landscaping and fencing shall be furnished to screen the parking areas, and beautify the structures; and
 - 5. The total square-foot area of signs shall not exceed 25 square feet.

- C. The following uses:
 - 1. Public utility power generating plants and transmission lines; and
 - 2. State or community owned and operated institutions and facilities; and
 - 3. Public and private schools and other educational institutions certified by the Vermont Department of Education; and
 - 4. Churches, convents and parish houses; and
 - 5. Public and private hospitals.

- D. Exterior lighting of public monuments shall be permitted, provided that the Zoning Board of Adjustment finds that the following conditions are met:
 - 1. The lighting utilizes only white light;
 - 2. The lighting lights as much of the monument as is feasible while adhering to the aesthetic goals and limited light intensity set forth below;

3. The lighting is limited in intensity so as to minimize glare and light pollution, not appear excessive when considered in the context of its surrounds, and in no event shall the illumination exceed .01 foot-candle from a distance of 100 feet from the public monument and six feet above the ground;
4. The lighting is limited to reasonable evening hours, and in no event shall the illumination:
 - a. Begin before 5:00 PM nor continue past 10:00 PM from December 21 through and including March 19;
 - b. Begin before 6:00 PM nor continue past 11:00 PM from March 20 through and including June 20, as well as from September 22 through and including December 20;
 - c. Begin before 7:00 PM nor continue past 12:00 AM (midnight) from June 21 through and including September 21.
5. The lighting is limited so that it shall not exceed 190 evenings in any calendar year. The evenings may include only the following:
 - a. Friday, Saturday, and Sunday;
 - b. New Year's Day;
 - c. Martin Luther King Day;
 - d. President's Day;
 - e. Memorial Day;
 - f. Flag Day;
 - g. Independence Day;
 - h. Bennington Battle Week;
 - i. Labor Day;
 - j. Patriot Day;
 - k. Two continuous weeks in October;
 - l. Columbus Day;
 - m. Election Day;
 - n. Veteran's Day;
 - o. Thanksgiving Day;
 - p. Two continuous weeks in December;
 - q. Such other evenings that the Trustees for the Village of Old Bennington, in their sole discretion, believe are so extraordinary, and otherwise in keeping with the holidays and occasions listed in 5 (b through p) above as well as in keeping with the purpose, meaning, and historical significance of such public monument, that lighting would be appropriate.
6. Utilize below ground equipment and fixed light sources to minimize safety risks and be physically and aesthetically unobtrusive.
7. For purposes of this section, "public monuments" means structures that can be entered and excludes statues, fountains, and places of commerce.

SECTION 52 – ACCESSORY USES

- A. Accessory uses, swimming pools and structures incidental to a permitted use and structure shall be permitted provided all dimensional and design review requirements are satisfied.
- B. Uses and structures or swimming pools which are accessory to any conditional use in the Village are permitted only when applied for and granted as part of the conditional use.

Rev. 2/2/99

SECTION 53 – DIMENSIONAL REQUIREMENTS

<i>MINIMUM DIMENSIONAL REQUIREMENTS</i>					
LOT AREA	LOT WIDTH	FRONT YARD	SIDE YARD	REAR YARD	BLDG AREA
SQ. FT	FT.	FT.	FT.	FT.	SQ. FT
80,000	150	25	25	25	1,200
<i>MAXIMUM DIMENSIONAL REQUIREMENTS</i>					
BUILDING HEIGHT			BUILDING COVERAGE		
FT.			OF LOT	%	
30			10		

Walls and fences and swimming pools shall not be required to meet the front, side or rear yard setback requirements. However, any wall or fence, including any gates intended to enclose a swimming pool shall be at least four (4) feet in height, and any such gates shall be self closing and self latching and inaccessible from the outside to small children.

SECTION 54 – SIGNS, ILLUMINATION AND LIGHTING

- A. The only permitted signs shall be:
 - 1. Signs showing the house number and name of the occupant or building;
 - 2. Signs telling the original owner and date of construction;
 - 3. Temporary signs advertising the sale of the premises.
- B. Signs advertising apartments for rent (see Section 51A), or vehicles for sale or rent, or tag sales and auctions (see Section 50D and the exception therein) or signs advertising customary home occupations (see Section 50C) shall not be permitted.
- C. Signs of conditional uses operated by cultural, religious and eleemosynary institutions are limited to 25 square feet in size (see Section 51B)
- D. Non-conforming signs shall not be expanded in size or number or changed in shape, color, design or location, without approval of the Zoning Board of Adjustment pursuant to Section 60 of these bylaws.
- E. Certain off-premises signs, temporary or permanent, normally placed in the highway right-of-way or on public property, may be permitted subject to regulations of the Village Trustees adopted October 7, 1986. Such signs require a permit from the Village Clerk.
- F. General regulations applicable to all signs unless otherwise stated herein:
 - 1. Signs shall be limited to six square feet in size.
 - 2. The size of signs lettered on two sides shall be counted as if lettered on one side.
 - 3. Signs shall not be illuminated. Reflective materials or paint shall not be used to increase reflection.

G. Except as specifically authorized by Section 51(D), exterior lighting shall not be used to illuminate structures or parts of structures (as defined in 24 V.S.A. Section 4303), nor lawns, shrubbery, driveways, or walkways for the purpose of (1) drawing attention, or (2) to deter theft. This provision shall not prevent the use of porch lights, entrance lights, small and dim lights marking the edges of driveways or walks, municipal streetlights, seasonal holiday decorations, or nonconforming lighting.

(adopted by previous amendment)

H. Exterior lighting of structures or parts thereof where such lighting constitutes a legally permitted non-conforming use, shall not be changed, moved, increased in intensity or hours of use or number of lights, changed in color of light, or changed in design or location, without the approval of the Zoning Board of Adjustment pursuant to Section 60 of these bylaws.

SECTION 55 – OFF-STREET PARKING REQUIREMENTS

A. The provisions of this section shall apply prospectively only to new structures or to applications made pursuant to Sections 60C or 61 of this bylaw.

B. Parking facilities off the street or highway right-of-way shall be provided on the same lot as the structures or use they serve and shall provide for not less than the minimum number of parking spaces set forth below, exclusive of driveways and ramps necessary for access:

1. For dwellings, two parking spaces per dwelling unit.
2. For restaurants, theaters, assembly halls or churches, one space for each three seats plus one space for each person normally employed at one time;
3. For places of public assembly or public recreation not otherwise listed, one space for each three legal occupants plus one space for each person normally employed at one time;
4. For inns, one space for each two sleeping rooms.

C. Parking space dimensional requirements:

					LOT CONFIGURATION							
Angle Of Parking	Stall Width	Curb Length Per Veh.	Stall Depth	Min. Drive Width	1 ROW PARKING + 1 DRIVE		2 ROWS PARKING + 1 DRIVE		3 ROWS PARKING + 2 DRIVES		4 ROWS PARKING + 2 DRIVES	
					Width	Sq.Ft. /Veh.	Width	Sq.Ft. /Veh.	Width	Sq.Ft. /Veh.	Width	Sq.Ft. /Veh.
0°	9'	23' 0"	9' 0"	12'	21' 0"	483	30' 0"	345	51' 0"	391	60' 0"	345
	10'	23' 0"	10' 0"	12'	22' 0"	506	32' 0"	368	54' 0"	414	64' 0"	368
30°	9'	18' 0"	17' 4"	11'	28' 4"	510	45' 8"	411	66' 2"	397	83' 6"	376
	10'	20' 0"	18' 3"	11'	29' 3"	585	47' 6"	475	68' 0"	453	86' 2"	431
45°	9'	12' 9"	19' 10"	13'	32' 10"	420	52' 8"	336	79' 0"	376	98' 10"	315
	10'	14' 2"	20' 6"	13'	33' 6"	490	54' 0"	383	80' 4"	379	100' 10"	358
60°	9'	10' 5"	21' 0"	18'	39' 0"	407	60' 0"	313	95' 0"	330	116' 0"	305
	10'	11' 6"	21' 6"	18'	39' 6"	455	61' 0"	351	95' 6"	366	116' 6"	335
90°	9'	9' 0"	19' 0"	24'	43' 0"	387	62' 0"	279	105' 0"	315	124' 0"	279
	10'	10' 0"	19' 0"	24'	43' 0"	430	62' 0"	310	105' 0"	350	125' 0"	310

D. Required minimum parking facilities shall have adequate all weather surfacing, capable of allowing free and safe movement of all vehicles customarily using the facility.

ARTICLE VI – NONCONFORMING USES AND STRUCTURES

SECTION 60 – NONCONFORMING USES

Any nonconforming use of a structure or premises which was lawfully existing at the time of the original adoption of this bylaw in 1973, or any pertinent amendment thereto, may be continued, and any structure so existing which was designed, arranged, intended for, or devoted to a nonconforming use, may be reconstructed and structurally altered, and the nonconforming use thereof changed, subject to the following regulations:

- A. A nonconforming use may not be changed, except to a conforming use, or with the approval of the Board of Adjustment, to another nonconforming use not more objectionable in character.
- B. A nonconforming use shall not, if once changed into a conforming use, be changed back into a nonconforming use.
- C. A nonconforming use shall not be extended or expanded, except with the approval of the Board of Adjustment, who must find that:
 1. The proposal will not alter the essential character of the neighborhood 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 health, traffic safety or welfare; and

2. The proposal will represent the minimum expansion or extension necessary to afford relief and will represent the least modification possible of these bylaws and the plan; and
 3. Strict enforcement of these bylaws would result in undue hardship upon the owner of the established non-conforming use.
- D. A nonconforming use, which has been discontinued for a period of six months, shall not be resumed thereafter, unless such a discontinuation is of a seasonal nature that occurs annually.

SECTION 61 – ENLARGEMENT OF NONCONFORMING STRUCTURES

No structure which does not conform to the requirements of this bylaw regarding building height, limit, area and width of lot, percentage of coverage and required yards and parking facilities shall be enlarged or substantially altered, unless such enlarged or altered portion conforms to the regulations, including use regulations.

SECTION 62 – RECONSTRUCTION AFTER DAMAGE

Nothing in this bylaw shall prevent the restoration or reconstruction within one year of a structure that has been damaged or destroyed by fire, explosion, accident, or by the public enemy, subsequent to the adoption of this bylaw, to its condition prior to such damage or destruction, nor prevent the restoration of an unsafe wall or structural member.

ARTICLE VII – SPECIAL REGULATIONS

SECTION 70 – STORAGE OF GARBAGE AND WASTE MATERIALS

No garbage, trash or waste material shall be stored in open view on any lot; nor placed off the lot by the street. While awaiting haulage, such materials shall be stored in the interior of the lot, in a structure or place screened from view.

SECTION 71 – STORAGE OF INOPERATIVE MOTOR VEHICLES, TRAILERS, MOBILE HOMES OR BOATS

No inoperative motor vehicle, trailer, mobile home or boat may be stored on any lot for a period in excess of seven (7) days, unless within a structure.

SECTION 72 – STORAGE OF COMMERCIAL VEHICLE

A commercially registered vehicle if parked or stored overnight should be as far to the rear of the property as is feasible and out of sight from the street and other dwellings.

ARTICLE VIII – ADMINISTRATIVE ENFORCEMENT

SECTION 80 – ADMINISTRATIVE OFFICER

The provisions of this bylaw shall be administered and enforced by the Administrative Officer nominated by the Planning Commission and appointed by the Board of Trustees for a term of three years, as provided by law. Such officer shall literally enforce the provisions of these regulations, inspect land development, maintain records of any actions taken and perform all other necessary and required tasks to carry out the provisions of these regulations and the duties of the office.

SECTION 81 – PERMITS

Before any premise or structure is devoted to a new or changed use, or before the erection, substantial alteration or moving of any structure, a zoning permit shall be obtained from the Administrative Officer. Application for such a permit shall be made on a prescribed form, accompanied by a fee in an amount established by the Board of Trustees. Before issuing any such permit, the Administrative Officer shall certify that the proposed structure and use literally complies with all of the provisions of this bylaw. The Administrative Officer shall maintain a full and accurate record of all applications, permits and violations acted upon by the Officer, copies of which shall be filed with the Board of Listers of the Town of Bennington and the town clerk, as provided for in 24 V.S.A. Section 4449. A copy of all permits also must be posted in at least one public place in the municipality until the expiration of 15 days from issuance of the permit. Unless otherwise extended by the authority issuing such permit, all projects authorized by any permit, including any design review permit must be fully completed within one year after the issuance of the permit.

For any property for which a permit has been issued, a notice of permit shall be posted within view from the public right-of-way most nearly adjacent to the subject property until the time for appeal (24 V.S.A. Section 4465) has passed.

No permit shall take effect until the time for appeal (24 V.S.A. Section 4465) has passed, or in the event that an appeal is properly filed, no such permit shall take effect until adjudication of the appeal by the Board of Adjustment is complete and the time for taking an appeal to the environmental court has passed without an appeal being taken. If an appeal is taken to the environmental court, the permit shall not take effect until the environmental court rules in accordance with 10 V.S.A. Section 8504 on whether to issue a stay, or until the expiration of 15 days, whichever comes first.

SECTION 82 – PLANNING COMMISSION AND BOARD OF ADJUSTMENT

There shall be a Planning Commission and a Board of Adjustment created as provided by 24 V.S.A. 4460 – 4473 inclusive, with the powers and duties provided therein.

SECTION 83 – SITE DEVELOPMENT PLAN

- A. A site development plan shall be required for any use specified in Sections 50C, 50E, 51 or 60C.
- B. Such site development plan shall be at a scale prescribed by the Planning Commission and shall show where applicable:

1. The boundaries and area of the affected lot; and
 2. Existing and proposed structures on the lot and adjacent lots within a distance of 200 feet from the boundaries of the lot; and
 3. Proposed vehicular circulation and parking; and
 4. Proposed pedestrian circulation; and
 5. Open space; and
 6. Park and playground facilities; and
 7. Landscape details; and
 8. Proposed grading; and
 9. Water supply and fire protection; and
 10. Sanitary sewage; and
 11. Storm drainage and natural drainage ways and water courses; and
 12. Existing contours and land conditions; and
 13. Existing and proposed exterior lighting; and
 14. Such other information as the Planning Commission may require.
- C. Any such site development plan shall be submitted to the Planning Commission in triplicate, who must approve it after a public hearing before any permit may be issued and make reasonable conditions as may be necessary to achieve the objectives of this section.

SECTION 84 – CONDITIONAL USE APPROVAL

- A. A conditional use may be approved by the Board of Adjustment only after a public hearing provided that the Board shall have found the use will not adversely affect:
1. The capacity of existing or planned community facilities; and
 2. The character of the area affected, as defined by the policies and objectives of these bylaws and the Village Plan; and
 3. Traffic on roads and highways in the vicinity; and
 4. Is in accord with other provisions of ordinances, regulations and bylaws of the Village applicable thereto, and each use so approved shall meet any standards applicable to the specific use as to lot and building dimensional requirements, landscaping, design and location of signs. Approval of the Board shall be based on a site development plan prepared in conformance with Section 83, and failure of the development to conform to such site development plan shall constitute a violation of this bylaw, punishable pursuant to Section 86.
- B. Fifteen days before the public hearing, the Board shall refer the application for a conditional use, together with a copy of the proposed site development plan to the Planning Commission, and the report of the Planning Commission on such application and site development plan shall be made a part of the record of the hearing.
- C. The Zoning Board of Adjustment may impose reasonable conditions as may be necessary to achieve the objectives of this section or to mitigate any impact generated by the granting of a permit.

SECTION 85 – VARIANCES

The Board of Adjustment shall consider appeals for variances from the provisions of this bylaw and shall render a decision in favor of the appellant if all of the following facts are found (24 V.S.A. Section 4469):

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

SECTION 86 – WAIVERS

Requests for waivers are considered by the Board of Adjustment. Any request for a waiver will be warned and a public hearing held pursuant to Section 87 of this bylaw. The purpose of waivers is to allow for minor additions to a principal or accessory structure that would not be counter to the purpose of these bylaws or the Village Plan, but which might not meet the standards for the granting of a variance. A waiver may be granted only to reduce dimensional requirements as provided below, and compliance with all other requirements of this bylaw is required. The Board of Adjustment may grant a waiver provided all of the following conditions are satisfied:

1. The proposal is for a one-story addition to an existing principal or accessory structure, and said addition shall not increase the building footprint by more than 100 square feet.
2. The addition is the minimum size that is necessary for it to serve its intended function.
3. The addition is specifically intended to improve access for disabled persons, or for a porch, deck, entryway, stairway, or similar structure.
4. No setback (front, side, or rear) shall be reduced to less than 15 feet.

The Board of Adjustment may impose conditions regarding the design and screening of the addition to mitigate any impacts on neighboring properties.

SECTION 87 – PUBLIC NOTICE

Any public notice that is required for a public hearing under this bylaw shall be given as required by 24 V.S.A. Section 4464.

SECTION 88 – DECISIONS OF THE PLANNING COMMISSION AND BOARD OF ADJUSTMENT

The Planning Commission and Board of Adjustment must issue a written decision on any application under review within 45 days of the adjournment of the public hearing, as provided for in 24 V.S.A. Section 4464(b)(1).

SECTION 89 – ENFORCEMENT PROCEDURE, PENALTIES

- A. No action may be brought under this section unless the alleged offender has had at least seven (7) days warning notice by certified mail. Action may be brought without the seven-day notice and opportunity to cure, if the alleged offender repeats the violation after the seven-day warning period and within the next succeeding twelve months. The seven-day warning notice shall state:
1. A violation exists; and
 2. The alleged offender has the opportunity to cure the violation within seven days; and
 3. The alleged offender will not be entitled to an additional warning notice occurring after the seven days;
- B. An enforcement proceeding must be instituted within 15 years from the date the alleged violation first occurred and not thereafter, and any such proceeding shall be subject to such other limitations as are contained in 24 V.S.A. Section 4454.
- C. The provisions of this bylaw will be enforced by the Administrative Officer in accordance with 24 VSA 4452 as follows: *" If any street, building, structure or land is, or is proposed to be, erected, constructed, re-constructed, altered, maintained, or used in violation of any bylaw, the administrative officer shall institute in the name of the municipality an appropriate action, injunction or other proceeding to prevent, restrain, correct or abate such construction or use or to prevent, in or about such premises, any act , conduct, business or use constituting a violation. A court action under this section may be initiated in environmental court, or as appropriate, before the judicial bureau, as provided under 24 V.S.A. Section 1974a."*
- D. Any person who violates this bylaw shall be fined not more than one hundred (\$100) dollars for each offense. In default of payment of the fine, such person, the members of the partnership, or the principal officers of such corporation shall each pay double the amount of such fine. Each day that a violation is continued shall constitute a separate offense.

ARTICLE IX – DESIGN REVIEW

SECTION 90 – PURPOSE

The purpose of design review in Old Bennington is to provide organization, procedures and design criteria and guidelines, within the context of enabling legislation, which will ensure that future development will be compatible with and appropriate to the existing character of the Village. This Article is concerned with the visual appearance of structures, their relation to each other and to the area.

SECTION 91 – DEFINITIONS

For the purposes of this article IX only, the following terms are defined as follows:

- A. **“Buildings”** have been defined to include structures with roofs, intended to house persons, animals or materials, plus other structures over eight feet tall which extends Design Review to storage sheds, barns, stables, gazebos, greenhouses, solar porches, and satellite dish antennas eight feet or more in height.
- B. **“Structure”** is defined to include “buildings, mobile homes, trailers, signs, walls and fences”.

SECTION 92 – ORGANIZATION FOR DESIGN REVIEW

Any person seeking a design review permit shall submit an application to the Administrative Officer pursuant to Section 93. The Planning Commission shall administer the design review provisions. The goal is to ensure that the design review principles and criteria set forth herein, and in the Design Review Report, are properly observed.

SECTION 93 – PROCEDURES FOR DESIGN REVIEW

- A. The erection, reconstruction, substantial alteration, movement, demolition or change of any structure in the Village will require the submission of a Site and Building Plan in triplicate to the Administrative Officer.
- B. Until an application is filed and while it is pending, applicants shall not anticipate approval by commencing clearing of trees, soil disturbance and other site preparation.
- C. The site and building plan shall be drawn to scale and shall include:
 - 1. A north point, property lines, existing and proposed grades, structures, trees, shrubs, driveways, lighting and other pertinent landscape features.
 - 2. Building elevations from three sides, door and window types, shutters, roof type and other details common in architectural design.
 - 3. Placement of the proposed structure within the lot and in relation to neighboring structures.
 - 4. Description of exterior building materials and colors.
 - 5. The Planning Commission may require other pertinent details as necessary.
 - 6. Drawings must be complete, needing no verbal explanations from the applicant to complete them.

Interior alterations or changes that do not affect, change nor add to the exterior of a structure will not be subject to design review regulations and shall not require a Site and Building Plan.

- D. The Administrative Officer shall within five (5) days after submission by the applicant, refer all site and building plans to the Planning Commission for analysis. If, in the joint opinion of the Administrative Officer and the Chair of the Planning Commission, the proposal constitutes a repair, reconstructs an existing structure with the same design and materials, or will not have any impact upon the visual characteristics of the village, they may approve the project without any further proceedings under this article.

- E. The applicant shall give notice of the application by first class mail to the applicant's abutting neighbors, and certify to the Administrative Officer the service of such notice under penalty of perjury.
- F. Within thirty-one (31) days after receipt of the site and building plan from the applicant, the Planning Commission shall hold a public hearing on such application. At, or after such hearing, the Planning Commission shall either issue a permit, approval with modifications, or disapproval to the applicant. All actions and documentation thereof shall be made a part of the permanent records of the Commission.

One copy of the approved site and building plan, endorsed by the Chair of the Planning Commission, shall be returned to the applicant and must be kept readily available at the site during the construction period. One copy shall also be filed in the permanent records of the Planning Commission. Construction must proceed without variation from the written plans as approved and within the time set forth in Section 81.

SECTION 94 – BASIS FOR DECISION

- A. Fair and proper administration of design review requires criteria that are clear, objective and known. Two types of criteria will be utilized.
 - 1. Criteria to be used by the Planning Commission are set forth below in Section 95 of this bylaw.
 - 2. Design guidelines, which are strongly recommended, are set forth in detail in verbal description and drawings in the Design Review Report contained within the Village Plan of Development.

The Planning Commission shall use thoughtful judgment in applying the criteria and guidelines in order to ensure that the legitimate needs of the Village residents are considered within the context of preserving the architectural and Villagescape character which residents cherish.

SECTION 95 – DESIGN REVIEW CRITERIA

Old Bennington offers a blend of architectural styles and landscapes which is harmonious and aesthetically pleasing. The character basically reflects design patterns common in the late 18th and early 19th centuries. Of the 81 principal buildings in the Village, 33% were built in the Georgian/Federal periods (1764-1820), 5% in the Greek Revival period (1820-1850) and 37% built later but in the Colonial Revival style, a total of 75% in these styles. 20% were built in the Victorian or Shingles styles (1850-1900) and 5% in miscellaneous styles (Italianate, modern, ranch, etc.) This range offers Old Bennington an adequate mix of architectural styles. Within this framework, the following criteria shall be used by the Planning Commission in the evaluation of site and building plans.

- A. When the applicant proposes the construction of a new building, the architectural style shall be those which are in harmony with the character of the Village at large. These styles include Georgian/Federal, Greek Revival, and Colonial Revival. In reviewing construction proposals, the Planning Commission shall be guided by the context of the neighborhood and what is appropriate to it in terms of siting, styles, scale, building materials, colors and landscaping, giving consideration to applicable zoning regulations and design criteria set forth herein

- B. Additions, alterations or restorations of an existing structure shall be permitted if such construction is in accord with the original style of the structure. Two different styles in a structure shall not be approved. Accessory buildings shall follow the style of the principal structures.
- C. Dimensional requirements concerning lot area, lot width, front, rear and side dimensions, building height and coverage and minimum building area shall be governed by the applicable provisions of Section 53 of this bylaw.
- D. Architectural principles of perpendicularity, parallelism, and symmetry shall be give important consideration by the Planning Commission in granting or denying approval of site and building plans. The Design Review Report provides a detailed exposition of these requirements.
- E. Building materials shall be in keeping with materials used in existing buildings, including wood (clapboard and shingles), red brick and stone of the region.
- F. In its consideration of site and building plans, the Planning Commission shall require reasonable amounts of plantings, landscaping, and screening with particular emphasis on trees, as required to maintain and improve the visual quality of the Village.
- G. Areas and objects which are normally considered unpleasant to view, such as trash receptacles, dish antennas, kennels and stables shall be screened from public view by appropriate shrubbery or fencing.
- H. Exterior colors used on structures, fences and walls shall be considered by the Planning Commission in decisions concerning site and building plans using Section 10.4.2 of the architectural criteria in the Design Review Report as a guide.
- I. Walls and fences shall be within the scope of the Planning Commission's Design Review authority. Walls shall be solid, made of stone, and unpainted. Ornamental fences may be approved for location along boundary lines or to divide parts of a lot, provided they are made of wood or wood substitutes which resemble wood, are made of pickets and rails, and are painted white. Non-ornamental fences shall not be approved unless for installation in the interior of properties for purposes such as confining animals or protecting children from swimming pools, and provided they are well screened from view from streets or nearby residences.
- J. Signs shall be governed by Section 54 of this bylaw.

SECTION 96 - SITE DEVELOPMENT PLAN CHECKLIST

The Site Development Plan checklist annexed to these bylaws is adopted for use by the Administrative Officer to determine the adequacy of a Site Development Plan and also to guide applicants in the preparation of such a plan.

ARTICLE X – INTERPRETATION OF BYLAWS

SECTION 100 – INTERPRETATION OF BYLAWS

- A. In their interpretation and application, the provisions of this bylaw shall be held to be the minimum requirements necessary for the promotion of the general health, safety, convenience and general welfare of the residents. It is not intended for this bylaw to repeal, abrogate, annul or in any way impair or interfere with existing provisions of the law or ordinance or any rules, regulations or permits previously adopted or issued pursuant to the law relating to the use of structures or premises, nor is it intended by this bylaw to interfere with or abrogate or annul any easements, covenants or other agreements between parties, provided however that where this bylaw imposes a greater restriction upon the use of structures or premises, or upon the height of structures, or requires larger yards, courts or other open spaces than are imposed or required by existing provisions of law or ordinance, or by such rules, regulations or permits or by such easements, covenants or agreements, the provisions of this bylaw shall control.
- B. The masculine shall be deemed to include the feminine and the singular shall be deemed to include the plural, where appropriate.

SECTION 101 – SEVERABILITY

If a court of competent jurisdiction adjudges any section or provision of this bylaw to be invalid said adjudication shall affect only the portion of the bylaw so adjudged and shall not affect the validity of the remainder of this bylaw.

ARTICLE XI – AMENDMENT AND REVIEW

SECTION 110 – AMENDMENT

This bylaw may be amended from time to time after a public hearing as provided by law.

SECTION 111 – REVIEW

Every five years, the Planning Commission shall review this bylaw and recommend such changes and amendments, if any, as may be necessary to the Board of Trustees. The Planning Commission shall hold not less than one public hearing at the time of review.

VILLAGE OF OLD BENNINGTON

SITE DEVELOPMENT PLAN CHECKLIST

An Adequate Site Development Plan must contain the following information:

1. North Arrow
2. Name and Address of the applicant and owner
3. Scale of drawing – If no scale given, **all** measurements of buildings, other required features and distances to property boundaries must be indicated.
4. Boundaries and area of lot
5. All existing and proposed structures
6. All driveways and parking areas
7. All landscaped features, existing and proposed
8. Water and sewer systems or connections, when applicable
9. All storm water drainage patterns, when applicable
10. Site lighting, when applicable
11. Site grading and contours, when applicable
12. Easements, Rights-of Way or other restrictions

Any other site feature which may impact the proposed use