

TOWN OF MIDDLEBURY

CONNECTICUT

INCORPORATED 1807

ZONING REGULATIONS

WITH AMENDMENTS EFFECTIVE THROUGH JANUARY 30, 2015

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ARTICLE I

GENERAL PROVISIONS

SECTION 1 - PURPOSE

1.1 Statement of Intent and Purpose:

The purpose of these Regulations is to guide the growth and development of the Town of Middlebury so as to promote beneficial and convenient relationships among residential, commercial, industrial and public areas within the Town, considering the suitability of each area for such uses, as indicated by existing conditions, trends in population and mode of living; and future needs for various types of developments, and to achieve the purposes more particularly described as follows:

- 1.1.1 to provide adequate light, air and privacy;
- 1.1.2 to prevent the overcrowding of land and undue concentration of population;
- 1.1.3 to provide for the beneficial circulation of traffic throughout the Town, having particular regard to the avoidance of lessening of congestion in the streets;
- 1.1.4 to secure safety from fire, panic, flood and other dangers;
- 1.1.5 to protect and conserve the existing or planned character of all parts of the Town, and thereby aid in maintaining their stability and value, and to encourage the orderly development of all parts of the Town;
- 1.1.6 to provide a guide for public policy and action which will facilitate economical provisions of public facilities and services, and for private enterprise in building development, investment and other economical activity relating to uses of land and buildings throughout the Town;
- 1.1.7 to minimize conflicts among uses of land and building and to bring about the gradual conformity of uses of land and buildings throughout the Town with the comprehensive plan herein set forth;
- 1.1.8 to create an optimum environment for living;

SECTION 2 - JURISDICTION

2.1 **Jurisdiction:**

Within the Town of Middlebury, no land, building or other structure shall be used and no building or other structure shall be constructed, reconstructed, enlarged, extended, moved or structurally altered except in conformity with the Regulations. No lot or land shall be subdivided, conveyed or encumbered so as (1) to make said lot or land nonconforming or more nonconforming to these Regulations, (2) to make any use, building or other structure nonconforming or more nonconforming, (3) to reduce any setback, yard, open space or off-street parking and loading spaces to less than is required by these Regulations or (4) to make any nonconforming setback, yard, open space or off-street parking and loading spaces more nonconforming.

2.2 **Nonconformity:**

Any building or other structure or any lot which existed lawfully, by variance or otherwise, on the date these Regulations or any amendment hereto became effective, and fails to conform to one or more of the provisions of these Regulations or such amendment hereto, may be continued subject to the provisions and limitations of Section 10.

SECTION 3 – CERTIFICATE OF ZONING COMPLIANCE

3.1 Certificate:

No building or other structure, or part thereof, shall be constructed, reconstructed, enlarged, extended, moved or structurally altered until an APPLICATION FOR CERTIFICATE OF ZONING COMPLIANCE has been approved by the Zoning Enforcement Officer. No land, building or other structure, or part thereof, shall be used or occupied, or changed in use, until an APPLICATION FOR CERTIFICATE OF ZONING COMPLIANCE therefore has been approved by the Zoning Enforcement Officer and until a CERTIFICATE OF ZONING COMPLIANCE therefore has been issued by the Zoning Enforcement Officer certifying conformity with these Regulations. No APPLICATION or CERTIFICATE, however, is required for a farm, forestry, truck garden or nursery use having no building or other structure in connection with such use. ALL APPLICATIONS FOR CERTIFICATE OF ZONING COMPLIANCE shall be submitted and approved in accordance with the provisions of Section 72; all CERTIFICATES OF ZONING COMPLIANCE shall be issued in accordance with such Section.

3.2 Conflict with Amendments:

No APPLICATION FOR CERTIFICATE OF ZONING COMPLIANCE shall be approved by the Zoning Enforcement Officer authorizing a proposed use of land, building or other structure or proposed construction, reconstruction, enlargement, extension, moving or structural alteration of a building or other structure which does not conform to any proposed amendment of these Regulations if the first notice of a public hearing to consider such amendment has been published in a newspaper as required by the General Statutes of the State of Connecticut. If, however, the proposed amendment has not been adopted by the Commission and made effective within 65 days from the date of such public hearing, the APPLICATION FOR CERTIFICATE OF ZONING COMPLIANCE may be approved by the Zoning Enforcement Officer.

SECTION 4 - DISTRICTS

4.1 Districts:

For the purpose of these Regulations, the Town of Middlebury is hereby divided into the following classes of Districts:

	<u>District</u>	<u>Map Code</u>
4.1.1	Residential District 40	R-40
4.1.2	Residential District 80	R-80
4.1.3	Residential District 120	R-120
4.1.4	Planned Residential Development Overlay District	P.R.D.
4.1.5	Planned Residential Development for Elderly Persons	
4.1.6	Senior Residential District	S.R.D.
4.1.7	Lake Quassapaug Preservation District	L.Q.P.D.
4.1.8	Assisted Senior Residential District	A.S.R.D.
4.1.9	Commercial District A-40	CA-40
4.1.10	Professional Office District 40	PO-40
4.1.11	Commercial Recreation District	C.R.D.
4.1.12	Light Industrial District 80	LI-80
4.1.13	Light Industrial 200	LI-200

4.2 Special Districts:

The following are additional classes of districts established in accordance with ARTICLE V:

4.2.1	Flood Plain District	F.P.D.
4.2.2	Special Development District	S.D.D.

SECTION 5 – ZONING MAP

5.1 Map:

The boundaries of the districts specified in Section 4 are hereby established as shown on a map entitled “Zoning Map, Middlebury, Connecticut” – dated May 29, 1975, including any special maps and boundary descriptions supplementary thereto and any amendments thereof, which map is hereby declared to be a part of these Regulations and is herein referred to as “Zoning Map”.

5.2 Interpretation of Map:

Zone limits parallel to all roads shall be measured from the property line if discernible, if not, property lines shall be deemed 25 feet from the centerline of the travelway, except as otherwise noted. In the case of Route 64, the CB-40 zone in the vicinity of Four Corners, the zone boundary shall be measured from the centerline of pavement.

Where a question arises as to exact boundaries of a district shown on the Zoning Map, the Commission shall by resolution determine the location of the boundary, giving due consideration, among other factors, to the indicated location of the boundary property lines and the expressed intent and purposes of these Regulations.

5.3 Extension of Use:

Where the boundary of a district divides a lot, the existence of which lot is evidenced by deed or deeds recorded in the land records of the Town of Middlebury on the effective date of these Regulations establishing such boundary, the Zoning Commission, in accordance with the provisions of Section 52, may grant a Special Exception authorizing a use of land, buildings and other structures permitted in one district to be extended into the other district for a distance of not more than 30 feet.

SECTION 6 – PERMITTED USES

6.1 Uses:

Land, buildings and other structures in any district may be used for one or more of the uses listed as permitted in the district under ARTICLES II, III, and IV. Uses listed as SPECIAL EXCEPTION uses are permitted in the district subject to the approval of the Commission in accordance with the provisions of Section 52 or 53 as specified. Any use not specified as permitted in the district is prohibited. The following uses are specifically prohibited in all districts:

- 6.1.1 The use, occupancy, parking or storage of a trailer on any lot except in accordance with the provisions of Section 65.
- 6.1.2 The outdoor storage on any lot in a Residence District of more than one (1) unregistered and/or inoperable motor vehicle.
- 6.1.3 Carousel, roller coaster whirligig, merry-go-round, ferris wheel or similar amusement device, unless sponsored by a local charitable or benevolent organization and located in a Business or Industrial District, or on a School Playground, or on a Church Yard. The provisions of this subsection shall not apply to a Commercial Recreation District.
- 6.1.4 The use or occupancy of a lot as a trucking terminal, except for the transportation of goods manufactured or assembled on the premises.
- 6.1.5 The Use of Occupancy of a Lot for a Nightclub. No existing Nightclub shall be enlarged, extended or altered.
- 6.1.6 Commercial car wash facilities.
- 6.1.7 Retail storage units.
- 6.1.8 Unlicensed junk yards as defined by State Statute as amended.

6.2 Performance Standards:

The use of land, buildings and other structures, wherever located, shall be established and conducted so as to conform to the performance standards specified in Section 61.

6.3 Parking and Loading:

As specified in Section 62, parking and loading spaces shall be provided off the street in connection with all uses of land, buildings and other structures. In addition, all off-street parking and loading spaces shall conform to the requirements of Section 62.

SECTION 7 – AREA, LOCATION AND BULK STANDARDS

7.1 General:

The following regulations shall apply to the area, shape and frontage of lots and the location and bulk of buildings and other structures in each district under ARTICLES II, III, and IV.

7.2 Lot Area, Shape and Frontage:

Each lot shall have at least the minimum area as specified in the district. Each lot to be used for a dwelling shall have at least the minimum area as specified in the district, and each lot to be used for a dwelling containing more than one (1) dwelling unit shall have at least the minimum additional area for each dwelling unit in the dwelling in excess of one (1) specified in the district. Each lot shall be of such shape that a square with the minimum dimension specified in the district will fit on the lot and, in Residence Districts, shall also have the minimum width along the building line specified in the district. Each lot shall have the minimum frontage on a street specified in the district.

In determining compliance with minimum lot area and shape requirement of these Regulations, land subject to easements for drainage facilities and underground public utilities and easements to the Town of Middlebury for passive and active recreation to include but not limited to walking, bicycling, running, sledding and skiing and to exclude equestrian and motorized vehicle use, may be included; but no street or highway, easement of vehicular access, private right-of-way for vehicles or easement for above ground public utility transmission lines may be included. Area consisting of ponds, lakes, swamps or marsh shall not be used for compliance with more than 25% of the minimum lot area requirement. Land in two or more Zoning Districts may be used to satisfy a minimum lot area requirement, provided that the requirement of the District requiring the largest lot areas is met, but no land in a Residence District shall be used to satisfy a lot area requirement in any other District.

7.3 Height:

No building or other structure shall exceed the number of stories and/or the maximum height, whichever is less, as specified in the district. This limitation, however, shall not apply to the following: ornamental cupolas, belfries, chimneys, flag or radio poles, silos, bulkheads, water tanks and towers, hose towers or scenery lofts or towers, churches, or Town buildings and structures, nor to tanks and elevator of a building and not occupying more than 25% of the area of the roof.

7.4 Setbacks:

No building or other structure shall extend within less than the minimum setback distances of any street line, rear property line, other property line or Resident District boundary line as specified in the district, subject to the following exceptions and additional limitations:

7.4.1 Signs:

Certain permitted signs, as specified in Section 63, may extend within lesser distances of a property or street line.

7.4.2 Projections:

Pilasters, belt courses, sills, cornices, marquees, canopies, awnings, eaves, similar architectural features not permanently affixed to the ground and open fire escapes may project into the area required for setback from a street line, property line or Residence District boundary line for the distance specified in the district. *No* projection will be permitted that interferes with site lines.

7.4.3 Fences, Walls Paved Surfaces and Terraces:

The required setback distances shall not apply paved surfaces, to fences or walls six (6) feet or less in height nor to necessary retaining walls or to unroofed terraces, but no fence, wall or terrace shall be located within the right-of-way of any street.

7.4.4 Accessory Building in Residence Districts:

Detached accessory buildings not more than twelve (12) feet in height and not used for human habitation or for the housing of animals and private swimming pools may be located in the required rear yard, not less than fifteen (15) feet from any side or rear lot line, provided that they occupy in the aggregate not more than twenty (20) percent of the required rear yard.

7.5 Building Bulk and Coverage:

The total floor area of all buildings and other structures on any lot, excluding basements, shall not exceed the percentage of lot area as specified in the district, and the aggregate ground coverage of all buildings and other structures, including cantilevers, on any lot shall not exceed the percentage of lot area as specified in the district.

SECTION 8 – ADDITIONAL STANDARDS

8.1 General:

The requirements hereinafter specified are supplementary to and in addition to standards set forth elsewhere in these Regulations.

8.2 Plans:

Site plans and architectural plans, when required to be submitted under these Regulations in connection with an APPLICATION FOR CERTIFICATE OF ZONING COMPLIANCE, shall conform to the following standards:

8.2.1 Site Plan:

A site plan drawn to scale of not less than 1" = 50', showing the dimensions and acreage of each lot or tract to be built upon or otherwise used; water courses and wetlands; the size, shape and location of existing and proposed buildings and other structures; historic features and major trees, building coverage data; the location and layout of parking areas, all parking spaces, curb cuts, driveways and sight distances; outside loading zones and storage areas; existing and proposed grades and drainage, erosion control plans; proposed sewer (or other waste disposal system) and water facilities and connections; a landscaping plan showing locations of proposed plantings and screenings and natural areas to be left undisturbed; proposed location of outdoor illumination, fences, signs, and advertising features; a soil map, soil symbols and written interpretation of same showing soil conditions on the lot or tract, and a key map showing the entire project, and its relationship to surrounding properties and the existing buildings thereon; four (4) copies shall be submitted.

8.2.2 Architectural Plans:

Preliminary architectural plans and rendering showing, as a minimum, the first floor plan and/or other outside access plan and all elevations, with indication of proposed material and color of all proposed principal buildings and structures and all accessory buildings and structures; four (4) copies shall be submitted.

8.2.3 Other:

The Commission may also request the submission of such additional information as the Commission may deem necessary in order to decide on the application or may waive submission of any of the foregoing data.

8.3 Accessory Uses:

Accessory uses shall not include uses which are otherwise not permitted or specifically prohibited in the District. In Residence Districts, accessory uses shall also conform to the following additional standards and conditions:

- 8.3.1 The accessory use shall be located on the same lot with the use to which it is accessory.
- 8.3.2 Accessory uses may include off-street parking spaces and provide garages, but, except in connection with a farm or a SPECIAL EXCEPTION use, there shall be no more than one (1) commercial vehicle parked on any lot or street and such vehicle shall not exceed 1 ½ tons capacity.
- 8.3.3 No part of a lot located in any of the Residence Districts shall be used for access to a use not permitted in such District.

8.4 Professional Office in a Dwelling Unit:

A professional office in a dwelling unit located in a Residence District is an additional use for which a CERTIFICATE OF ZONING COMPLIANCE is required. Such office shall be used only for the office of persons engaged in a recognized profession, such as physicians, dentists, lawyers, engineers, architects, land surveyors, teachers and clergymen, who through training and experience are qualified to perform services of a professional as distinguished from a business nature. The person conducting the office shall reside in the dwelling unit, and there shall be no more than two (2) non-resident persons employed in connection with such office. The floor area used for the office shall not exceed one third of the floor area of the dwelling unit.

8.5 Home Occupation in a Dwelling Unit:

- 8.5.1 A permit shall be required and be issued for a home occupation as an accessory use to a residence as provided in Section 21. The following criteria shall be met, in addition to the other applicable criteria and standards set forth in the Regulations.
 - A. Such accessory uses shall be restricted to the residential owner, except as otherwise provided in these Regulations.
 - B. Adequate off-street parking shall be provided on the premises consistent with the standards established for the relevant type of use under Section 62 of the Regulations.

- C. The Commission may condition the issuance of a permit under this section on the provision of reasonable screening, time limits, hours of use, and other factors related to the operation of such use.

8.5.2

The following standards shall be applied to all home occupations permitted under Section 21 of these Regulations:

- A. The use must be clearly incidental and secondary to the use of the building as the principal residence of the owner in fee thereof.
- B. Only one home occupation is permitted per dwelling unit.
- C. The use must not change the residential character of the dwelling in any visible manner.
- D. The use must not create objectionable noise, odor, vibrations, or unsightly conditions noticeable off the premises.
- E. The use must not create interference with radio and television reception in the vicinity.
- F. The use must not create a health or safety hazard.
- G. No more than one (1) non-resident may be employed.
- H. No external alterations or construction features not customarily found in a home may be made to the dwelling.
- I. No more than one (1) commercial-type vehicle, not to exceed 11,000 pounds gross vehicle weight (GVW), may be parked on the site.
- J. Except for fruits, vegetables, and other produce grown on the premises, no merchandise may be displayed so as to be visible from the street.
- K. Only those articles that are made, raised, or grown on the premises may be sold.
- L. The home occupation must be confined to the first floor of the dwelling unit and must not occupy more than twenty percent (20%) of the floor area of the first floor or five hundred (500) square feet, whichever is less (for purposes of this subsection, no addition made to the floor area within the two years prior to the Commission's receipt of an application for a home occupation permit shall be considered in the calculation of the floor area to be allowed for the home occupation).

- M. All parking shall be appropriately screened from all abutting residential properties.
- N. Lawfully commenced home occupations shall not be permitted to become more intensive than these Regulations would otherwise allow, and any change to a home occupation that results in such a level of intensity shall be deemed to be a change in character of the use.

8.5.3 Any permit issued by the Commission for a home occupation under these Regulations shall be limited to the specific use described in the application and shall be contingent upon continuous satisfaction of the standards and criteria set forth in this Section 8 and all other relevant provisions of these Regulations. The permit shall expire and become null and void upon any substantial or material change in the nature of the permitted use or upon the failure of the permittee to comply with any applicable provision of these Regulations. Each permit shall be valid for a period of two (2) years or for such lesser period fixed by the Commission. Upon application, the Commission may extend the time period for periods of not more than one (1) year, provided that there exists no violation of the terms of the original permit.

8.6 Renting of Rooms:

When a portion of a dwelling unit is rented or leased, the renting of rooms in the dwelling unit is an additional use for which a CERTIFICATE OF ZONING COMPLIANCE is required. The person renting the rooms shall reside in the dwelling unit. This section shall not apply to the renting or leasing of an entire dwelling unit.

8.7 Farms:

Farms, including truck gardens, nurseries, greenhouses, forestry and the keeping of livestock, shall conform to the following additional standards and conditions:

- 8.7.1 Farms shall not include commercial piggeries, and there shall be no commercial slaughtering, fertilizer manufacturing or any commercial reduction of animal matter.
- 8.7.2 No livestock shall be kept on a lot less than five (5) acres and any building in which livestock or poultry are kept shall not extend within less than one hundred (100) feet of any property or street line, except as follows:

- A. The term “livestock” as used above shall not include domestic animals, sheep, goats or other animals being raised as part of a 4-H project, and the term ”lot” as used in subparagraph (b) below may include leased land adjacent to or directly across the street from a lot owned, and
- B. horses or ponies may be kept on a lot less than five (5) acres, provided the lot contains an area not less than 40,000 square feet owned and/or leased for each such horse or pony and any building in which such horses or ponies are kept shall not extend within less than fifty (50) feet of any property or street line and, in the case of new buildings hereafter constructed, shall not extend within less than one hundred (100) feet from an existing dwelling on another lot, and
- C. an aggregate of not more than twenty (20) chickens or other poultry may be kept on any lot less than five (5) acres if kept in a building or enclosure conforming to the setback requirements for buildings and other structures; and
- D. provided that none of the foregoing uses on lots less than five (5) acres shall create offensive odors, noise or unsightly appearance noticeable off the owned and/or leased premises.

8.7.3 No commercial greenhouse shall extend within less than 150 feet of any property or street line.

8.8 Minimum Access:

Lots which lack the width measurement of the street line may be approved if the lots conform to the area requirement for that particular zone. Each interior lot must have a frontage effective for access purposes of not less than fifty (50) feet on a public street or on a street approved as part of a subdivision plan and maintain this minimum fifty (50) foot width from the street to the interior lot line. The area of the access strip shall not be included in determining the area of the interior lot. A separate access strip shall not be included in determining the area of the interior lot. A separate access strip is required for each lot. Each access strip must be owned in fee simple by the owner of the lot. No more than one (1) single family dwelling is permitted per lot. Each lot shall be capable of accommodating automobile access from such street to a parking space or spaces on the lot by means of a driveway. Proof of capable access requires the necessary permits from any Commissions or Departments to include but not limited to the Middlebury Conservation Commission and the Board of Selectmen (for access to Town roads.)

8.9 Corner Visibility:

No wall, fence, shrubbery, or trees shall be erected, maintained, or planted on any lot which unreasonable or dangerously obstructs or interferes with visibility of drivers of vehicles on a curve or at any street intersection. Any fence, wall or plantings which so obstructs such line of sight shall not be considered a nonconformity authorized to continue under the provisions of Section 10, titled Nonconformity.

8.10 Construction on Unaccepted Streets or Highways:

No CERTIFICATE OF ZONING COMPLIANCE shall be issued for the erection of a Building, other than an accessory building, located on a lot abutting an unaccepted street or highway unless, (a) plans for a street to be accepted by the Town upon completion have been approved by the Commission and by the Board of Selectmen, (b) a bond complying with Subsection 8.1 of the Subdivision Regulations for completion of said street has been posted in an amount which in judgment of the Commission is sufficient to insure completion of the street in conformity with the plans and specifications and which meets Town standards and (c) the Board of Selectmen have by official vote determined that construction of building on said unaccepted street may proceed prior to completion and acceptance of the street without detriment to the Town. The Zoning Enforcement Officer may issue a Stop Work Order on any such building in accordance with Section 72 if at any time he/she determines that the completion of the street or highway in accordance with Town standards is not likely.

8.11 Outside Lighting:

Outside lighting in all districts shall be directed so that the source of illumination is not visible beyond the property or street line. In residential districts no light shall be transmitted outside of the lot where it originates so as to endanger the public health or safety on any street or highway nor to impair the value or reasonable use of any lot.

8.12 Performance Standards:

In addition to the requirements of Section 61, all use of land, buildings and other structures in Industrial Districts shall conform to the following standards:

- 8.12.1 No offensive odors, noxious fumes or gases shall be emitted into the air from any lot.
- 8.12.2 No noise from manufacturing, processing or assembly of goods or material shall be transmitted to a residential district or PO-40 District outside the lot where it originates; but noise up to 60 decibels may be transmitted within the Industrial District

8.13 Areas adjacent to Regional Water System Interconnection:

Only previously developed parcels and those developed through a simple division in accordance with R-40 and R-80 zoning districts will be eligible to receive public water service in areas where the extension of public water service is not compatible with the State of Connecticut Conservation and Development Policies Plan. (Conservation areas, Preservation areas, Existing preserved open spaces and Rural Lands). This restriction applies to properties located along the region's water supply interconnection (water main) installed in Route 188 (Whittemore Road) and Tucker Hill Road between their respective intersection with Bronson Drive and Chase Road.

SECTION 9 – DEFINITIONS

9.1 **Definitions:**

The paragraphs which follow define and explain certain words used in these Regulations. Other words used in these Regulations shall have the meaning commonly attributed to them. Words in the present tense include the future, the singular number includes the plural and vice-versa. The word “person” includes a partnership, corporation or other entity. The words “shall” and “must” are mandatory and not merely directory, and the word “may” is permissive.

The word “lot” includes the word “plot”. The word “building” includes the word “structure”. Where a question arises as to the precise meaning of a word, the Commission shall be resolution determine the meaning of the word, giving due consideration to the expressed purpose and intent of these Regulations.

Whenever any statute, regulation or ordinance is referred to by these Regulations, the reference shall be deemed to be to the most recently amended version, and if the statute, regulation or ordinance has been renumbered or otherwise recodified after the effective date of these Regulations, the reference shall be deemed to be to the most recently amended version as so renumbered or recodified.

Accessory Apartment: A separate self-contained living unit and within and subordinate to any existing single family residence.

Accessory Use: A use of land, or of all or a portion of a building or structure, that is both (1) located on the same lot as the principle use or on an adjoining lot under the same ownership, and (2) subordinate or incidental to the principle use of the land, building or structure.

Accessory Building or Structure: A building or structure that is both (1) located on the same lot as the principal building and (2) used in a manner subordinate or incidental to the use of the existing principal building or structure. The main dairy, livestock, poultry, nursery or other barn on a farm shall not be deemed to be an accessory building or structure.

Age Restricted Housing: Housing designed to meet the needs and requirement of an active adult community, where at least one adult occupant of each dwelling is 55 years or older and there is no permanent resident under the age of 18 years of age.

Assisted Living Facility: A managed residential community consisting of private residential units and providing assistance with activities of daily life such as meal service, laundry service, housekeeping, social and recreational activities, transportation and personal services in a group setting to persons who require help or aid with activities of daily living.

Base Flood: means the flood having a one percent chance of being equaled or exceeded in any given year.

Base Flood Elevation: means the elevation of the base flood as recorded on the Flood Insurance Rate Map and accompanying stream profile data.

Basement: A portion of a building partially or completely below finished grade, and having at least six (6) feet of its wall height below grade plane for at least one half (1/2) of its perimeter (see “story above grade”). For the purposes of the National Flood Insurance Program only, a basement means that portion of a building having its floor subgrade (below ground level) on all sides.

Boarding House: A building arranged or used for lodging for compensation, with or without meals, and not occupied as a single family unit.

Building: Any structure having a roof supported by columns or walls and intended for shelter, housing or enclosure of persons, animals or chattel. The word “building” shall also refer to any modification, addition or alteration to an existing building.

Building Coverage: The percentage of the total area of the lot covered by ground floor area of all building thereon, both principal and accessory as measure by the exterior dimensions of each building, including cantilever areas.

Building Height: The vertical distance from the grade plane to the highest point of mansard curvilinear, A frame, or flat roofs and parapets, or to the mean level between the eaves and ridges of gable, hip or gambrel roofs. The grade plane is a reference plane representing the average of finished ground level adjoining the building at all exterior walls. When the finished ground level slopes away from the exterior walls, the reference plane shall be established by the lowest points within the area between the building and the lot line or, when the lot line is more than 6 feet from the building, between the building and a point 6 feet from the building.

Cantilever: Any part of a structure projecting horizontally more than three (3) feet from the structure and entered at one end only.

Catering Establishments: Any premises which has an adequate, suitable and sanitary kitchen, dining room, and facilities to provide hot meals, which does not have sleeping accommodations for the public and which is owned or operated by any persons, firm, association, partnership, or corporation that regularly furnishes or hires on such premises, one or more ballrooms, reception rooms, dining rooms, banquet halls or similar places or assemblages for a particular function, occasion, or event or that furnishes provisions and services for consumption or uses at such functions, occasion or event and which employs an adequate number of employees on such premises at the time of any such function, occasion or event.

Certification: For the purpose of soil erosion and sediment control, certification means a signed, written approval by the Commission or its designated agent, that a soil erosion and sediment control plan complies with the applicable requirements of the regulation.

Child Care Facility: A child care facility which accommodates six (6) or fewer children of any age is one classified and required to meet the Group R-3 of the Building Code as amended. During the regular school year a maximum of three (3) additional children who are in school full time, including the provider's own children, shall be permitted except that if the provider has more than three (3) children who are in school full time, all of the provider's children shall be permitted. A facility which accommodates more than 6) children two and one half (2 ½) years or less for any length of tie shall be considered institutional.

Conversion: The change of a dwelling so as to provide for year-round use of previously part-year use.

Club: An organization catering exclusively to members and their guests, provided that the primary purpose of the club is not financial gain and that commercial activities conducted by the club are incidental to its purposes.

Commission: The Planning and Zoning Commission of the Town of Middlebury.

Congregate Living Facility: A managed residential community consisting of private residential units and providing meal service, laundry service, housekeeping, social and recreational activities, transportation and personal services in a group setting to persons primarily fifty-five (55) years and older.

Convalescent Home: Any establishment, other than a hospital, where three or more persons suffering from or afflicted with, or convalescing from, any infirmity, disease or ailment, are kept, boarded or housed for remuneration.

Day Care: A facility providing care for five (5) or fewer individuals during daytime hours and one that has received the appropriate zoning, building, sanitation, and State permits as regulations require, as amended.

Development: Any man-made change to improved or unimproved real estate, or to buildings or other structures. The term includes, but is not limited to, construction, mining, dredging, filling, grading, paving, excavation, drilling operations, and permanent storage of materials.

Disturbed Area: means an area where the ground cover is destroyed or removed leaving the land subject to accelerated erosion.

Dwelling: A single unit providing complete, independent living, sleeping, eating, cooking and sanitation. These facilities must be contiguous and have separate egress. The term “dwelling” shall not be deemed to include hotel, motel, inn, boarding or rooming house, convalescent or nursing home, mobile home trailer, tent or tourist home, except as these Regulations may otherwise specifically provide. An apartment is a dwelling on the same lot as the primary residence. If the apartment is part of the primary dwelling structure, it must have the specified wall separation and other requirements of the Building Code.

Dwelling Multiple: A dwelling or group of dwellings on one lot containing dwelling units for three (3) or more families and having separate or joint entrances, services and facilities.

Equestrian Complex: Areas of land and buildings laid out to feature horseback riding as a private and/or public facility. Area can be designated as paddock areas, pasture land, training grounds, competition grounds and/or bridal trails.

Erosion: means the detachment and movement of soil or rock fragments by water, wind, ice and gravity.

Flood Hazard Boundary Map (FHBM): means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined as A zones.

Flood Insurance Rate Map (FIRM): means an official map of a community on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the applicable risk premium zone.

Flood Insurance Study: is the official report by the Federal Emergency Management Agency. The report contains flood profiles as well as the Flood Boundary Floodway Map and the water surface elevation of the base flood.

Floodway: means the high risk channel area of a watercourse and adjacent land area that must be reserved to discharge the base flood without increasing water surface elevations more than one foot.

Floor: For the purposes of the National Flood Insurance Program only, floor means the top surface of an enclosed area in a building (including basement) i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction., The term does not include the floor of a garage used solely for parking of vehicles.

Floor Area: The floor area for a dwelling unit shall be measured by the outside dimensions of the walls enclosing the dwelling unit, but it shall not include entries or

breezeways, heater rooms or any common areas serving several dwelling units. Party walls serving two (2) dwelling units shall be equally divided between the dwelling units for the purpose of determining the floor area. Only that portion of the floor area which is finished for living purposes shall be counted in meeting the above requirements.

Garage, Private: An accessory building or portion of a primary building providing for the storage of motor vehicles belonging to the occupants of the premises. This accessory building shall not have provision for repairing nor servicing vehicles for profit.

Garage, Public: A building other than a private garage or carport, used for maintaining, repairing, selling, servicing and storage of motor vehicles.

Golf Course: Areas of land laid out for golf with a series of 9 (nine) or 18 (eighteen) holes, each including tee, fairway, practice greens, driving ranges, and putting greens and often one or more natural or artificial hazards.

Grade: The mean of the highest and lowest finished grade at the base of foundation of the structure.

Grade Plane: A reference planes representing the average of the finished ground level adjoining the building at all exterior walls.

Grading: means any excavating, filling (including hydraulic fill) or stockpiling of earth material or any combination thereof including the land in its excavated or filled condition.

Home Occupation: Any use that meets the criteria set forth in Section 8 of these Regulations and that is customarily carried on entirely within a dwelling by the residents thereof.

Hotel, Inn, Motel or Motor Court: A building or group of buildings used primarily as a temporary rooming place and having sleeping rooms in which lodging is provided for compensation with or without meals.

Inspection: For the purposes of soil erosion and sediment control, inspection means the periodic review of sediment and erosion control measures shown on the certified plan.

Junkyard: A lot, land or structure, or part thereof, used primarily for the collecting, storage and/or sale of waste paper, rags, scrap metal or discarded materials, and/or for the collecting, dismantling, storage and salvaging of machinery or vehicles not in running condition, or discarded solid materials including garbage, scrap metal, junk and refuse materials including inert matter and landscape refuse. This definition may be refined to comply with the definition of “junk yard” as defined by State Statute as amended.

Kennel: The term “kennel” shall have the same meaning as defined in the General Statutes of the State of Connecticut and shall include “commercial kennel” as defined in such Statutes.

Lot Area: The actual area, in square feet, enclosed by the boundaries of a lot.

Lot, Assessor: A lot is a parcel or plot of land which is taxed as a single unit of land by the Tax Assessor of the Town of Middlebury.

Lot, Building: is a lot shown on a subdivision map approved by the Planning and Zoning Commission and filed in the office of the Middlebury Town Clerk, or a lot that is capable of meeting all of the relevant Municipal and State requirements for a building permitted in the zoning district where is currently located.

Lot, Corner: A lot located at the intersection of and abutting two or more streets. See “Lot Line Front”.

Lot Line: The established division line between lots, or between a lot and a street or other proposed or dedicated public right-of-way.

Lot Line, Front: The line separating the lot from the street right-of-way. In the case of a corner lot, the lot line front shall be considered the lot line which is the front entrance for the purposes of establishing setbacks.

Lot, Rear: A lot not having the required lot frontage but having lawful access, as provided by these Regulations.

Lowest Floor: means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building’s lowest floor.

Manufactured Home: means 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 also includes park trailers, travel trailers, recreational vehicles and other similar vehicles placed on a site for greater than 180 consecutive days and intended to be improved property.

Manufactured Home Park or Subdivision: means a parcel, or contiguous parcels, of land divided into two or more manufactured home lots for rent or sale.

Mean sea level (MSL): means, for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1929 or other datum, to which base flood elevations shown on a community’s Flood Insurance Rate Map are referenced.

Motel: See “Hotel”

Museum: A Building that houses for preservation and for display to the public (by paid or free admission) artistic, historical or scientific objects which have permanent value and which is used for accessory uses common to and complimentary to museum such uses such as: maintaining dining facilities where food and beverages may be served to museum visitors only, holding catered events at which food and alcoholic beverages may be served, fundraisers, seminars and outdoor events, which outdoor events shall be subject to obtaining an individual certificate of zoning compliance submitted thirty (30) days in advance of the scheduled date of such outdoor events.

National Geodetic Vertical Datum (NGVD): as corrected in 1929 is a vertical control used as a reference for establishing varying elevations in the flood plain.

New Construction: For the purpose of the National Flood Insurance Program only, new construction means structures for which the start of construction commenced on or after the effective date of Section 53 – Flood Plain District of these Regulations.

Nightclub: Any business establishment serving food or drink (or permitting any consumption thereof on the premises) which provides live or recorded music for dancing or other entertainment of customers; but not including business establishments that provide recorded background music at lot decibel levels to create a pleasant atmosphere.

Open Space: For the purposes of Section 27, “Open Space” shall mean all land not used for the construction of dwellings, supporting facilities, parking, vehicular circulation, or private yards.

Outside Storage: The outside storage or display of merchandise supplies, machinery, equipment, two or more unregistered vehicles (provided they do not constitute a junk yard), defined hereinbefore, and other material and/or the outside manufacturing, processing or assembly of goods, but excluding areas for parking of registered motor vehicles in daily use.

Pool, Private: Any structure that contains water over twenty-four (24) inches (610 mm) in depth and which is used solely for swimming or recreational bathing and which is available only to the family and guests of the owner of record. These pools include in-ground, above-ground, and on-ground swimming pools, hot-tubs, and spas.

Private Street: A street that is maintained by private parties and not maintained by the Town nor State but is built to the standards of a public street.

Professional Office: The office of recognized professions, such as doctors, lawyers, dentists, architects, engineers, artists, musicians, designers, teachers and others, who, through training or experience, are qualified to perform services of a professional as distinguished from a business nature.

Sediment: A solid material, either mineral or organic, that is in suspension, is transported or has been moved from its site of origin by erosion.

Setback: The shortest distance between a structure and a street line or lot line.

Sign: Sign shall include every sign, billboard, illustration, insignia, lettering, picture, display, banner, pennant, flag or other device however made, displayed, painted, supported or attached, intended for use for the purpose of advertisement, identification, publicity or notice, when visible from any street or from any lot other than the lot on which the sign is located and either (1) located out-of-doors or (2) located indoors and intended to be viewed from outside the building. The term “sign”, however, shall not include any flag, pennant or insignia of any governmental unit, or any traffic or directional sign located within the right-of-way of a street when authorized by the Town of Middlebury or State of Connecticut.

Soil: means any unconsolidated mineral and organic material of any origin.

Soil Erosion and Sediment Control Plan: means a scheme that minimizes soil erosion and sedimentation resulting from development and includes, but is not limited to, a map and narrative.

Start of Construction: For the purposes of the National Flood Insurance Program only, start of construction includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways; nor does it include the excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Story: That portion of a building included between the upper surface of any floor and the upper surface of any floor next above, except that the topmost story shall be that habitable portion of a building included between the upper surface of the topmost floor and the ceiling or roof above.

Story Above Grade: Any story having its finished floor surface entirely above grade except that a basement shall be considered a story above grade when the finished surface of the floor above grade is:

1. more than above six (6) feet above grade plane; or
2. more than six (6) feet above the finished ground level for more than fifty (50) percent of the total building perimeter as determined by the Building Official(s);
3. more than twelve (12) feet above the finished ground level at any point as defined by the Building Code as amended.

Street: Any thoroughfare, including any street, avenue, boulevard, road, lane, highway, and place, and any land dedicated as a public right-of-way, that affords a principle means of access to abutting property and that is dedicated and accepted by the Town or the State for such purposes.

Street Line: See “Lot Line, Front”. If the street right-of-way boundaries have not been established, they shall be deemed to be twenty-five (25) feet off the centerline of the existing travelway.

Structure: Anything constructed, erected or assembled on or within the ground, or attached to something located on or within the ground. The term “structure” includes, but is not limited to, any building, manufactured home, storage tank, sign, wall (retaining or otherwise). Swimming pool, satellite dish, ham radio antenna, cellular or radio transmission tower, or other man-made utility and infrastructure. The term “structure” excludes public utility poles, flagpoles, transmission lines, television antennas, highway and railroad bridges, landscape furniture, fences and decorations, mailboxes, lamp posts, and seasonal decorations. Where the phrase “building or structure” appears in the Regulations, it shall be deemed to mean “building or other structure”.

Substantial Improvement: means any combination of repairs, re-construction alteration or improvements to a structure, the costs of which equal or exceeds 50% of the market value of the structure as determined by the cost approach of value, the quantity survey method, the segregated cost method or the square foot method either before the improvement or repair is started or before the damage occurred if the structure has been damaged and is being restored. For the purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

Swimming Pools: See “Pools Private”

Warehouse: a building used primarily for storage of goods and material prior to distribution that are produced in conjunction with a manufacturing facility.

Water surface elevation: means the height, in relation to the North American Vertical Datum (NAVD) of 1929 (or other datum where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

Yard: A portion of a lot lying between a building or structure and a lot line, and containing no surface structures, except as may be specifically authorized in these Regulations. In measuring a yard, as hereafter provided, the line of a structure shall be deemed to mean a line parallel to the relevant lot line, drawn from the point of the structure nearest to such lot line.

Zero Line Lot Development: A siting technique where side yard restrictions are reduced and the building abuts a side lot line.

SECTION 10 – NONCONFORMITY

10.1 Continuing Existing Non Conforming Uses:

The lawfully permitted use of land or structures existing at the times of the adoption of the zoning ordinance or any amendment thereto may be continued, although such use does not conform to the standards of the district in which such land or structure is located. Said uses shall be deemed nonconforming uses.

10.2 Non Conforming Use of Land:

Where no structure is involved, the nonconforming use of land may be continued, provided, however:

10.2.1 That no such nonconforming use shall be enlarged or increased, nor that it be extended to occupy a greater area of land than that occupied by such use at the time of the adoption of the zoning ordinance, unless specifically allowed by other provisions in this regulation.

10.2.2 That no such nonconforming use be moved in whole or in part to any other portion of the lot or parcel of land occupied by such nonconforming use at the time of the adoption of this regulations.

10.2.3 That if such nonconforming use of land, or any portion thereof, ceases for any reason for any continuous period of more than 30 days, or is changed to a conforming use, any future use of the land shall be in conformity with the provisions of these regulations.

10.2.4 For non-conforming lots in a Light Industrial District 200, the existence of which lot is evidenced by deed or deeds recorded in the land records of the Town of Middlebury on the effective date of these Regulations establishing the Light Industrial District 200, the Commission in accordance with Section 52 may grant a special exception authorizing the use of land or structure permitted in Section 42 within the applicable yard so that the use or structure is not nearer in the lot line than the setback in Section 11 for Light Industrial District 80 (LI-80).

10.3 Non Conforming Use of Structures:

10.3.1 A structure, the use of which does not conform to the use regulations for the district in which it is situated, shall not be enlarged or extended unless the use therein is changed to a conforming use. Such nonconforming structures shall not be structurally altered or reconstructed unless such

alterations are required by law, provided, however, that such maintenance and repair work as is required to keep a nonconforming structure in sound condition shall be permitted.

- 10.3.2 Such nonconforming structure shall not be structurally altered or reconstructed unless such alterations are required by law, provided, however, that such maintenance and repair work as is required to keep a nonconforming structure in sound condition shall be permitted.
- 10.3.3 A nonconforming use may be extended throughout any parts of the structure which were manifestly arranged or designed for such use at the time of the adoption of the ordinance, provided this extension was made within one year after the date of such adoption.
- 10.3.4 A nonconforming use of structures may be changed to a conforming use or changed to a use less nonconforming than its present use.
- 10.3.5 If any nonconforming use of a structure ceases for any reason for a continuous period of more than one year, or is changed to a conforming use, or if the structure in which such use is conducted or maintained is moved for any distance whatsoever for any reason, than any future use of such structure shall be in conformity with the standards specified by the zoning regulation for the district in which such structure is located.
- 10.3.6 If any structure in which any nonconforming uses are conducted or maintained is removed, the subsequent use of land on which such structure was located, and the subsequent use of any structure thereon, shall be in conformity with the standards specified by the zoning regulations for the district in which such land or structure is located.
- 10.3.7 For nonconforming buildings in a Light Industrial District 200, the existence of which is evidenced by zoning, building or other records in the Town Hall on the effective date of these Regulations establishing the Light Industrial District 200 and which use or uses are permitted in Section 42, the Commission in accordance with Section 52 may grant a special exception authorizing the extension or enlargement within the applicable yard so that the extension or enlargement is not nearer the lot line than the existing building.

10.4 Restoration of Damaged Structures:

Any structure legally nonconforming in use which is damaged or destroyed by fire, explosion, act of God, or the public enemy may be rebuilt and the use continued, but not to any greater extent than in the previously existing structure.

10.5 Non Conforming Lot:

A parcel of land, which fails to meet the area, shape or frontage of any other applicable requirements of these Regulations pertaining to lots, may be used as a lot, and a building or other structure may be constructed, reconstructed, enlarged, extended, moved or structurally altered thereon, provide that he following requirements are met:

- 10.5.1 The use, building or other structures shall conform to all other requirements of these regulations;

- 10.5.2 No owner of the parcel since October 15, 1959 shall have been the owner of contiguous land which in combination of such nonconforming parcel would make or would have made a parcel that conforms, or more nearly conforms, to the area, shape or frontage requirements of these regulations pertaining to lots;

- 10.5.3 Or if the nonconformity is due to the fact that the area has been up-zoned and the owner builds on the lot within five years of the effective date of up-zoning;

- 10.5.4 A lot which meets all of the area, shape, frontage and other applicable requirements of these Regulations pertaining to lots on November 3, 1977, but thereafter fails to meet all of said requirements because the area has been up-zoned effective December 5, 1977, may be used as a Lot, and a building or other structure may be constructed, reconstructed, enlarged, extended, moved or structurally altered thereon. This provision is intended to supersede Subsection 10.5.3 above with respect to previously conforming Lots in the area affected by the December 5, 1977 Zone change only and will not affect any Lot made nonconforming by a previous or future Zone change. This subparagraph shall not apply to any Lot containing less than 40,000 sq. ft. located in an area zoned R-20 on November 3, 1977, which under the provisions of Section 11, then existing would have required 40,000 sq. ft. because of the absence of sewers, but said Lot shall continue to be subjected to the provisions of Sub-section 10.5.3 above as they applied to said Lot on November 3, 1977.

- 10.5.5 A lot which meets all of the area, shape, frontage and other applicable requirements of these regulations pertaining to lots on January 3, 1991 but thereafter fails to meet all of said requirement because the area has been up-zoned effective January 20, 1991 may be used as a lot and a building or other structure may be constructed, reconstructed, enlarged, extended, moved or structurally altered thereon. In addition, any such lots which lack 200 feet frontage or 200 feet width will only be required to comply

with the R-40 District side yard requirements of Section 11 as they existed on January 3, 1991; and any such lots which lack 300 feet in depth will only be required to comply with the R-40 District rear yard requirements of Section 11 as they existed on January 3, 1991. This provision shall supersede Subsection 10.5.3 above with respect to previously conforming or valid nonconforming lots in the area affected by the January 20, 1991 zone change only, and will not affect any lot made nonconforming by a previous or future zone change.

**SECTION 11
HEIGHT, AREA AND YARD REQUIREMENTS**

	R40	R80	R120	PO40
Min. Lot Area	40,000 S.F.	80,000 S.F.	120,000 S.F.	40,000 S.F.
Min Lot Area for Family Unit	40,000 S.F.	80,000 S.F.	120,000 S.F.	40,000 S.F.
Min. Lot Area Interior Lot	60,000 S.F.	120,000 S.F.	120,000 S.F.	60,000 S.F.
Min. Square	150'	200'	200'	150'
Min Frontage	150'	200'	200'	150'
Min. Setback from Street	35'	50'	50'	50'
Min. Setback from Other Property Line	25'	40'	40'	25'
Min Setback from CT Highway 63 & 64	75'	75'	75'	75'
Max. Stories	2.5	2.5	2.5	2.5
Max. Height	35'	35'	35'	35'
Max. Lot Coverage	10%	10%	10%	10%
Max. Floor Area	15%	15%	15%	15%
Area Min. for All Floors	1,300 S.F.	1,300 S.F.	1,300 S.F.	1,300 S.F.
Min. for 1st Floor Area One Story	1,300 S.F.	1,300 S.F.	1,300 S.F.	1,300 S.F.
Min. for 1st Floor Area 1.5 Story	1,000 S.F.	1,000 S.F.	1,000 S.F.	1,000 S.F.
Min. for 1st Floor Area 2 Story	900 S.F.	900 S.F.	900 S.F.	900 S.F.

SECTION 11 (continued)
HEIGHT, AREA AND YARD REQUIREMENTS

	CA40	LI80	S.D.D.	C.R.D.
Min. Lot Area	40,000 S.F.	80,000 S.F.	10 ACRES	15 ACRES
Min Lot Area for Family Unit	40,000 S.F.	80,000 S.F.		
Min. Lot Area Interior Lot	40,000 S.F.	80,000 S.F.	10 ACRES	15 ACRES
Min. Square	150'	200'	200'	200'
Min Frontage	150'	200'	200'	200'
Min. Setback from Street	50'	100'	100'	100'
Min. Setback from Other Property Line	20'	60'	60'	60'
Min Setback from CT Highway 63 & 64	75'	100'	100'	100'
Max. Stories	2.5	2.5	2.5	2.5
Max. Height	35'	35'	35'	35'
Max. Lot Coverage	25%	25%	25%	20%
Max. Floor Area	30%	30%	30%	30%

ARTICLE II

RESIDENCE DISTRICTS

SECTION 21 – RESIDENCE DISTRICT

- 21.1** **Permitted Uses:** The following uses are permitted in all residential districts:
- 21.1.1 A single detached dwelling for one (1) family and not more than one (1) such dwelling per lot.
- 21.1.2 A professional office in a dwelling unit, subject to the provisions of Section 8.
- 21.1.3 Home occupations in a dwelling unit, subject to the provisions of Section 8.
- 21.1.4 The renting, with or without meals, in a dwelling unit to a total of not more than four (4) persons, subject to the provisions of Section 8.
- 21.1.5 Schools, parks, playgrounds and open space lands of the Town of Middlebury.
- 21.1.6 Farms, including truck gardens, forestry and the keeping of livestock and poultry, subject to provisions of Section 8.
- 21.1.7 A garden center, greenhouse, nursery or a landscape service, including the sale of plants, whether grown on the premises or not, and related supplies and services, provided that it is located on a lot of not less than three (3) acres, and a buffer strip not less than fifteen (15) feet wide in all side and rear yards is provided where adjacent to a residence district, which buffer area shall be suitably landscaped and not used for parking or for any use prohibited in such adjacent residence district. A commercial greenhouse must comply with Section 8.7.3 of these Regulations. The sale and service of power equipment for home use shall be considered a permitted accessory use.
- 21.1.8 Signs as provided in Section 63.
- 21.1.9 Accessory uses customary with and incidental to any aforesaid permitted use, subject to the provisions of Section 8.

21.2 Special Exception Uses:

- 21.2.1 Conversion of single family dwellings so as to contain one accessory apartment subject to the following provisions:
1. The accessory apartment does not exceed 30% of the floor area of the single family dwelling.
 2. The dwelling must retain its character and appearance as a single family dwelling.
 3. A maximum of two (2) persons shall reside in an accessory apartment.
 4. The accessory apartment must meet all codes to include but not limited to State and Municipal codes of Building, Fire, and Health.
 5. The Municipal Sanitarian shall certify that the septic system, if not on public sewer, is adequate for the accessory apartment and will not create hazardous conditions for sanitary sewerage.
 6. The principal owner(s) of the dwelling are either the owner of the primary dwelling or the accessory apartment.
 7. Occupants of the dwelling and accessory apartment shall be related by blood, adoption, marriage, or legal guardianship.
 8. Adequate off street parking shall be provided.
- 21.2.2 Roadside stands for the display and sale of farm products grown on the premises.
- 21.2.3 Day nurseries.
- 21.2.4 Convalescent homes, private hospitals and sanitarium, licensed by the State of Connecticut.
- 21.2.5 Supportive rental housing for person with physical disabilities when conducted by non-profit corporation and not as a business for profit and in possession of a certificate of good standing from the Office of the Secretary of State.
- 21.2.6 The following uses when conducted by a non-profit corporation and not as a business for profit: churches and places of worship; parish halls; schools; colleges; universities; general hospitals; cemeteries; and education, religious, philanthropic and charitable institutions.
- 21.2.7 Buildings, uses and facilities of the Town of Middlebury other than uses specified in Subsection 21.2.5 as permitted uses.
- 21.2.8 Summer day camps, provided that there is no furnishing of rooms.

- 21.2.9 The following uses when not conducted as a business or for profit: membership clubs; lodges; community houses; and nature preserves and wildlife sanctuaries; and golf, tennis, swimming, boating and similar clubs.
- 21.2.10 Public utility substations and telephone equipment buildings provided that there is no outside service yard or outside storage of supplies.
- 21.2.11 Water supply reservoirs wells, towers, treatment facilities and pump stations.
- 21.2.12 A commercial kennel, veterinary hospital, livery and board stables and riding academies.
- 21.2.13 A transfer station operated by the Town of Middlebury only.
- 21.2.14 Professional Office for persons engaged in a recognized profession such as physicians, dentists, lawyers, engineers, architects, land surveyors, teachers, and clergy persons who through training and experience are qualified to perform services as a professional as distinguished from a business nature. The person conducting the office must own the property where the profession is being conducted or be the person controlling the entity that owns the property. There shall be no more than two (2) persons employed in connection with such office and
1. The property where the Special Exception use is to be conducted shall be located on a State Highway.
 2. The architecture, design, character and appearance of any structure in which the Special Exception use is to be conducted shall be in conformance with that of a single family residential dwelling.
 3. Adequate parking to accommodate the Special Exception use on the subject property shall be provided on the premises and NOT on any adjoining street or highway.
 4. All signage on the subject property shall be in compliance with Section 63 of the Zoning Regulations.
- 21.2.15 Accessory uses customary with and incidental to any aforesaid SPECIAL EXCEPTION USE.

SECTION 22
PLANNED RESIDENTIAL DEVELOPMENT OVERLAY DISTRICT

22.1 **Purpose:**

The purpose of the Planned Residential Development Overlay District (“PRD”) is (1) to provide for diversity of housing types and sizes, (2) to provide additional affordable or economical housing, (3) to protect environmentally significant areas and (4) to preserve significant amounts of open space by allowing flexibility in the design and placement of residential structures.

22.2 **Qualifying Standards:**

No parcel of land shall be considered for a Planned Residential Development Overlay District unless it complies with the following standards:

22.2.1 The parcel shall be located in (and thereafter if approved shall be designated in conjunction with) an R-40 Residential District in areas of the Town of Middlebury, specified below (“Eligible Area”). Such district shall be designated on the zoning map as R-40/PRD. In addition, an identifying number may be assigned to each district. The Eligible Areas are:

- A. That portion of the R-40 District bounded northerly by Judd Hill Road; easterly by Longmeadow Brook; southerly by Oxford town line; and westerly by a line commencing on the Oxford town line and running northerly along the westerly boundary of property now or formerly of the Estate of Mary Alishauskas (as it existed on November 1, 1989) to the street line of Christian Road and thence continuing northerly along said Christian Road to Judd Hill Road.
- B. That portion of the R-40 District on the easterly side of Town identified as those properties presently served by Hillcrest Water Company as evidenced by its water lines in place adjacent to said property on June 1, 1989.
- C. That portion of the R-40 District is described as follows:
Property situated at North Benson Road on the east and west sides thereof and also bounded on the north by Judd Hill Road, in part, and in part by land now or formerly of Francis M McDonald et al, which additional eligible area is shown as: (1) Parcels 1 and 78 on Middlebury Tax Assessor’s Map No. 7-6; (2) Parcel 16 on Middle Tax Assessor’s Map No. 8-4; (3) Parcel 3A on Middlebury Tax Assessor’s Map No. 7-4; and (4) a portion of Parcel 9 on Middlebury Tax

Assessor's Map No. 7-4, generally described as an area east of North Benson Road defined by a line that is approximately 980± feet east of such road at the southeasterly corner of such area, thence approximately 1,255± feet to the north-northwest to a point which is approximately 825± feet east of North Benson Road. The land included in such eligible area includes North Benson Road, beginning at a point on the west side thereof which approximately 1760± feet north of the intersection of North Benson Road and Southford Road, thence in a northerly direction to a point on the west side of North Benson Road which is approximately 285± feet south of the intersection with Judd Hill Road, and beginning at a point on the east side of North Benson Road which is approximately 1625± feet north of the intersection of North Benson Road and Southford Road, thence in a northerly direction on North Benson Road to a point on the east side of North Benson Road which is approximately 418± feet south of Judd Hill Road.

- 22.2.2 The minimum size for Planned Residential Development District is 50 contiguous acres; the maximum size is 200 acres. For the purposes of this section, property separated from other property by a Town road shall be considered to be contiguous, provided that there is a minimum of 30 acres on each side of such Town road.
- 22.2.3 The PRD must contain 200 ft. minimum road frontage. The Commission may, however, approve reduced frontage (but not less than 150 feet) if existing conditions would permit such access which would not adversely affect abutting property or be detrimental to the neighborhood. The minimum road frontage must be on a Street designated as an arterial roadway or a collector street in the Middlebury Plan of Development. For purposes of this section, frontage on North Benson Road shall nevertheless qualify as such frontage.
- 22.2.4 PRDs may be created within existing zoning districts located in Eligible Areas or may be rezoned together with a paired R-40 residential district classification from non-residential district in an Eligible Area.
- 22.2.5 The PRD is only allowed where: (a) immediate access to existing sanitary sewer lines is available, provided the Water Pollution Control Authority has determined that sufficient capacity exists, and (b) immediate access to an existing public water system is available, provided the Water Commission has determined an adequate supply exists.

22.3 **Density:**

22.3.1 **Standard Density:**

The maximum number of units allowed in the PRD shall be determined in the following manner: Calculate the net area of the parcel by subtracting from the total site acreage; (a) Ten percent (10%) of the entire site for roads, (b) Fifty percent (50%) of those areas classified as wetlands and watercourses as determined by a qualified professional and as agreed to by the Conservation Commission and the Planning and Zoning Commission, plus fifty percent (50%) of the land in steep slopes ie: slopes above twenty-five percent (25%). Divide the net area by one acre (43,560 square feet) and round down to the nearest whole unit to determine the maximum number of units allowed. This amendment shall not apply to a development for which a Preliminary Development Plan has already been approved by the Middlebury Planning and Zoning Commission prior to the effective date of this amendment, provided that a Final Development Plan for such development is approved within the time periods required in these regulations.

22.3.2 **Density Increase:**

To encourage the provision of affordable housing units, the applicant for approval of a PRD may apply for a density increase of up to 50% above the base density. Such increase will only be approved if said applicant agrees that one-half of the extra units are set aside for affordable housing as provided for in the Regulations.

22.4 **Procedure for Establishing Planned Residential Development Districts**

22.4.1 **Establishment:**

All Planned Residential Development Districts shall be considered re zonings subject to the requirements and procedures of Section 8-3 of the Connecticut General Statutes, except as noted herein. Except as set forth in Subsection C below, a Planned Residential Development District shall be established only in conjunction with approval of a Preliminary Development Plan for the entire District by the Planning and Zoning Commission. The purpose of the Preliminary Development Plan shall be to indicate the general intent and arrangement of the proposed development.

A. **Zone Change Application:**

A completed application for zone change approval, with the required fee, shall be submitted to the Commission accompanied by ten (10) copies of the Preliminary Development Plan meeting the requirements of Subsection 22.4.2 below. Such application shall include the full

text of the proposed zoning amendment necessary for complete approval of the Planned Residential Development District, together with a statement of maximum proposed density and the calculation thereof in compliance with Subsection 22.3 above.

B. Public Hearing:

After receipt of a complete zone change application, complete preliminary plan of development and required application fees, the Commission shall hold a public hearing and take action to approve, approve with modification, or disapprove the zone change and Preliminary Development Plan within the time limits provided in Sections 8-3 and 8-7d of the Connecticut General Statutes. The Commission, acting in its legislative capacity when it approves, approves with modification, or denies the zone change application and preliminary Plan of Development required by this regulation, has extensive discretion to determine compliance with the required standards.

C. Modifications:

In the event a portion of the land to be encompassed by the change in zone to a Planned Residential Development District is comprised of "T" lots situated in the Long Meadow Pond area, some of which are not yet owned by the applicant but are or will be acquired by the applicant, or are or will be the subject of tax lien foreclosures to be prosecuted by the applicant, then the Commission may, at its discretion, accept an application seeking a zone change for the entire parcel (the "Entire Parcel"), and permit the applicant to submit two Preliminary Development Plans, one of which shall be for the Entire Parcel and shall show the maximum development proposed by the Applicant in the event that all of the "T: lots encompassing the proposed District are acquired (the "Maximum Plan"), and the other shall be for such lesser portion of the Entire Parcel as is then currently owned or under the control of the applicant (the "Owned Parcel") and shall show the development proposed by the applicant in the event no further "T: lots are acquired (the "Minimum Plan"). Both Preliminary Development Plans will be presented for consideration at the Public Hearing scheduled pursuant to Section B above. The Commission, acting in its legislative capacity, shall approve, approve with modifications(s), or deny the change in zone for the Entire Parcel but shall approve, approve with modification(s), or deny only the Minimum Plan for the Owned Parcel, being that portion of the Entire Parcel owned or controlled by the Applicant, provided, however, that in the event the Commission has approved, or approved with modification(s) such Minimum Plan, and the Applicant subsequently

acquires title to additional “T” lots encompassed by the Maximum Plan, the Commission may, at its discretion, upon application by the Applicant, approve, approve with modification(s), or deny modification(s) to the Minimum Plan without further Public Hearing provided that the proposed modification is within the scope of the Maximum Plan previously presented at the Public Hearing, and shows no greater development than as appeared in such Maximum Plan.

Any such modification(s) of a Preliminary Development Plan approved, or approved with modification(s), by the Commission shall be endorsed by the Commission and recorded with the Town Clerk of the Town of Middlebury in the same manner as is required hereunder for the original Preliminary Development Plan.

Any portion of the approved Design Development District for which a Final Development Plan is not approved in accordance with Subsection 22.4.7, including any portion of the Entire Parcel which is not ultimately acquired by the Applicant, shall be deemed subject to revocation in accordance with Subsection 22.4.7.

22.4.2

Preliminary Development Plan Submission:

Ten copies of the Preliminary Development Plan (PDP) shall be submitted to the Planning and Zoning Commission along with an application for a Certificate of Zoning Compliance. Such application shall include a clear statement explaining how the proposed zone change and PRD meet the purposes set forth in Subsection 22.1 above. The Commission shall charge a fee, as may be amended from time to time, to cover review costs of a PRD submission. The Commission shall refer the plans to the Conservation Commission for a review of the project impacts on wetlands and water courses, to the Water Commission to review the public water impacts and to the Water Pollution Control Authority for review of sewer impacts. In addition, plans shall be submitted to the Architectural Review Board for comment under procedures established in Subsection 51.3 of the Zoning Regulations. The PDP plans shall include topography at two foot contour intervals. The Preliminary and Final Development Plans must be developed by either a professional engineer, architect, registered landscape architect, registered land surveyor or a professional planner, or any combination of such professionals, each to limit himself to his particular area of expertise. The Preliminary Development Plan, nor the Final Development Plan, for a Single Family Residence PRD (as defined below) or an individual Lot PRD, shall be required to show the actual final location, size, shape or design (subject to compliance with Section 22.9.3E) of the final home to be built, but may only show in each location

designated for a home a square or rectangular building envelope area within which a home shall be located for purposes of approval. Final homes must be built completely within each such building envelope, the size of which must be approved by the Commission, except that patios and decks may extend outside the building envelope. Homes may be customized and varied in size so long as they meet the building standards set forth in Section 22.9.3 below, including the architectural design approved by the Commission. As used herein, a “Single Family Residence PRD” means a PRD consisting solely of single family detached homes with an attached or under-house garage, exclusive of recreation, maintenance and accessory structures maintained by the Home Owners Association. The PDP shall include the following:

- A. The existing and proposed vehicular circulation system including major and minor thoroughfares, collector streets, local streets, parking and loading area, and points of access to public easements and rights of-way.
- B. A written report by a qualified traffic engineer evaluating the impact of the PRD on the transportation system, including the amount of traffic projected within and for the proposed development and the adequacy of the surrounding streets and traffic controls to accommodate existing traffic, projected traffic from the proposed development, and projected traffic from other approved developments in the area.
- C. The existing and proposed pedestrian circulation system including its interrelationships with the vehicular circulation system, open space system, and other areas of common use.
- D. A general landscape plan including the proposed treatment of common areas, usable open space, water courses and the treatment of the perimeter of the PRD including materials and techniques to be used such as living screens, berms, fences and stone walls.
- E. Information on land areas adjacent to the proposed PRD to indicate the relationship between the existing and proposed utilization of surrounding properties, including land uses, zoning, densities, height of structures, circulation systems, public facilities, and unique natural features.
- F. Proposed types, quantities, and general location of residential units including square footage and number of bedrooms and densities for individual sections of phases of the development as well as for the PRD as a whole.

- G. Examples of proposed product types for the residential units, typical lot and/or building layouts and elevations of all buildings (front, back and both sides) showing proposed textures, materials and colors. Identical buildings will not require multiple elevations.
- H. Proposed area regulations in conformity with this Section 22, and with Section 11 to the extent applicable and their justification.
- I. Proposed development schedule with projected completion date(s) for the PRD and its individual phases.
- J. Proposed number of units by bedroom count.
- K. Identification of any historic structures or features on the site.
- L. Preliminary grading and drainage information of the same nature and to the same extent required for a subdivision under the Commission's regulations and Board of Selectmen's regulations and ordinances.
- M. A map showing all wetlands areas, water courses and slopes above 25% together with a calculation of the maximum allowable density on the site.
- N. A listing of all property owners by tax parcel number, within 250 feet of the project boundaries.
- O. A summary table indicating compliance with the development standards. The table shall show proposed phasing, the number and type of buildings and units, number of parking spaces required and provided, square feet and percent of lot area covered by pavements and buildings, lot area, frontage and landscape requirements and amount of open space required and provided.
- P. A report discussing projected demands for public water and sewer and evidence that an undue burden will not be place, on these services by the proposed development.
- Q. The impact of the PRD on schools, police, fire and other municipal services.
- R. Provisions for Affordable Housing Unites (as defined in Subsection 22.7.2 below), if any.
- S. Any other information the Commission deems appropriate for a proper and complete review of the Preliminary Development Plan.

22.4.3

Findings

In order to approve a zone change and Preliminary or Final Development Plan submitted under this Section, the Commission shall first make the following findings:

- A. The purposes specified in Subsection 22.1 have been substantially met.
- B. The qualifying standards of Subsection 22.2 and the design standards of Subsection 22.9 have been met.
- C. Provisions for traffic, water, sewerage, storm water and open space are adequate, do not overburden existing streets, water, sewer and storm water drainage facilities on- or off-site and do not create water problems off-site.
- D. No congestion in the streets surrounding the site will result from the PRD and the proposed development design will not require upgrading of the street system of the Town of Middlebury. This requirement can only be waived if the Commission and the Board of Selectmen in their sole discretion elect to permit the necessary upgrading at the applicant's expense. To make the necessary analysis, the applicant may be required to provide additional information, plans and data at his expense.
- E. The proposed development design will not require upgrading of the existing on or off site sewer, water and similar municipal systems and drainage systems. This requirement can only be waived if the Commission in its sole discretion recommends, and the Water Pollution Control Authority or the Water Commission, as to their respective utilities, elect to permit the upgrading either on or off-site at the applicant's expense. To make the necessary analysis, the applicant may be required to provide additional information, plans and data at his expense.
- F. The need exists in the community for a different type of housing unit than is allowed under the base zone and the need exists for the number of affordable housing units suggested, if any.
- G. The development and design of the PRD will not have an adverse effect on surrounding properties, will be in harmony with the neighborhood, and will not have an adverse effect on property values in the area.

- H. The proposed development will not have a significant adverse effect on the environment and in particular wetland and watercourse areas. In making this finding the recommendations of the Conservation Commission regarding the development will be taken into account.
- I. Where appropriate, the applicant has provided for continuing maintenance of private roads, parking areas, storm water drainage facilities, open space and other amenities not accepted by the Town of Middlebury.

22.4.4

Recording and Effective Date

The approved Preliminary Development Plan shall be endorsed by the Commission and recorded in the office of the Town Clerk of the Town of Middlebury within ninety (90) days of the date of approval, unless extended by the Commission for good cause shown. The Planned Residential Development District zone change contemplated by Subsection 22.4.1 shall be effective upon recording of such approved endorsed PDP.

22.4.5

Final Development Plan Submission

Before development can begin, a Final Development Plan must be approved by the Planning & Zoning Commission with respect to all or, if the site is to be developed in phases, that portion of the PRD District where phase 1 is located. If the PRD is to be developed in phases each phase shall require a Final Development Plan. The Final Development Plan shall conform substantially to the approved PDP including, without limitation, the vehicular and pedestrian circulation system approved in the preliminary Development Plan and shall adhere to all area regulations adopted by the Preliminary Development Plan. The Final Development Plan shall include the following, subject to Subsection 22.10 below:

- A. Final subdivision plan submission in accordance with Subdivision Regulations, if applicable.
- B. Site plans meeting the standards of Section 8 and Section 51 of these Regulations, and the standards for a site development plan required by the Subdivision Regulations.
- C. Detailed landscape plans for common areas, usable open space and perimeter areas including proposed grading, plant materials, and method (s) of maintenance.
- D. The provisions for Affordable Housing Units (as defined in Subsection 22.7.2 below), if any.

- E. The contract with the Town provided for in Subsection 22.8 below, if applicable.

22.4.6

Procedure

- A. The following procedure shall be followed with respect to the Final Development Plan (subject however to subsection 22.10 below in the case of Individual Lot Subdivisions): The Final Development Plan must be submitted within one year from the date of the Preliminary Development Plan approval. Otherwise the Preliminary Development Plan is null and void and the parcel will revert to the original underlying zone designation unless the Commission approves an extension of up to six months. Upon such reversion, the Commission shall take action to remove the PRD District designation of the parcel from the zoning map. Application for a Final Development Plan may be for only part of the approved Preliminary Development Plan if that PDP as approved contemplates phases or if it is determined by the Commission that, as a result of the size of the project, it would be detrimental to the Town or neighborhood to allow development in a single phase, or it would be unreasonable to require a final application for the entire project. In no event, however, shall the first phase encompass less than twenty-five acres.
- B. The following procedure shall be followed with respect to the final development plan (subject however to subsection 22.10 below in the case of individual lot subdivisions) final application for subsequent phases of the project shall be submitted at maximum intervals of three hundred sixty-five (365) days. Upon failure to submit any such application within said time limit, the provisions of subsection 22.4.6A on both will apply as to such phase.
- C. The following procedure shall be followed with respect to the Final Development Plan (subject however to subsection 22.10 below in the case of individual lot subdivisions): The commission may hold a public hearing on the Final Development Plan is in its estimation the plan differs significantly from the preliminary development plan or for any reason satisfactory to it. Otherwise, the Final Development Plan shall be processed in the same manner as a site development plan approval under Section 51 of these regulations, but subject, however, to this Section 22, and shall be filed after approvals in accordance with those procedures.

22.4.7

Project Completion

If no Final Development Plan has been approved for all or a portion of the PRD within twenty-four (24) months after approval of the Preliminary Development Plan, or a modification of thereof, the Planned Residential Development District designation may be revoked by the commission.

- A. Each portion or phase of a PRD for which no Final Development Plan has been approved within 24 months of the approval of the Preliminary Development Plan, or a modification thereof, shall be deemed to be subject to revocation unless an extension of the 24 months time period has been granted as provided below.
- B. The applicant shall post a performance bond in accordance with Section 51 of these regulations for completion of all improvements in the development, except residential units, at the time of approval of the Final Development Plan in accordance with procedures set forth in Section 51 of these Zoning Regulations. The performance bond requirement of Section 51 may be satisfied by an irrevocable letter of credit in the amount set by the Commission in any form approved by the Town Counsel.
- C. If less than 5% of the dwelling units in any approved phase of the PRD have received certificates of occupancy within 24 months of the approval of such a Final Development Plan, the PRD shall be reviewed by the commission to determine the developer's intent to proceed. The Commission may, for good cause, all for extensions of up to one year for completion of buildings, structures, or other improvements. If the Commission determines that the developer does not intend to proceed with the PRD, the Commission may revoke such Final Development Plan approval. Notice of intent to revoke shall be given to the developer, or his successors in interest, by certified mail sent at least (10) days prior to the date of the meeting at which such action is proposed. Revocation of the FDP approval or any phase thereof, shall terminate PRD approval as to such FDP as well as automatically revoke the zone change of the PRD, subject to the right to complete all structures commenced in accordance with the FDP. Thereafter, all completed structures shall constitute preexisting, nonconforming uses in accordance with these regulations.
- D. In accordance with C.G.S. Sec. 8-3(i), the Commission shall state on its certificate of approval for the Final Development Plan, the five

year expiration for completion of all work in connection with the Final Development Plan.

- E. If affordable housing units are contemplated in the PRD, no certificate of zoning compliance for any units in the original project for which application is made which are not subject to the contract and covenant restricting them as affordable housing shall be issued until completion in issuance of a certificate of zoning compliance for a pro rata number of units of restricted affordable housing. The pro rata allocation shall be based on the proportion of the number of affordable housing units to the total units approved in the whole application.

22.5 Allowed Uses

22.5.1 Allowed by Right

Base uses allowed within the Planned Residential Development include single family detached and single family detached dwellings. Single family attached includes some semi-detached dwellings. In addition, all other uses allowed within all residential zoning districts in Middlebury as defined in section 21, except Subsections 21.1.2, 21.1.3, 21.1.4, 21.1.6 and 21.1.7 are allowed in the PRD, subject to a Preliminary Development Plan approval.

22.5.2 Allowed By Special Exception

Special exception uses must be approved in the Preliminary Development Plan and are allowed to include those only noted in Subsections 21.2.3, 21.2.6, 21.2.8, 21.2.9 and 21.2.10 listed in section 21 of these Zoning Regulations. Day nurseries may only be approved if located in a separate detached building situated so as to create a minimum disturbance to residents of the PRD. Any special exception use not included as part of the Preliminary Development Plan approval, but suggested in the Final Development Plan may only be approved after a public hearing has been held on the proposed use. In all cases the provisions of Section 52 of the Regulations shall be followed. Notwithstanding the foregoing, and an individual lot PRD subsections 21.2.6, 21.2.8 and 21.2.9 listed in Section 21 of these Zoning Regulations shall not to be allowed so that only Subsections 21.2.3, 21.2.10 and 21.2.14 will be allowed, by Special Exception in an individual lot PRD.

22.6 Maintenance Requirements

In order to ensure the long-term maintenance of common land and in facilities and to prevent maintenance expenditures by the town, the following shall be required:

- 22.6.1 PRD projects shall be approved subject to the submission of a legal instrument setting forth a plan or manner of permanent care and maintenance of open spaces, recreational areas, common parking areas, and other communally owned facilities. No such instrument shall be acceptable until approved by the Town Attorney as to legal form and effect.
- 22.6.2 Any Homeowners Association (HOA) created shall be organized as a not for profit corporation with automatic membership in the HOA when property is purchased in the PRD. This shall be specified in the covenants which run with the land in which bind all subsequent owners. Covenants for maintenance assessments shall also run with the land. Included in the maintenance covenants shall be procedures for changing them at stated intervals. Deeds shall specify the rights and responsibilities of property owners to the HOA. The HOA shall also be responsible for liability insurance, local taxes, in the maintenance of all commonly held facilities through the use of a pro rata share formula for all property owners.

22.7 Provisions of Affordable Units

All provisions of this Section are subject to Subsection 22.10 below for Individual Lot PRD(s). One half of all units allowed above the base density must be affordable units which are made available for sale or rent to moderate income households. Where possible affordable units shall not be segregated on the project site nor shall they be substantially different in finish or level of amenities offered. The different types of other housing units, in terms of numbers of bedrooms, shall generally be proportionately reflected in the types of Affordable Housing Units.

- 22.7.1 Definitions of Moderate Income Household
Moderate income households are those which, at the time of execution of a contract of sale or lease agreement, do not exceed the median family income, as adjusted for family size, for the mean of all of the New Haven County and the Litchfield County, CT Housing and Urban Development Metropolitan Fair Market Rent Areas (“HMFA”) as established on an annual basis by the U.S. Department of Housing and Urban Development (“HUD”) as defined in C.G.S. §8-30g (7), as amended.
- 22.7.2 Definition of Affordable Housing Unit
An “Affordable Housing Unit” shall be defined in accordance with C.G.S. §8-30g (6), as amended.

22.7.3

Determination of Eligibility

In determining whether an applicant for an Affordable Housing Unit meets the definition of Moderate Income Household, the same factors and methods of calculations used by HUD in determining median family income for eligibility for HUD administered program shall be followed. Moderate income households applying for dwelling units shall be selected on the basis for the following categories of priority:

- A. Residents of the Town of Middlebury for two (2) continuous years, whether presently or in the past ten (10) years.
- B. Residents of the New Haven County and the Litchfield County HMFAs.
- C. All others

In order to prevent overcrowding of Affordable Housing Units, the guidelines shall be that, at the time of sale or lease of an affordable housing unit, it be occupied by no more than two persons per bedroom.

22.7.4

Resale Restrictions

In the case of Affordable Housing Units, the title to said properties shall be restricted so that in the event of any resale by the owner or any successor, the resale price shall not exceed the then maximum sales price as defined in Subsection 22.7.2 above. In no event shall an owner be compelled to sell at a price below his cost. Rent increases in units which are rented shall be allowed only to the extent that the new rent does not exceed the then current maximum rental for the unit determined in accordance with subsection 22.7.2 above. Such restrictions shall be conveyed by deeds incorporating the terms and conditions of the sales agreement and resale restrictions or embodied in the lease and notice of lease, a copy of which shall be filed with the Town of Middlebury Tax Assessor. These covenants shall run with the land and be enforceable by the town of Middlebury until released by the Town. The sale and resale or lease, sublease and re-letting of units may not occur until the Assessor of the Town of Middlebury verifies that the conditions have been met with respect to the initial sale or resale price or rent under a lease, sublease or re-letting. The new purchaser or renter of the property shall also provide the assessor with information verifying their income for the prior three years.

22.8 **Contract Requirements**

All provisions of this section are subject to subsection 22.10 below for individual lot PRDs. At the time of, in prior to, approval of the Final Development Plan the applicant must present the final contract document to the Town which has been approved by the Town Counsel. Said contract shall be executed within 90 days and will describe the following:

- 22.8.1 Terms of the final development plan.
- 22.8.2 Procedures for establishment of maximum income for the occupants of the affordable housing and price limits on sale, resale, rental, sublease, or conversion to common interest ownership and subsequent sale of the affordable housing units. This shall include current calculations applying these Regulations as of the month prior to application.
- 22.8.3 Provisions for increases of the specified income, sale price or rent.
- 22.8.4 Covenants in favor of the Town of Middlebury incorporating the terms and conditions of the contract, which covenants shall run with the land and be enforceable by the Town.
- 22.8.5 Subordination to the interest of institutional first mortgages on individual dwelling units of the project, if the project is subject to chapter 828 of the Connecticut General Statutes (the Common Interest Ownership Act).

22.9 **Design Standards**

- 22.9.1 Open Space
Provision of open space is one of the major purposes for using Planned Residential Developments. A minimum of fifty percent (50%) of the total site acreage must be preserved as private, common and a recreational open space. For this purpose roads, parking areas, drives, land within twenty-five (25) feet of a building, and strips of land less than twenty-five (25) feet wide shall not be counted as part of the land constituting open space. All remaining land not utilized for dwellings or private lots shall be considered land which is either dedicated as open space or owned in common by unit owners, unless otherwise designated and approved by the commission. Provision for open space in individual lot PRDs, however, shall be governed exclusively by section 22.10 below.

A. Private Open Space

No less than one hundred fifty (150) square feet of permanent open space per dwelling unit shall be provided and constructed immediately adjacent and accessible to each unit for private use consisting of decks, patios or porches.

B. Recreational Open Space

Recreational space is permanent open space providing immediate access for or to residents of the development for pedestrian circulation (other than connecting sidewalks) and recreation. Such recreational open space shall be dedicated to the homeowner's association for recreational development. At least seven hundred (700) square feet of the open space per dwelling unit (or other reasonable amount as determined by the Commission) shall be set aside in each PRD as recreational open space.

C. Common Open Space

In addition, a minimum of not less than 30% of the gross acreage of the parcel shall be designated as common open space. At least 25% of the common open space acreage must be any single contiguous parcel, except such parcel may be divided by rights of way for public utilities. No more than 50% of the common open space can consist of wetlands, watercourses, exposed rocks or slopes in excess of twenty-five (25%).

D. Ownership

Common open space shall be dedicated to the Town, a qualified land trust, and/or the homeowners association by deed or by conservation easement, in each case subject to approval by the Commission. All documents dedicating the land must be approved by the Town Attorney and any conditions imposed must conform to the Zoning Regulations.

E. Public Path Access

The commission shall determine if established hiking or bridle trails traverse the parcel proposed for a PRD, and if such trails are determined to exist the applicant shall incorporate the appropriate trail within the common or recreational open space.

22.9.2

Building Setbacks

The design standards of this section are subject to the provisions of Subsection 22.10 below for individual lot PRDs. No building may be

placed within 50 feet of an existing property line, or within 100 feet of an existing dwelling on an adjacent parcel as determined at the time of application. Any two story building shall be 100 feet from existing property lines. Buildings shall be set back 100 feet from abutting external roadways and 150 feet from any state highway. Minimum setbacks from internal roadways shall be 25 feet, unless the Commission determines that as to particular structures a setback of as little as 15 feet would enhance the design and would not adversely affect residents of the structures.

22.9.3

Building Standards and Separation

The design standards of this section are subject to the provisions of subsection 22.10 below for individual lot PRDs. The maximum number of units in any building shall be four. Units may be attached side-by-side or back-to-back but may not be stacked one on top of the other; except that up to ten percent (10%) of the units may be above ground floor units to the extent of fifty percent (50%) of the floor area of the ground floor unit(s) involved, where, in the judgment of the Commission, superior design will result and sound barriers will protect first floor residents from noise above. Each unit must be served by two separate outside entrances.

- A. No building shall extend within less than thirty (30) feet of any other dwelling, except that where any facing walls contain a window or door, such distance shall be increased by one (1) foot for each two (2) feet of height of the higher facing wall above the lowest adjacent ground elevation thereto. Any walls which are facing an angle of thirty (30) degrees or less shall be considered facing walls. Enclosed stairwells in similar architectural appurtenances shall be considered as part of the wall and shall maintain the required setback. The distance between a single family detached dwelling and the garage of an adjacent single family attached dwelling shall be a minimum of twenty (20) feet. The distance between adjacent garages and single family dwelling shall be a minimum of fifteen (15) feet.
- B. The minimum floor area for units shall be 650 square feet for a single bedroom unit, 800 square feet for a two bedroom unit in 1000 square feet for a three bedroom unit.
- C. Maximum building length shall be 100 feet and no more than 25 feet of any exterior wall may be constructed without an offset of at least 4 feet.

- D. The maximum height shall be limited to 2 ½ stories or 35 feet to the peak of the roof. Accessory buildings shall be limited to 1 ½ stories or 25 feet to the peak of the roof.
- E. All buildings in the PRD shall be of good quality design and appearance so as to blend harmoniously with the site in the neighborhood. Such design shall convey an impression and feeling to persons familiar with architecture that these dwelling units are of quality in substance and the PRD is a desirable place to live. All dwellings within a neighborhood or phase shall be of a single consistent architectural style to create a harmonious appearance. However, a subsequent phase may be of an alternative style of design provided it complements the architectural quality of the development and is reasonably compatible to that which exists in order to establish a conforming and consistent design.
- F. All utility lines and connections shall be underground, except terminal boxes and connections which are prohibited from being placed underground, as approved by the Commission.
- G. All above grade electric or telephone utility boxes and other apparatus shall be suitably screened with plant material or by an architectural screen compatible with the exterior materials of the dwelling units.

22.9.4

Parking

The design standards of this section are subject to the provisions of Subsection 22.10 below for Individual Lot PRDs.

- A. One resident parking space per bedroom, but with a minimum of two shall be included for each dwelling unit and ½ space per unit for visitor parking.
- B. At least one of the required resident spaces must be located in an enclosed garage or covered carport within 50 feet of the dwelling unit.
- C. Either the garage or the pad in front of it may count toward the parking requirement but not both.
- D. Visitor parking spaces shall be located within two hundred (200) feet from the farthest dwelling unit to be served if the average

typographical grade between the parking spaces in the dwelling units is less than five percent (5%). If the average topographical grade between the parking spaces and the dwelling units is greater than five percent (5%), such parking shall be located within seventy-five (75) feet of the farthest dwelling unit to be served.

- E. One parking space must be provided for each 100 square feet of recreational buildings, within 200 feet of the building.
- F. Any open parking areas, excluding garage driveway pads, must be set back a minimum of 25 feet from all sides of dwellings. The Commission may, however, permit lesser setbacks down to 15 feet were the Commission finds that the number of spaces, superior design considerations and density factors would permit lesser setbacks without adversely affecting residents of the dwelling units involved.
- G. No parking may have as its only egress backing out onto a through street within the Planned Residential Development. Such parking off of cul-de-sacs may be permitted at the discretion of the Commission in instances where it would not present a safety hazard.
- H. In connection with parking, adequate, unobstructed space shall be provided for snow storage and clearance.
- I. All parking shall comply with provisions of Section 62, Subsection 62.6.3 of these Regulations entitled "Landscaping", to the extent said Subsection 62.6.3 is applicable.

22.9.5

Road Standards

The design standards of this section are subject to the provisions of Subsection 22.10 below for Individual Lot PRDs.

- A. All roads within a PRD must be constructed to the Town road standards as set forth in the Town Subdivision Regulations and Town ordinances and other road regulations (except as permitted under subsection 22.9.5 B below), and in general shall be designed to discourage through traffic. The Planning and Zoning Commission may recommend to the Board of Selectmen that a street standard be modified along short cul-de-sacs. The Board of Selectmen must grant their approval before the preliminary Development Plan is approved.

- B. Streets developed under the Planned Residential Development ordinance will be public unless the Planning and Zoning Commission approves or requires the use of private roads and the necessary mechanism to maintain the roads. The Board of Selectmen must concur in this decision before the Preliminary Development plan is approved.
- C. In the case of private roads the Commission may permit pavement widths down to twenty (20) feet, provided the right of way width remains at least fifty (50) feet, where the Commission finds that density, length of road, projected traffic volumes, available parking and other relevant factors justify such reduction.
- D. Private driveways shall serve 1 to 3 units and shall have a pavement width of between 16 and 18 feet. Sidewalks are not required along private driveways, however, units located off private driveways shall be connected to the walkway system by appropriate pathways.
- E. Private streets serving four or more units may intersect roadways (whether public or private) connecting Town streets, but private driveways may and not intersect such roadways connecting Town streets.
- F. The Planning and Zoning Commission may at its discretion require 4 feet wide sidewalks to serve portions or all of the proposed Planned Residential Development.
- G. No entry signs may be placed within the median of project roadways. One small sign per entrance (maximum 20 sq. ft.) announcing the project may be placed outside the public right of way at no more than 2 entrances to the development.

22.9.6

Coverage Requirements

The design standards of this section are subject to the provisions of Subsection 22.10 below for Individual Lot PRDs. The maximum percentage of the parcel which may be covered by buildings is 10%.

22.9.7

Landscaping

The design standards of this section are subject to the provisions of Subsection 22.10 below for Individual Lot PRDs.

- A. All areas adjoining other residential property shall contain a buffer strip at least thirty (30) feet wide planted to substantially screen the buildings in the PRD from neighboring residential areas.
- B. A preliminary landscape planned must be submitted with the Preliminary Development Plan and a final landscape and planting plan submitted with the Final Development Plan.
- C. To the greatest extent possible all mature trees should be retained on the site. Street trees (minimum three (3) inch caliper) shall be planted on 30 foot centers. In instances where sidewalks are placed within the right-of-way the street trees shall be planted outside the right-of-way.
- D. All utility lines and connections must be placed underground, except terminal boxes and connections which are prohibited from being placed underground, as approved by the Commission. Terminal boxes and connections placed above ground shall be adequately landscaped to screen them from view and shall be shown on the PDP.
- E. Existing mature vegetation of the site shall be retained in areas not disturbed by construction. In areas disturbed by construction, or in areas where existing vegetation is sparse, new plant material (trees, shrubs) shall be provided as follows:
 - 1. Shade trees, evergreen trees and flowering trees shall be planted in, or adjacent to parking areas. At least one (1) tree shall be planted for each three (3) spaces, or fraction thereof, in locations approved by the Commission.
 - 2. Trees and shrubs shall be planted around foundations and between structures in a manner approved by the Commission.

22.9.8

Ownership, Lot and House Size

The design standards of this section are subject to the provisions of Subsection 22.10 below for Individual Lot PRDs. If any individually owned lots are included in the PRD, the minimum lot size shall be 40,000 square feet and the provisions of Section 11 of the Zoning Regulations shall apply unless the Commission, for good cause shown, allows a smaller lot area or waives certain provisions of Section 11 as part of the Preliminary Development Plan approval process.

22.9.9 Solar Access

The Planned Residential Development shall be designed in accordance with the design and construction standards pertaining to solar energy set forth in the Middlebury Subdivision Regulations, to the extent possible, to enable maximum effective use of solar Energy Systems in the future.

22.10 Individual Lot PRDs

Notwithstanding any of the foregoing provisions of this Section 22, the following provisions shall govern Individual Lot PRDs and supersede all of the foregoing provisions of this Section whenever they are inconsistent therewith. As used here in the term Individual Lot PRD means a PRD which is divided into lots allowing only one single family dwelling thereon, fronting on a private road or public street and individually owned in fee, and there are no other buildings in the PRD except community buildings, recreational facilities, maintenance buildings and public utility structures. The PRD development and all buildings in structures therein shall have a unified consistent architectural design, and shall be constructed by a single developer which shall be set forth in covenants running with the land approved by the Commission and recorded on the Town land records. Community areas and open space shall be owned by a homeowners association controlled by all the individual lot owners after sale of the last lot by the developer.

22.10.1 Procedure

- A. An applicant for the establishment of an individual lot PRD shall comply with the provisions of Subsections 22.4.1, 22.4.2 and 22.4.3 above, but will not be required to include affordable housing in the PRD or to submit bedroom counts. The Commission may for good cause waive any aspect of the Preliminary Development Plan (“PDP”). Such causes shall include, without limitation, waiver of a requirement until the Conservation Commission, the Water Commission or the Water Pollution Control Authority have reviewed or acted upon the PDP. And applicant for a PRD made at its option elect to combine the Preliminary Development Plan and the Final Development Plan as a single application by combining all of the required elements of a Preliminary Development and a Final Development Plan, in which event the Commission shall precede to approve, disapprove or approve with modification the application as a combined Preliminary/Final Development Plan. Such election can be made at any time during the proceedings by giving written notice to the Commission and filing all of the remaining plans and documents which would be required to obtain approval of a Preliminary Development Plan and a Final

Development Plan. Upon such filing, the sixty-five (65) day period required by section 8-7d of the Connecticut General Statutes shall begin to run again at the next regular meeting of the Commission. Such election may not to be made, however, if the applicant intends to develop the PRD in phases.

- B. When the Commission approves an Individual Lot PRD, which is not to be developed in phases the five year period as provided in Subsection 22.4.7(D) for completion of all work in connection with the PRD as shown on said Final Development Plan, shall apply.
- C. The Final Development Plan for an Individual Lot PRD shall not be required to show the actual final location, size, shape or design of the final house to be built on each individual lot, but may only shall conceptual houses for purposes of final approval. Final houses may be customized and varied in size so long as they meet the building standards set forth in Subsection 22.10.3 below, including the architectural design approved by the Commission.

22.10.2

Optional Exclusion

If no affordable units are proposed and no units are allowed above the base density, then the provisions of Subsection 22.7 and Subsection 22.8 shall not apply to the Individual Lot PRD.

22.10.3

Design Standards for Individual Lot PRD

A. Open Space

A minimum of fifty percent (50%) of the total site acreage must be preserved as open space. For this purpose, there shall be included in such open space (1) all wetlands and watercourses on the entire site, (2) all of the 50 foot buffer area surrounding the wetlands except any portion which is allowed by the Conservation Commission to be utilized for improvements other than landscaping, (3) all areas outside of individual lots which have not been utilized for roads, drainage basins, recreational buildings, maintenance buildings and structures, (4) the center landscaped area of each cul-de-sac turnaround, and (5) one-half of the gross area of each individual lot. All open space, except areas included in individual lots, shall be dedicated to a homeowners association by deed and in appropriate areas may also be

subject to a conservation easement in favor of a qualified land trust or the Town, in each case subject to approval by the Commission. All documents dedicating the land must be approved by the Town Attorney and any conditions imposed must conform to the Zoning Regulations.

B. Building Setbacks

No building near the perimeter of the site may be placed within fifty feet of an existing property line or within one hundred feet of an existing dwelling on an adjacent parcel as determined at the time of application. Buildings shall be set back thirty-five (35) feet from an abutting external Town roadway and fifty (50) feet from any state highway. The minimum set back from internal private driveways shall be twenty-five (25) feet from the pavement, unless the Commission determines that as to particular structures on a cul-de-sac a setback as little as fifteen (15) feet from said pavement would enhance the design and would not adversely affect residents of the houses.

C. Building Standards and Separation

All units in the PRD shall be single family detached buildings.

1. No dwelling shall extend within less than thirty (30) feet of any other dwelling. The distance between a dwelling and the garage of an adjacent dwelling shall be a minimum of twenty (20) feet. The distance between adjacent garages on two lots shall be a minimum of fifteen (15) feet. Where there is no building intended in a particular area on an adjacent lot to which the above separations would apply, then the setback from the rear and sidelines of each lot shall be fifteen (15) feet.
2. The total minimum floor area for all stories of each dwelling shall be 1,300 square feet. The minimum first floor area for all dwellings as set forth in subsection H below.
3. The maximum building height shall be limited to the lesser of (1) two and one-half stories, or (2) thirty-five feet, as measured from the average finished grade to a point halfway between the upper and lower edges of the structure's principal roof. There shall be no maximum building length.

4. All dwelling houses and other buildings in the PRD shall be of a single consistent architectural style to create a harmonious and unified appearance. All Individual Lot PRDs shall be approved for and completed by a single developer in accordance with the Final Development plans for the buildings to be constructed thereon. A successor developer for the entire PRD or the remaining undeveloped portion thereof must be approved by the Commission, as provided in the covenants required above by this Subsection 22.10. Such approval will be granted if (1) the successor/developer agrees in writing to complete all of the Individual Lot PRD exactly as approved by the commission and (2) post the required bonds in lieu of bonds posted by the prior developer. All buildings in the Individual Lot PRD shall be of good quality, design and appearance so as to blend harmoniously with the site and the neighborhood. Such design shall convey an impression and feeling to persons familiar with architecture that these dwelling units are of quality and substance and the Individual Lot PRD is a desirable place to live. Such determination will be made by the Commission after receipt by the Commission of a report of an Architectural Review Board as provided in these regulations. In evaluating this requirement, the Architectural Review Board and if the Commission shall be guided by the pictures attached to these regulations as Appendix A as representing examples of good quality design and those buildings pictured in Appendix a B being examples of poor quality design. In no event will any PRD be approved if it contains any buildings substantially similar to the design depicted in Appendix B.
5. Subsections (F) and (G) of Subsection 22.9.3 shall apply to individual lot PRDs.

D. Parking

Each lot shall contain at least a two-car garage and parking for two other cars.

1. No other parking shall be required unless there is a maintenance or recreational building or area, in which event parking for a reasonable number of cars as determined by the Commission shall be provided. Parking must be set back at least ten feet from any such building.

2. No parking may have as its only egress backing out onto a through street within the PRD. Such parking may be permitted, however, off of cul-de-sacs at the discretion of the Commission in instances where it would not present a safety hazard.
3. In connection with parking, adequate, unobstructed shall be provided for snow storage and clearance. No other provisions of the parking regulations (Section 62 of these regulations) shall apply to individual lot PRDs, except those pertaining to residential properties with respect to dimensions, construction and joint use.

E. Road Standards

Roads within an Individual Lot PRD may be constructed as Town roads, and upon acceptance deeded to the Town, or may be constructed as private roads owned by the homeowners association. In the event that such road to become Town roads, then the Town road standards shall apply unless waived by the Board of Selectmen.

1. If the roads in the PRD are to be private roads, and Shelby constructed pursuant to a permit issued by the Board of Selectmen in accordance with the road regulations of the Town. The Board of Selectmen must concur in the decision to utilize private roads before the Preliminary Development Plan (or the combined Preliminary/Final development plan) is approved, and the Board of Selectmen may waive any provisions of the Town road regulations which it deems appropriate for a particular private road.
2. In the case of private roads, the Commission may permit a right-of-way not less than thirty (30) feet, where the Commission finds that density, length of road, projected traffic volumes, available parking and other relevant factors justify such reduction. The Commission may also waive other provisions of the Subdivision Regulations pertaining to streets, subject to approval by the Board of Selectmen, with respect to any private roads.
3. Private driveways shall have a pavement width of not less than (10) feet. Sidewalks are not required along private driveways or private roads.

4. One entry signs announcing the project, of up to twenty (20) square feet may be placed in the median at the main entrance, provided the median is at least (8) feet wide.

F. Coverage Requirements

The maximum percentage of the entire individual lot PRD which may be covered by buildings is fifteen percent (15%).

G. Landscaping

A preliminary landscape plan it must be submitted with the Preliminary Development Plan and a final landscape planting plan submitted with the Final Development Plan. Notwithstanding the foregoing, it is recognized that owners of the individual lots will wish to customize their plantings. Therefore, the final landscape and planting plan may omit actual landscaping of lots.

1. To the greatest extent possible, all mature trees should be retained on the site. Street trees (minimum three (3) inch caliper) shall be planted on thirty (30) foot centers. In instances where sidewalks are placed within the right-of-way, the street trees may be planted outside the right-of-way.
2. All utility lines and connections must be placed underground, except terminal boxes and connections which are prohibited from being placed underground, as approved by the Commission. Terminal boxes and connections placed above ground shall be adequately landscaped to screen them from view and shall be shown on the Preliminary Development Plan.
3. Existing mature vegetation on the site shall be retained in areas not disturbed by construction. In areas outside lots and not disturbed by construction. In areas outside lots and not disturbed by construction, new plant material (trees, shrubs, grasses) shall be provided to enhance the open space and the country appearance of the PRD, as may be determined by the Commission.

H. Ownership, Lots and House Size

In an Individual Lot PRD, the minimum lot size shall be 30,000 square feet and the following height, area and yard requirements shall apply in lieu of Section 11:

Minimum lot area	30,000 square feet
Minimum square	100 feet
Minimum frontage	50 feet

Minimum setbacks:

From private road	25 feet from the edge of pavement
From other property line	15 feet
From town street	35 feet
From state highway	50 feet

Maximum stories	2 ½
Maximum height	35
Maximum lot coverage	20%
Maximum floor area	20%

Minimum area all floors	1,300 square feet
One story	1,300 square feet
One and one half stories	1,000 square feet
Two stories	900 square feet

22.11 Excavation and Grading Standards

The provisions of Section 64 of these Regulations shall be deemed complied with if approval is granted for Final Development Plan, unless the applicant proposes to remove from the site a substantial portion of earth for sale or use elsewhere, in which event a separate excavation and grading permit provided in Section 64 shall be required.

SECTION 23
PLANNED RESIDENTIAL DEVELOPMENT FOR ELDERLY PERSONS

23.1 General:

In order to provide for the special needs of elderly and handicapped persons who may require multifamily type living accommodations, and to ensure land development for such purposes remains consistent with the adopted comprehensive Plan of Development of the town of Middlebury, land development allowed by this Section is subject to greater administrative standards and procedures due to the greater densities of development provided for planned elderly multi-family development. Due to the densities associated with such elderly multi-family developments this use is restricted to those areas of town where existing services and facilities are already in place.

23.2 Qualifying Standards:

No tract of land shall be considered for a Planned Residential Development for Elderly Persons unless it meets the following minimum qualifying standards:

- 23.2.1 The tract of land shall consist of a single lot or a number of contiguous lots under one ownership or control having a total area of not less than five (5) acres.
- 23.2.2 The tract shall be located within a Residential R-40 Zone south of Nutmeg Road and east of Regan Road.
- 23.2.3 The tracts shall be served by a public sewer.
- 23.2.4 That tract shall have two hundred (200) feet of street frontage on Route 64 or on an existing street planned for extension to the site. In addition, the tract may have access on other roads if the Commission finds traffic conditions warrant it.
- 23.2.5 All dwelling units in each tract shall be restricted to occupancy by “elderly persons”, who are defined to be persons at least fifty five (55) years of age or older, and by “disabled persons” and “handicapped persons” as defined in regulations adopted by the United States Department of Housing and Urban Development under the Housing Authorization Act of 1976. One unit, however, may be occupied by a full-time resident custodian. The spouse of a resident elderly persons and another person determined to be essential to the care and well-being of a disabled or handicapped person may also occupy his or her dwelling unit. The Developer shall present evidence satisfactory to the

Commission of such effective legal restrictions and of the relevant state or federal agency's requirements.

- 23.2.6 The tract shall be served by a public water supply if more than 30 dwelling units are contemplated. As used herein "public water supply" means water obtained from a private or municipal entity regulated by the Department of Public Utility Control or holding a Certificate of Public Convenience as provided in Public Act 84-330.

23.3 Procedure:

All Planned Residential Developments for Elderly Persons shall be considered Special Exceptions subject to the requirements and procedures of Section 51 and 52, in addition to those specified herein. Prior to submission of the application for a Special Exception, a preliminary plan of development of the entire tract shall be submitted to the Commission. The purpose of the preliminary plan shall be to indicate the general intent and arrangement of the proposed Structures and uses to be included in the development. The Commission shall approve, approve with modification or disapprove the preliminary plan within sixty-five (65) days from the acceptance at the submission thereof at a regular meeting, unless the Commission determines to hold a public hearing, which must be within said sixty-five (65) day period. In such event the Commission shall take one of the above alternative actions within sixty-five (65) days from said public hearing.

- 23.3.1 In the case of an approval, the application for a Special Exception as required by Section 52, shall be submitted within one hundred eighty (180) days from the date of such approval. Otherwise the preliminary plan approval is null and void. Such application may be for only part of the approved preliminary plan if it is determined by the Commission that as a result of the size of the project, it would be unreasonable to require a final application for the entire project. Final application for subsequent parts or phases of the project shall be submitted at maximum intervals of three hundred sixty-five (365) days.

- 23.3.2 When the application for Special Exception for a Planned Residential Development for Elderly Persons is accepted as a complete application at a regular monthly meeting, the Commission shall (1) hold a Public Hearing on said application as required by Section 52, which when held on the first phase shall include the preliminary plan of development of the entire tract, and (2) decide upon such application, all in accordance with the provisions of Section 8-3C of the Connecticut General Statutes, as amended. A Public Hearing may be held on subsequent phases and shall be held if, in the opinion of the Commission, there is a substantial change in the preliminary plan of development.

23.4 Design Standards:

The following standards shall apply to the design and development of Planned Residential Developments for Elderly Persons.

- 23.4.1 The maximum number of dwelling units shall be no greater than eight (8) dwellings per gross acre over the total area of the tract.
- 23.4.2 No buildings shall contain more than eight (8) dwelling units. In addition, one building in each development may contain a community facility either separately or together with up to six (6) dwelling units, which shall be adequately insulated from noise and separated from foot traffic.
- 23.4.3 No building shall extend within less than one hundred fifty (150) feet of any state highway line, fifty (50) and feet of any other street line or fifty (50) feet of any other property line.
- 23.4.4 No building shall extend within less than thirty (30) feet of any other dwelling, except that where any facing walls contain a window or windows, such distance shall be increased by one foot for each foot of height of the higher facing wall above the lowest adjacent ground elevation thereto. Any walls which are facing at an angle of thirty degrees (30°) or less shall be considered facing walls. Stairwells and similar architectural appurtenances shall be considered as part of the wall and shall maintain the required setback.
- 23.4.5 At least fifty (50%) percent of the dwelling units in all phases shall be provided with their own separate entrance directly from the outside and all dwelling units shall be provided with no less than sixty (60) square feet of private usable outdoor space, such space to be directly accessible by the occupants of the dwelling units.
- 23.4.6 No building containing a dwelling shall exceed a length of one hundred fifty (150) feet. No exterior wall of any such building shall exceed thirty (30) feet in length in an unbroken plane without an offset of at least two (2) feet, but the Commission may permit reasonable variations if they enhance the quality of the building, or the project, or are required because of substantial site problems.
- 23.4.7 All dwellings shall be of a single consistent architectural style to create a harmonious unity of appearance.
- 23.4.8 All utility shall be underground.

- 23.4.9 Each dwelling unit shall be provided with water, electrical and drainage hookups for washing machines and clothes dryers, or be located within such reasonable distance of a community laundry facility as may be approved by the Commission.
- 23.4.10 Garages, carports and off-street parking spaces or a combination thereof shall be provided on the tract for not less than one and one-half (1 ½) cars per dwelling unit. No parking spaces shall be located in a required front yard facing a public street, and all parking spaces visible from a public street shall be separated from said street by a landscape area. No open parking shall extend within twenty (20) feet of any dwelling. Parking shall be located within 200 feet from the farthest dwelling units to be served if the average topographical grade between the parking spaces and the dwelling units is less than five percent (5%). If the average topographical grade between the parking spaces and the dwelling units is greater than five (5%), such parking shall be located within one hundred (100) feet of the farthest dwelling unit to be served.
- 23.4.11 All driveways and parking areas shall be paved with asphalt or concrete, walkways shall be surfaced with concrete, brick or flagstone, and all curbs shall be of concrete or granite. Asphalt curbing may be used where in the judgment of the Commission it is sufficient for the particular area of the development.
- 23.4.12 All land not utilized for dwellings and private usable outdoor space shall be considered common land. Not less than one thousand (1,000) square feet of permanent usable open space per dwelling unit shall be provided for outdoor activities. Required paved vehicular areas, wetlands, and private outdoor space shall not be considered permanent usable open space. Such land shall be of such condition, size and shape as to be readily usable for pedestrian circulation, and passive recreation for the residents of the development and shall be permanently reserved by one of the following means:
- A. Held in corporate ownership by the occupants. Membership in said corporation shall be mandatory for all residents of the development and shall be so stipulated in the deed or lease as the case may be.
 - B. Held in ownership by the developer subject to a legal agreement with the town regarding the developer's responsibility for the maintenance of the common land.
 - C. A combination of the above.

23.4.13 Evidence shall be submitted that the Planned Residential Development for Elderly Persons has been designed in accordance with the design and construction standards pertaining to solar energy set forth in Section 4 of the Middlebury Subdivision Regulations, to the extent applicable, so as to enable maximum effective use of solar energy systems in the future.

23.4.14 Each Planned Residential Development for Elderly Persons shall be served by an approved private street designed so as to discourage through traffic. Such street shall not extend within less than twenty (20) feet of any dwelling, shall have a pavement width of twenty-two (22) feet excluding parking areas, and shall be constructed in accordance with the requirement of the Town of Middlebury Board of Selectmen.

23.5 Height:

No dwelling shall exceed two stories or thirty (30) feet whichever is less. No other accessory structures shall exceed one and one half (1 ½) stories or twenty (20) feet in height, whichever is less. (See definition of “Story”, Section 9).

23.6 Coverage:

The aggregate land area covered by all buildings and other structures shall not exceed twenty-five percent (25%) of the total area of the parcel. A 300-foot square must fit within the set back lines.

23.7 Floor Area:

In buildings containing more than one dwelling units there shall be provided the following:

23.7.1 A minimum of 400 square feet and a maximum of 550 square feet for single occupancy efficiency.

23.7.2 A minimum of 550 square feet and a maximum of 700 square feet for double occupancy, single bedroom.

23.7.3 A minimum of 600 square feet and a maximum of 800 square feet for double occupancy, two bedrooms. No more than ten percent (10%) of the dwelling units in a development shall contain two (2) bedrooms.

23.8 Development Standards:

Each application shall be signed by the owner and developer accompanied by the following:

- 23.8.1 A financing plan describing the Federal or State subsidy program and the subsidizing agency, if applicable, the estimated costs of land, site development, building, operation and maintenance, an approximation of the schedule of rents, leases or sale prices, and the number of units to be provided for occupants under federal or state current rent subsidy guidelines, together with the certificate required by Subsection 21.2.5.

- 23.8.2 A tabulation of proposed buildings by type, size (number of bedrooms, floor area), ground coverage, and a summary showing the percentages of the tract to be occupied by buildings, parking and other paved vehicular areas, sidewalks and walkways, and the usable open space.

- 23.8.3 Descriptive material providing information about the owner and developer, the developer's experience in building, and the developer's eligibility as a public, non-profit or limited dividend housing sponsor, evidence of preliminary site approval under the subsidy program where applicable, the names and addresses of the architect, engineer, and landscape architect, if any, and other pertinent information.

- 23.8.4 A general description of the tract in question and surrounding areas, describing degree of compatibility of proposed use with existing neighborhood.

- 23.8.5 An evaluation of the probable impact of the proposed development on the Town of Middlebury's services, facilities and environment.

- 23.8.6 A description of the size and availability of permanent public open space in the immediate vicinity.

- 23.8.7 The proximity of the proposed development to public transportation, recreation facilities, neighborhood shopping and service facilities.

- 23.8.8 Evidence that the developer's financial ability to complete and administer the proposed development in accordance with the plans and specifications submitted and as finally modified and approved.

- 23.8.9 Acknowledgement that a performance bond for site improvements will be required under Section 51 and evidence that such bonding is available to him.

- 23.8.10 Evidence that commitments for other bonding required by governmental agencies and lenders (if needed) have been obtained.
- 23.8.11 If the developer is a corporation or partnership, identification of the natural persons who are the ultimate controlling stockholders or persons.
- 23.8.12 All other information required by Sections 51 and 52 above.

23.9 Findings Required:

The Planning and Zoning Commission may approve the creation of a Planned Residential Development for Elderly Persons provided that a finding is made that the facts submitted with the application establish that:

- 23.9.1 The standards and conditions of this Section 23 and Section 51 and 52 of these regulations have been met.
- 23.9.2 The developer has provided, where appropriate, for the sustained maintenance of the development in general, and also for the open space in accordance with Subsection 23.4.12 above.
- 23.9.3 The streets and drives will be suitable and adequate to carry anticipated traffic and increased densities will not generate traffic in such amounts as to overload the street network in the area.
- 23.9.4 The existing or proposed utility services are adequate for the population densities and building intensities.
- 23.9.5 Utilities and drainage have been laid-out so as not to unduly burden the capacity of such facilities both on and off the site, or create water problems on properties located off the site.
- 23.9.6 The development will be in keeping with the general intent and spirit of the Middlebury Plan of Development.

23.10 Approval:

The Commission may approve, disapprove or approve with modifications an application to develop land under this Section.

- 23.10.1 Before any approval by the Commission becomes effective, the Applicant shall

post the performance bond required by Section 51. It will be sufficient compliance if the Town is included as an obligee under a bond or bonds provided to any state or federal agency covering the same project in such amounts and on such terms as the Commission may approve.

- 23.10.2 When acting to approve any application, the Commission shall file with the Town Clerk at least one (1) copy of the approved site plan, showing the Commission's modifications, if any, and no development or significant alteration shall be permitted except in conformity with such approved plan. Prior to issuance of a Certificate of Occupancy the Applicant must provide evidence of completion in conformity with such Plan by submitting an as-built Class A-2 survey of the completed development certified by a professional engineer or registered land surveyor. Any substantial revision of an approved Special Exception application and any reconstruction, enlargement, extension, moving or structural alteration of an approved Special Exception use or any building or structure in connection therewith shall require submission of a Special Exception application in the same manner as for the original application.
- 23.10.3 No Certificate of Occupancy shall be issued until it has been determined by the Zoning Enforcement Officer that all provisions of the approval as granted by the Planning and Zoning Commission have been complied with. In those cases where seasonal conditions prevent compliance with the provisions of the approval before the site improvements are complete, the Commission may authorize the Zoning Enforcement Officer to approve issuance of a Temporary Certificate of Occupancy on the condition that all provisions of the approval are complied with as the season permits. Non-compliance within the stated time shall make the approval null and void unless further extended for good cause shown.
- 23.10.4 Any approval given by the Commission shall be valid only as long as the Developer owns or controls the particular development. Upon a change in Developer, the successor Developer shall submit a new application requesting that he be substituted for the original Developer. The acquisition of voting control of a corporate or partnership Developer by a person not a stockholder or partner at the time the original application was approved shall cause said corporation or partnership to be a successor Developer. Such application shall identify the successor Developer and clearly delineate any changes contemplated in the project to the same extent as an original application and shall provide evidence of his willingness and ability to carry out the project as originally approved, including any changes proposed. Where no change in the project has occurred during construction or no changes are contemplated, it will not be necessary for the successor Developer to submit new site plans or other similar data. The

original performance bond shall remain in full force and effect unless the successor Developer arranges for his substitution as obligor thereunder. The Commission may require an additional bond or an increased bond if the successor Developer proposed changes not covered by the original bond or bonds. The Commission shall issue a new approval of the project as originally approved if it finds that the successor Developer is ready, willing and able to carry out the project as approved. If, however, the successor Developer proposes changes or if actual changes have taken place during construction, then such approval will be made on the same basis as an original application based on the standards set forth in this Section 23.

23.10.5 Any person, firm or corporation having obtained approval of a Special Exception under this Section, shall commence work within one (1) year after said approval and shall complete all work and comply with all conditions of approval within two years after said approval. In the event all such work and/or all such conditions are not completed within said time, the approval granted shall become null and void. The Planning and Zoning Commission may file a statement to that effect upon the Land Records if it deems such notice necessary and in the best interest of the Town. The commission, however, may by resolution and without public hearing extend its approval for two additional periods of one year each for either commencement or completion for good cause shown.

- A. Approval of an application for a special exception under this section shall be conditioned upon the applicant's filing of the special exception approval on the Middlebury Land Records as per the requirements of Public Act 75-317. Said filing must take place within thirty (30) days of the approval.
- B. No other use, except the approved use, shall be allowed on the parcel of land approved for a Planned Residential Development for Elderly Persons. Said approved use shall be developed in compliance with the Commission approval.

23.11 Severability:

No section or subsection of the Special Exception use and procedures established herein shall be deemed severable from other sections or subsections of this Special Exception Section for the construction of a Planned Residential Development for Elderly Persons. In the event that any section or subsection of this section or any portion thereof, shall later be invalidated, whether by judicial decree or otherwise, all other provisions contained herein relating to the issuance of Special Exceptions for Planned Residential Developments for Elderly Persons shall become inoperative, except that Special Exceptions previously issued by the Commission hereunder shall remain valid.

SECTION 24 – SENIOR RESIDENTIAL DISTRICT

24.1 Purpose:

The purpose of the Senior Residential District(s) is (1) to provide for diversity of senior housing types and sizes, (2) to provide additional affordable or economical senior housing, (3) to protect environmentally significant areas and (4) to preserve significant amounts of open space by allowing flexibility in the design and placement of residential structures.

24.2 Qualifying Standards:

No parcel of land shall be considered for a Senior Residential District unless it complies with the following standards:

- 24.1 The parcel shall be located in (and thereafter if approved shall be designated in conjunction with) a residence District 40, or in a Commercial District A-40 which is contiguous to a Residence District 40 in areas of the Town of Middlebury specified below (eligible area). Such districts shall be designated on the Zoning Map as SR. In addition, an identifying number may be assigned to each district, as approved. If the parcel is in a Commercial District A-40 it must be rezoned to Residence District 40 as part of the approval of the preliminary development plan. The eligible area is:
- A. That portion of the R-40 District bounded easterly by Interstate 84 (I-84) and by Conn. Route 63, northerly by Woodside Avenue and westerly by residential lots fronting on White Ave.
 - B. That area of land immediately north of Nutmeg Road bordered on the west by Regan Road and bordered on the east by the termination of Stevens Road and on the south by the southernmost boundary of the Middlebury Commons Senior Housing Development.
- 24.2.2 The minimum size for a Senior Residence District is 5 contiguous acres; the maximum size is 15 acres.
- 24.2.3 Senior Residential District, hereinafter referred to as SR, must contain 200 ft. minimum road frontage. The Commission may, however, approve reduced frontage (but not less than 150 feet) if existing conditions would not adversely affect abutting property or be detrimental to the neighborhood. The minimum road frontage must be on a street designated as an arterial road or a collector street in the Middlebury Plan of

Development. The Commission may approve access to a Town Street which connects to an arterial road or collector street.

24.2.4 SR must be created within an existing Residence District 40 located in the eligible area.

24.2.5 The SR is only allowed where (1) immediate access to existing sanitary sewer lines is available, provided the Water Pollution Control Authority has determined that sufficient capacity exists, and (b) immediate access to an existing public water system is available, provided the Water commission has determined an adequate supply exists for domestic service and fire protection.

24.2.6 Resident Eligibility
Occupancy for Senior Residential Housing is open to an individual fifty-five (55) years of age or older, or a household in which one member must be fifty-five (55) years of age or older.

24.3 Density

24.3.1 Standard Density
The maximum density shall be six dwelling units per 40,000 square feet.

24.4 Procedure for Establishing Senior Residential Districts

24.4.1 Establishment

All Senior Residential Districts shall be considered re-zoning subject to the requirements and procedures of Section 8-3 of the Connecticut General Statutes, except as noted herein. A Senior Residential District shall be established only in conjunction with approval of a Preliminary Development Plan for the entire District by the Planning and Zoning Commission. The purpose of the Preliminary Development Plan shall be to indicate the general intent and arrangement of the proposed development.

A. Zone change Application

A completed application for zone change approval, with the required fee, shall be submitted to the Commission accompanied by (10) copies of the Preliminary Development Plan meeting the requirements of Subsection 24.4.2 below. Such application shall include the full text of the proposed zoning amendment necessary for complete approval of the Senior Residential District, together with a statement of maximum

proposed density and the calculations thereof in compliance with Subsection 24.3 above.

B. Public Hearing

After receipt of a complete zone change application, complete preliminary plan of development and required application fees, the Commission shall hold a public hearing and take action to approve, approve with modification, or disapprove the zone change and Preliminary Development Plan with the time limits provided in Section 8.3 and 8-7d of the Connecticut General Statutes. The Commission, acting in its legislative capacity when it approves, approves with modification, or denies the zone change application and Preliminary Plan of Development required by this regulation has extensive discretion to determine compliance with the required standards.

24.4.2

Preliminary Development Plan Submission

Ten copies of the Preliminary Development Plan, hereinafter referred to as PDP, shall be submitted to the Planning and Zoning Commission, along with an application for a Certificate of Zoning Compliance. Such applications shall include a clear statement explaining how the proposed zone change and SR meet the purposes set forth in Subsection 24.1 above. The Commission shall charge a fee, as may be amended from time to time, to cover review cost of a SR submission. The applicant shall refer the plans to the Conservation Commission for a review of the public water impacts and to the Water Pollution Control Authority for a review of sewer impacts. In addition, plans shall be submitted to the Architectural Review Board for comment under procedures established in Section 51 of the Zoning Regulations. The PDP shall include topography at two-foot contour intervals. The Preliminary Development Plans must be developed by either a professional engineer, architect, registered landscape architect, registered land surveyor or a professional planner, or any combination of such professionals, each to limit himself to his particular area of expertise. The PDP shall include the following:

- A. The existing and proposed vehicular circulation system including major and minor thoroughfares, collector streets, local streets, parking and loading areas, and points of access to public easements and rights-of-way.
- B. A written report by a qualified traffic engineer evaluating the impact of the SR on the transportation system, including the amount of traffic

projected within and for the proposed development and the adequacy of the surrounding streets and traffic controls to accommodate existing traffic, projected traffic from the proposed development, and projected traffic for other approved developments in the area.

- C. The existing and proposed pedestrian circulation system including its interrelationships with the vehicular circulation system, open space system, and other areas of common use.
- D. A general landscape plan including the proposed treatment of common areas, usable open space, watercourses, and the treatment of the perimeter of the SR including materials and techniques to be used as living screens, berms, fences, and stone walls.
- E. Information on land areas adjacent to the proposed SR to indicate the relationship between the existing and proposed utilization of surrounding properties, including land uses, zoning, densities, height of structures, circulation systems, public facilities, and unique natural features.
- F. Proposed types, quantities, and general location of residential units including square footage and number of bedrooms and densities for individual sections or phases of the development as well as for the SR as a whole.
- G. Examples of proposed product types for the residential units, typical lot and/or building layouts and elevation of all buildings (front, back, and both sides) showing proposed textures, materials and colors. Identical buildings will not require multiple elevations.
- H. Proposed area regulations in conformity with this Section 24, and with Section 11 of these regulations to the extent applicable, and their justification.
- I. Proposed development schedule with projected completion date(s) for the SR and its individual phases.
- J. Proposed number of units by bedroom count.
- K. Identification of any historical structures or features on the site.
- L. Preliminary grading and drainage information of the same nature and to the same extent required for a subdivision under the Commission's regulations and Board of Selectmen's regulations and ordinances.

- M. A map showing all wetlands areas, watercourses and slopes above 25%.
- N. A listing of all property owners by tax parcel number, within 250 feet of the project boundaries.
- O. A summary table indicating compliance with the development standards. The table shall show proposed phasing, the number and type of buildings and units, number of parking spaces required and provided, square footage and percentage of lot area covered by pavement and buildings, lot area, frontage and landscape requirements and amount of open space required and provided.
- P. A report discussing projected demands for public water and sewer and evidence that an undue burden will not be placed on these services by the proposed development.
- Q. The impact of the SR on schools, police, fire and other municipal services.
- R. Any other information the Commission deems appropriate for a proper and complete review of the Preliminary Development Plan.
- S. The Commission may waive any requirement of Subsection 24.4.2 of these Regulations if, and only if, the Commission determines that the requirements sought to be waived are not reasonably necessary to the proper disposition of the application.

24.4.3

Findings

In order to approve a zone change and Preliminary Development Plan submitted under this Section, the Commission shall first make the following findings:

- A. The purposes specified in Subsection 24.1 have been substantially met.
- B. The qualifying standards of Subsection 24.2 and the design standards of Subsection 24.7 have been met.
- C. Provisions for traffic, water, sewerage, stormwater and open space are adequate, do not overburden existing streets, water, sewer and stormwater drainage facilities on-or-off-site and do not create water problems off-site.

- D. No congestion in the streets surrounding the site will result from the SR, and the proposed development design will not require upgrading of the street system of the Town of Middlebury. This requirement can only be waived if the Commission and the Board of Selectmen in their sole discretion elect to permit the necessary upgrading at the applicant's expense. To make the necessary analysis, the applicant may be required to provide additional information, plans and data at his/her expense.
- E. The proposed development design will not require upgrading of the existing on- or off-site sewer, water and similar municipal systems and drainage systems. This requirement can only be waived if the Commission in its sole discretion recommends, and the Water Pollution Control Authority elects to permit the upgrading either on- or off-site at the applicant's expense. To make the necessary analysis, the applicant may be required to provide additional information, plans, and data at his expense.
- F. The need exists in the community for a different type of housing unit than is allowed under the base zone, and the need exists for the number of senior housing units suggested.
- G. The development and design of the SR will not have an adverse effect on surrounding properties, will be in harmony with the neighborhood, and will not have adverse effect on property values in the area.
- H. The proposed development will not have a significant adverse effect on the environment and in particular wetland and watercourse areas. In making this finding, the recommendations of the Conservation Commission regarding the development will be taken into account.
- I. Where appropriate, the applicant has provided for continuing maintenance of private roads, parking areas, stormwater drainage facilities, open space and other amenities not accepted by the Town of Middlebury.

24.4.4

Recording and Effective Date

The approved Preliminary Development Plan shall be endorsed by the Commission and recorded in the office of the Town Clerk of the Town of Middlebury within ninety (90) days of the date of approval, unless extended by the Commission for good cause shown. The Senior Residential District zone change contemplated by Subsection 24.4.1 shall be effective upon recording of such approved and endorsed PDP.

24.4.5

Final Development Plan Submission

Before development can begin, a Final Development Plan must be approved by the Planning and Zoning Commission with respect to all or, if the site is to be developed in phases, that portion of the SR District where Phase I is located. If the SR is to be developed in phases each phase shall require a Final Development Plan. The Final Development Plan shall conform substantial to the approved PDP, including, without limitation, the vehicular and pedestrian circulation system approved in the Preliminary Development Plan and shall adhere to all area regulations adopted by the Preliminary Development Plan (please refer to Subsections 24.4.2 and 24.4.3 above.) The Final Development Pan shall include the following:

- A. Final subdivision plan submission in accordance with Subdivision Regulations, if applicable.
- B. Site plans meeting the standards of Subsection 24.4.2 herein above, Section 8 and Section 51 of these Regulations, and the standards for a site development plan required by the Subdivision Regulations.
- C. Detailed landscape plans for common areas, usable open space, and perimeter areas including proposed grading, plant materials, and method(s) of maintenance.
- D. The legal instrument provided for in Subsection 24.6 below, if applicable.

24.4.6

Procedure

- A. The Final Development Plan, hereinafter referred to as FDP, must be submitted within one year from the date of Preliminary Development Plan approval. Otherwise, the Preliminary Development Plan is null and void and the parcel will revert to the original underlying zone designation unless the Commission approves an extension of up to six months. Upon such reversion the Commission shall take action to remove the SR District designation of the parcel from the zoning map. Application for a Final Development Plan may be for only part of the approved Preliminary Development Plan if the PDP as approved contemplates phases or if it is determined by the Commission that, as a result of the size of the project, it would be detrimental to the Town or neighborhood to allow development of a single phase, or it would be unreasonable to require a final application for the entire project. In no event, however, shall the first phase encompass less than five acres.

- B. Final application for subsequent phases of the project shall be submitted at maximum intervals of three hundred and sixty-five (365) days. Upon failure to submit any such application within said time limit, the provisions of Subsection A. above will apply as to such phase.
- C. The Commission may hold a public hearing on the Final Development Plan if, in its estimation, the plan differs significantly from the Preliminary Development Plan. Otherwise, the Final Development Plan shall be processed in the same manner as a site development plan approval under Section 51 of these Regulations, but subject, however, to this Section 24, and shall be filed after approvals in accordance with those procedures.
- D. The Commission shall, prior to approval of the FDP, make the findings specified in Subsection 24.4.3 herein, above.

24.4.7

Project Completion

If no Final Development Plan has been approved for all or a portion of the SR within twenty-four (24) months after approval of the Preliminary Development Plan, the Senior Residential District designation may be revoked by the Commission.

- A. Each portion or phase of a SR, for which no Final Development Plan has been approved within 24 months of the approval of the Preliminary Development Plan, shall be deemed to be subject to revocation unless an extension of the 24 month time period has been granted as provided below.
- B. The applicant shall post a performance bond in accordance with Section 51 of these Regulations for completion of all improvements in the development, except residential units, at the time of approval of the final Development Plan in accordance with procedure set forth in Section 51 of these Zoning Regulations. The performance bond requirement of Section 51 may be satisfied by an irrevocable letter of credit in the amount set by the Commission and in a form approved by Town Counsel.
- C. If less than 5% of the dwelling units in any approved phase of a SR have received certificates of occupancy within twenty-four (24) months of the approval of such Final Development Plan, the SR shall be reviewed by the Commission to determine the developer's intent to proceed. The Commission may, for good cause, allow for extensions

of up to one (1) year for completion of buildings, structures, or other improvements. If the Commission determines that the developer does not intend to proceed with the SR, the Commission may revoke such Final Development Plan approval. Notice of intent to revoke shall be given to the developer, or his successors in interest by certified mail sent at least ten (10) days prior to the date the meeting at which such action is proposed. Revocation of the FDP, or any phase thereof, shall terminate SR approval as to such FDP as well, and shall automatically revoke the zone change of the SR District, subject to the right to complete all structures commenced in accordance with the FDP. Thereafter all completed structures shall constitute pre-existing, non-conforming uses in accordance with these Regulations.

D. In accordance with C.G.S. Section 8-3 (i), the Commission shall state on its certificate of approval for the Final Development Plan the five-year expiration date for completion of all work in connection with the Final Development Plan.

24.5 Permitted Uses

24.5.1 Permitted Subject to the Provisions of this Section 24

Uses permitted within the Senior Residential District include single family detached and single family attached dwellings, two family and multi family dwelling units (a) designed exclusively to be occupied by and to meet the specific requirements and design standards suitable for occupancy by one or more elderly, disabled and handicapped persons and (b) which conform to the requirements of State and Federal programs providing for housing for the elderly as evidenced by a signed and sealed certified statement from the owner, his architect, and engineers that such housing conforms to the State and Federal agencies' program requirements for elderly housing whether or not such housing is constructed under such program. Accessory uses permitted are those customary with and incidental to any aforesaid permitted uses.

24.6 Maintenance Requirements

In order to ensure the long term maintenance of common land and facilities and to prevent maintenance expenditures by the Town, the following shall be required:

All SR projects shall be approved subject to the submission of a legal instrument(s) setting forth a plan or manner of permanent care and maintenance of open spaces, recreational areas, common parking areas, and other communally owned facilities. No such instrument shall be acceptable until approved by the Town Attorney as to legal form and effect.

24.7 Design Standards

24.7.1 Open Space

Provision for open space is one of the major purposes for using Senior Residential Developments. A minimum of fifty percent (50%) of the total site acreage must be preserved as private, common and recreational open space. For this purpose roads, parking areas, drives, land within twenty-five (25) feet of a building, and strips of land less than twenty-five (25) feet wide shall not be counted as part of the land constituting open space. All remaining land not utilized for dwellings shall be considered land which is dedicated as open space, unless otherwise designated and approved by the Commission.

24.7.2 Building Setbacks

No building may be placed within 20 feet of an existing property line, or within 100 feet of an existing dwelling on an adjacent parcel as determined at the time of application. Buildings shall be set back 100 feet from abutting external roadways and 150 feet from any state highway, unless the Commission determines that, as to particular structures a setback of as little as 50 feet from any abutting external roadway would enhance the design and not adversely affect residents of the structure. Minimum setbacks from internal driveways shall be 25 feet, unless the Commission determines that, as to particular structures, a setback of as little as 15 feet would enhance the design and would not adversely affect residents of the structures.

24.7.3 Building Standards and Separation

- A. The minimum floor area for units shall be 500 square feet for a single bedroom unit, 650 square feet for a two-bedroom unit and 850 square feet for a three-bedroom unit.
- B. Maximum building length is deemed to be that shown on the PDP.
- C. The maximum height shall be limited to 2 ½ stories or 35 feet to the peak of the roof. Accessory buildings shall be limited to 1 ½ stories or 25 feet to the peak of the roof.
- D. All buildings in the SR shall be of good quality design and appearance

so as to blend harmoniously with the site and the neighborhood. Such design shall convey an impression and feeling to persons familiar with architecture that these dwelling units are of quality and substance and the SR is a desirable place to live. All dwellings within a neighborhood or phase shall be of a single consistent architectural style to create a harmonious appearance. However, a subsequent phase may be of an alternative style of design provided it complements the architectural quality of the development and is reasonably compatible to that which exists in order to establish a conforming and consistent design.

- E. All utility lines and connections shall be underground, except terminal boxes and connections, which are prohibited from being placed underground, as approved by the Commission.
- F. All above grade electric or telephone utility boxes and other apparatus shall be suitably screened with plant material or by an architectural screen compatible with the exterior materials of the dwelling units.

24.7.4 Parking

- A. Not less than one parking space per dwelling unit.
- B. Visitor parking spaces shall be located within two hundred (200) feet from the farthest dwelling unit to be served if the average topographical grade between the parking spaces and the dwelling units is less than five percent (5%).
- C. No parking may have as its only egress backing out onto a through street within the Senior Residential District. Such parking off of cul-de-sacs may be permitted at the discretion of the Commission in instances where it would not present a safety hazard.
- D. In connection with parking, adequate, unobstructed space shall be provided for snow storage and clearance.
- E. All parking shall comply with the provisions of Section 62.

24.7.5 Road Standards

- A. All roads within a SR must be constructed to Town road standards as set forth in the Town Subdivision Regulations and Town Ordinances

and other road regulations and, in general, shall be designed to discourage through traffic. The Planning and Zoning Commission may recommend to the Board of Selectmen that a street standard be modified along short cul-de-sacs. The Board of Selectmen must grant their approval before the Preliminary Development Plan is approved.

- B. Streets developed under the Senior Residential District regulations will be public unless the Planning and Zoning Commission approves or requires the use of private roads and the necessary mechanism to maintain the roads. The Board of Selectmen must concur in this decision before the Preliminary Development Plan is approved.
- C. In the case of private roads the Commission may permit pavement widths down to twenty (20) feet, provided if the right-of-way width remains at least fifty (50) feet, where the Commission finds that density, length of road, projected traffic volumes, available parking and other relevant factors justify such reduction.
- D. The Planning and Zoning Commission may at its discretion require four feet wide sidewalks to serve portions or all of the proposed Senior Residential District.
- E. No entry signs may be placed within the median of roadways. One small sign per entrance (maximum 20 sq. ft.) announcing the project may be placed outside the public right-of way at no more than 2 entrances to the development.

24.7.6

Coverage Requirements

The maximum percentage of the parcel may be covered by buildings is 10%.

24.7.7

Landscaping

- A. All areas adjoining other residential property shall contain a buffer strip at least thirty (30) feet wide planted to substantially screen the buildings in the SR from neighboring residential areas.
- B. A preliminary landscape plan must be submitted with the Preliminary Development Plan and a final landscape and planting plan submitted with the Final Development Plan.
- C. To the greatest extent possible, all mature trees should be retained on the site. Street trees (minimum three (3) inch caliper) shall be planted

on 30 foot centers. In instances where sidewalks are placed within the right-of-way, the street trees shall be planted outside the right-of-way.

- D. Existing mature vegetation on the site shall be retained in areas not disturbed by construction. In areas disrobed by construction, or in areas where existing vegetation is sparse, new plant material (trees, shrubs) shall be provided as follows:
 - 1. Shade trees, evergreen trees and flowering trees shall be planted in, or adjacent to, parking areas. At least one (1) tree shall be planted for each three (3) spaces, or fraction thereof, in locations approved by the Commission.
 - 2. Trees and shrubs shall be planted around foundations and between structures in a manner approved by the Commission.

24.7.8

Solar Access

The Senior Residential District shall be designed in accordance with the design and construction standards pertaining to solar energy set forth in the Middlebury Subdivision Regulations, to the extent possible, to enable maximum effective use of solar energy systems in the future.

SECTION 25- LAKE QUASSAUG PRESERVATION DISTRICT

25.1 Purpose:

The lake Quassaug Preservation District (LQPD) is an overlay district. The objective of the Lake Quassaug Preservation District is to encourage and promote:

- 25.1.1 The preservation, conservation and protection of the natural features and resources of Lake Quassaug and the surrounding area, such as, for example scenic vistas, water recreation, water quality, tree cover, open areas, wetlands and other environmental significant features and resources, and
- 25.1.2 Preservation and enhancement of the existing character of the Lake Quassaug area.

In order to promote those objectives the purpose of the Lake Quassaug Preservation District is to afford opportunities (1) for greater flexibility in the design of new or additional single-family residential development and forms of ownership on the land surrounding Lake Quassaug than would otherwise be allowed if such land were to be developed under other applicable provisions of these Regulations, and (2) for existing single-family development on such land to become in conformance with these Regulations under diverse forms of ownership and thereby to encourage upgrading of such existing development.

25.2 Qualifying Standards

No parcel of land or adjoining parcels of land shall be considered for designation under the Lake Quassaug Preservation District Regulations unless each such parcel complies with the following standards:

- 25.2.1 Each such parcel is located in the area surrounding Lake Quassaug bounded on the north by White Deer Rock Road, on the east by Tranquility Road, on the south by Middlebury Road and on the west by the Woodbury-Middlebury Town line. If the proposed designation under the LQPD Regulations is approved the parcel or parcels so designated shall be designated on the zoning map as {underlying zone designation}/LQPD with an identifying number assigned to such designation, e.g., R-40/LQPD-1.
- 25.2.2 The minimum size for one or more adjoining parcels to be designated, as LQPD is 20 contiguous acres. There is no maximum size.

25.3 Procedure for Obtaining Lake Quassapaug Preservation Designation

25.3.1 An application for designation of property as LQPD constitutes a petition to amend these Regulations under Section 74 and except as noted herein is subject to the requirements and procedures of Section 8-3 of the Connecticut General Statutes as amended. Property shall be designated as LQPD only in conjunction with and condition upon, approval by the Commission of a Preliminary Plan of Development for the land in question.

25.3.2 Applications for designation of property as LQPD shall include the following:

- A. A completed application for zone change together with the required fee for such application and a statement explaining how the proposed zone designation and proposed development meet the purposes of Subsection 25.1 above.
- B. Ten (10) copies of a proposed set of Special Regulations, consistent with the requirements of Subsection 25.3.4 below, which shall be applicable to the property if the LQPD designation is approved listing the elements of the existing regulations, limitations and conditions that are applicable to the underlying zone or zones in which the subject property is located that are to be modified or eliminated and new regulations, limitations and conditions that are to be applicable to the subject property. The Special Regulations shall specify the maximum density of dwelling units that would be allowed. The proposed maximum density shall not be greater than that which is legally permissible in the underlying zone (with effect given to any pre-existing legal nonconformities). The applicant shall demonstrate to the satisfaction of the Commission that, taking into account all relevant factors, the proposed density meets the applicable purposes and objectives of the LQPD as set forth in Section 25.1. In addition, the Special Regulations shall require that a minimum of 10% of the parcel be reserved for recreation areas and/or open spaces and/or subjected to conservation or preservation restrictions (as defined in Section 47.42a of the Connecticut State General Statutes, as amended) or other deed restrictions. The size, location, shape, topography and general character of the land so reserved and the nature of any proposed restrictions shall satisfy the applicable purposes and objectives of the LQPD as set forth in Subsection 25.1, as determined by the Commission. The Commission may waive or modify the open space requirements to the extent that it determines, in its sole discretion and taking into account all relevant factors, that such a

reservation or restriction is not necessary or desirable to satisfy the applicable purposes and objectives of Subsection 25.1 or that those purposes and objectives are otherwise satisfied. Any open space land shall be offered and subjected to restrictions and covenants as provided in Subsection 4.14 of the Middlebury Subdivision Regulations. The Special Regulations shall also contain a suitable boundary description of the land to which they and the Preliminary Plan of Development shall apply. All words or terms which are defined in Section 9 of the Regulations shall be used as so defined.

- C. Ten (10) copies of a proposed Preliminary Plan of Development showing in a schematic fashion the concept of the proposed development. The Commission may charge a fee, as may be amended from time to time, to cover review costs of a proposed LQPD submission. The Preliminary Plan of Development and the Final Development Plan, as contemplated in Subsection 25.4 below, shall be developed by a professional engineer, registered architect, registered landscape architect, registered land surveyor or professional land planner, or any combination of such professionals, each to be limited to his particular area of expertise.
- D. The Preliminary Plan of Development and other application materials shall include the following:
 - 1. Topography at two (2) foot contour levels;
 - 2. General locations of proposed and/or existing dwellings and accessory buildings;
 - 3. Existing and, if any, proposed means of vehicular access from the public street(s) abutting the property and any proposed interior vehicular circulation system;
 - 4. Existing and, if any, proposed pedestrian circulation system showing the interrelationship with the vehicular circulation, open space system and other areas of common use;
 - 5. General landscape plan indicating the proposed treatment of any common areas, usable open space and watercourses;
 - 6. Where the proposal involves the creation of subdivided lots, an indication of the boundaries of such proposed lots, the building envelope thereon and the means of access to such lots that do not have frontage on a public street;

7. A summary table indicating compliance with the standards of these Regulations and the proposed Special Regulations as may be applicable to the proposed development; and
8. Such other information as the Commission deems appropriate for a proper and complete review of the application.

25.3.3 In considering any application for LQPD designation the Commission is acting in its legislative capacity with all discretion associated with acting in that capacity. After the receipt of a complete application, the Commission shall hold a public hearing and take action to approve, approve with modifications or disapprove the proposed zone change and Preliminary Development Plan all in accordance with, and subject to the limits contained in, Section 8-3 and 8-7d of the Connecticut General Statutes as amended.

25.3.4 The Special Regulations may not allow for any use of the property other than for single-family detached residences and accessory uses as are permitted in the underlying zone in which the property is located. However, the Special Regulations may allow for more than one single-family detached residence on a lot or parcel. Notwithstanding the foregoing, however, any use of the land in the area covered by the Special Regulations and/or structures on such land that is existing at the time of the adoption of the Special Regulations and is for other than single family residences and accessory uses shall be allowed to be continued pursuant to and subject to the limitations of Section 10 – Nonconformity of these regulations.

25.3.5 The Commission may approve the proposed zone change, Special Regulations and Plan of Development if it finds after considering all relevant information that:

- A. The proposed zone change, Special Regulations and Preliminary Plan of Development meet the intent and applicable purposes and objectives set forth in Subsection 25.1 as well as the applicable laws and standards for zone changes and are in conformance with the plans and policies of the then current Middlebury Plan of Development as promulgated pursuant to Section 8-23 of the Connecticut General Statutes, as amended:
- B. The property meets the qualifying standards set forth in Subsection 25.2; and

- C. Where applicable, the applicant has properly provided for continued maintenance of private roads, parking areas, stormwater drainage facilities, open space and other amenities not accepted by the Town of Middlebury.

25.3.6 If the Commission approves the proposed zone change, Special Regulations and Preliminary Plan of Development, the Commission shall establish an effective date for the proposed Special Regulations and notice of the approval thereof and the approval of the Preliminary Plan of Development shall be given in the same manner as required for amendments to these Regulations. The Preliminary Plan of Development shall also be endorsed by the Commission and filed in the office of the Middlebury Town Clerk within 90 days of the date of approval, unless extended for good cause shown.

25.4 Final Development Plan

25.4.1 The construction and site development and the use, buildings and structures authorized by the Special Regulations and as contemplated in the Preliminary Plan of Development shall only be allowed in accordance with a Final Development Plan for the entire development, or if development is to proceed in phases or stages, a Final Development Plan for the relevant phase or stage, that has been submitted to and approved by the Commission.

25.4.2 A Final Development Plan shall conform substantially to the Preliminary Plan of Development and comply in all material respects with the Special Regulations as approved by the Commission and shall include the following, as applicable:

- A. Where subdivided lots are a part of the development, a final subdivision plan submission in accordance with the Subdivision Regulations;
- B. Site Plans meeting the standards of Section 8 and 51 of these Regulations and, if subdivided lots are a part of the development, the standards for a site development plan required by the Subdivision Regulations, and
- C. Detailed landscaped plans for any common areas, usable open space and perimeter areas including proposed grading, contemplated new plantings and methods of maintenance.

25.4.3 If, in the judgment of the Commission, a proposed Final Development Plan differs in any material respect or if the Commission otherwise determines that it is appropriate to do so, the Commission may hold a public hearing on the approval of the Final Development Plan. Otherwise the Final Development Plan shall be

processed in the same manner as a site development plan approval under this Subsection 25.4 and Section 51 of these Regulations.

25.4.4 If the Final Development Plan is not submitted to the commission for review within one (1) year after the effective date of the Special Regulation, the designation of the property as LQPD, the Special Regulations and the Preliminary Plan of Development shall become null and void. The Commission may, for good cause, extend such deadline for one or more periods not to exceed six (6) months in the aggregate. Where development is to take place in phases or stages as contemplated in the Special Regulations, Final Development Plans shall be submitted for approval at maximum intervals of one (1) year after the approval of the Final Development Plan for the prior phase or stage. Upon failure to adhere to that schedule, the designation of the LQPD, the Special Regulations and the Preliminary Plan of Development for any phases or stages as to which a Final Development Plan has not been approved shall become null and void. The Commission may, for good cause, extend such deadline as to each phase or stage for one or more periods not to exceed six (6) months in the aggregate. Unless the Special Regulations provides otherwise, all of the development contemplated in the Preliminary Plan of Development shall be completed and a certificate of zoning compliance obtained within five (5) years of the effective date of the Special Regulations. If the Special Regulations and Preliminary Plan of Development become null and void as herein provided, any structure that is then actually under construction and such structures as well as previously completed structures shall constitute pre-existing nonconforming uses in accordance with these Regulations. Such lapse shall not prevent a later application for re-designation of the remaining land as LQPD.

25.4.5 Unless the Commission determines otherwise, upon approval of the Final Development Plan and as a condition to the commencement of construction, the applicant shall post a performance bond to insure the completion of all common improvements in the development (or, in the case of contemplated development in phases or stages, the common improvements necessary to service that phase or stage). As used in this Subsection, the term “common improvements” means driveways and/or roadways, parking areas, stormwater drainage facilities, walkways and other improvements contemplated in the Final Development Plan that, in each case, serve more than one building. Common improvements do not include buildings or related improvements that service only one building. The required performance bond may be in the form of an irrevocable letter of credit in the amount set by the Commission and in a form approved by the Town Attorney

and shall be otherwise in accordance with Section 51 of these Regulations and the procedures contained therein. The Commission may from time to time reduce the amount of the performance bond as the common improvements are completed in accordance with the approved Final Development Plan as determined by the Commission.

25.5 Special Regulations

25.5.1 Special Regulations applicable to R-80/LQPD-1. The following Special Regulations shall be applicable to the land included within the boundaries of R-80/LQPD-1:

A. Boundaries

The land included within R-80/LQPD consists of 155.0446 acres shown on the map entitled “North Shore Reserve, Perimeter Survey, White Deer Rock Road, Middlebury, CT” Scale 1” = 200’, Area = 155.0446 acres. Map Date 3-18-96 Rev. 5-23-96 by Bradford E. Smith & Son, Land Surveying and Planning Consultants, which land is more particularly bounded and described as set forth on Schedule A which is attached hereto and made a part thereof.

B. Applicable Regulations

1. Except as provided in paragraph (b) (2) below, all of the presently effective regulations that apply to land located within the R-80 zoning District and all future regulations that may be adopted that affect land located within the R-80 Zoning District, with effect given to Section 10 of the Zoning regulations or any future regulation relating to the continuance of existing non-conforming uses, shall be applicable to the land included within R-80/LQPD-1 and the uses thereof.
2. Within R-80/LQPD-1 the following special regulations shall apply notwithstanding any of the provisions of any other regulation that may affect land within the R-80 Zoning District.
 - a. Set Back from Other Property Line
With respect only to the easterly property line of Lot 8 as shown on the map entitled “North Shore Reserve, Preliminary Plan of Development, White Deer Rock Road, Middlebury, CT” Scale 1” = 200’, Area = 155.0446 acres, Map Date 3-18-96 Rev. 5-23-96 and 6-6-96 Bradford E. Smith & Son, Land Surveying and Planning consultants (the

“Preliminary Plan”), the set back from other property line shall be a minimum of 32 feet (and not 40 feet) for the existing structure on said Lot 8 as said existing structure may be altered, reconstructed or enlarged. With respect only to the westerly property line of Lot 9 as shown on the Preliminary Plan, the set back from other property line shall be a minimum of 31 feet (and not 40 feet) for the existing structure on said Lot 9 as said existing structure may be altered, reconstructed or enlarged.

b. Frontage and Minimum Access

With respect only to Lots 6, 7, 8, 9, 10 and 11 as shown on the Preliminary Plan, respectively, if such lots are configured as shown on said map, they need not have frontage on a public street and access between each such Lot and White Deer Rock Road by means of a common driveway with individual branches to the respective Lots to be constructed in the area shown on said map as “Common Area for Driveway” shall be sufficient and to be constructed in accordance with applicable provisions of the Middlebury Road and Drainage Regulations.

c. Density

Each lot to be created from the land within R-80/LQPD-1 shall have the minimum lot size and dimensions as shown on the Preliminary Plan. Except with respect to existing structures and uses which shall be governed by Section 10 of the Zoning Regulations or any future regulation relating to the continuance of existing non-conforming uses and except to the extent otherwise provided under Section 21 relating to Permitted uses in Residence Districts, a single detached dwelling for one (1) family and not more than one (1) such dwelling shall be permitted on each of Lots 1 through 11, inclusive and respectively, as shown on the Preliminary Plan.

d. Open Space

The land shown on the map referred to in paragraph 1 as “Open Space to be Deeded to the Middlebury Land Trust, Inc. 32.8267 Ac.” Shall be offered and subjected to restrictions and covenants as provided in Section 4.14 of the Middlebury Subdivision Regulations.

e. Conservation and Other Restrictions

In order to achieve further the objectives of the Lake Quassapaug Preservation District and, in particular, to preserve, conserve and protect water quality, tree cover, wetlands and other environmentally significant features and resources of the land within R-80/LQPD-1, all of such land shall be subjected to restrictions that shall constitute a “conservation restriction” within the meaning of Sections 47-42a through 47-42c of the Connecticut General Statutes, as amended, providing, at a minimum, for the following:

- (i) The conservation restriction shall run in favor of the Town of Middlebury or other agency or entity acceptable to the Middlebury Planning and Zoning Commission that will accept the restriction.
- (ii) Construction of houses and septic systems on Lots 1, 2 and 3 inclusive, shall be restricted to the areas indicated on the Preliminary Plans of Development (the “building envelopes”)
- (iii) Filing and excavation, mining, drilling or removal of topsoil, sand, gravel, rock, minerals or other earth materials, the construction of driveways or roadways and any change in the natural topography of the land in the portions of Lots 1, 2 and 3, inclusive, that are outside of the building envelopes shall be prohibited unless specifically approved by the Middlebury Conservation Commission or any successor agency having similar jurisdiction (the “Conservation Commission”).
- (iv) Proper sedimentation and erosion control acceptable to the Conservation Commission shall be maintained during all construction activities. No portion of the land shall be re-graded unless appropriate measures acceptable to the Conservation Commission are taken to eliminate any unacceptable resulting concentration of drainage or runoff. Appropriate ground cover shall be provided as soon as practicable in any disturbed areas.

- (v) Use of pesticides, herbicides and other chemicals for lawn and grounds care shall, to the extent reasonably practicable, be limited to those that will not have a material deleterious effect on Lake Quassapaug or other wetlands and watercourses on the land unless otherwise approved by the Conservation Commission where warranted by special circumstances.
- (vi) Use of sand and salt on the common driveway and individual driveways shall be limited to that reasonably required for safety.
- (vii) No use activity or operation that is defined as a “Regulated Activity” under the Inland Wetlands & Watercourses Regulation of the Town of Middlebury or otherwise regulated under any other law, statute, ordinance or regulation of similar import shall be conducted on the land except for obtaining any necessary license, permit or approval from the governmental authority having jurisdiction and then only in conformity with such license, permit or approval. The Preliminary Plan of Development depict the current wetlands and watercourses and the fifty-foot buffer from the limits of each that constitutes the current regulated area under the Inland Wetlands Watercourses Regulation. The Final Development Plan shall more precisely locate the limits of this buffer area.

25.6

Special Requirements for West Shore At Lake Quassapaug Area.

The West Shore at Lake Quassapaug Area (hereinafter “WSALQ Area”) shall be subject to the Special Requirements of this Section 25.6, which shall not constitute a designation under the Lake Quassapaug Preservation District. The WSALQ Area consists of the Middlebury portion of 41.0506 acres of land lying on the West side of Lake Quassapaug, conveyed by the Harris Whittemore, Jr. Trust by Deed dated May 15 , 2000 and recorded in Volume 166 at Page 813 et seq. of the Middlebury Land Records (and a duplicate copy recorded in the Town of Woodbury), all of which became owned by a certain condominium association known as “The West Shore at Lake Quassapaug” (hereinafter the “West Shore Condominium”) organized pursuant to a “Declaration of the West Shore at Lake Quassapaug, Middlebury, CT, Woodbury, CT” dated May 15, 2000 (hereinafter the “Declaration”) and recorded in Volume 166 at Page 868 et seq. of the Middlebury Land Records (and a duplicate copy recorded in the Town of

Woodbury), thereby continuing single ownership of said Middlebury and Woodbury land areas in the West Shore Condominium. The WSALQ Area, which is only the Middlebury portion of the land included in the West Shore Condominium, is thus bounded on the West by the Woodbury town line and on the East by Lake Quassapaug plus a short portion of Old Woodbury Road. The lake shore portion of all the West Shore Condominium land and one interior Unit includes 30 Condominium Units, rather than lots, 26 of which each has a dwelling located thereon. Units 2 through 5 and portions of Units 6, 7 and 8 lie in the Town of Woodbury and therefore are not subject to these Zoning Regulations, except those portions lying in Middlebury. Unit 1 is not in the West Shore Condominium, and is part of Woodbury open space. Units 9 through 26, Unit 27 and portions of Units 6, 7 and 8, together with non-residential Units C-1, B-1 and B-2 and that portion of Unit A-1 lying in Middlebury are subject to these Zoning Regulations, but these Middlebury Condominium Units shall not be subject to the provisions of Section 11 of the Middlebury Zoning Regulations.

The West Shore Condominium is governed by an Executive Board elected by the condominium members (the “West Shore Executive Board”), which administers dwelling replacements, enlargements or related structures pursuant to the above referenced Declaration. There shall be no additional dwellings constructed in the WSALQ Area. Accordingly, any of the 18 dwellings in Middlebury, the Middlebury portions of Units 6, 7 and 8 (including the Middlebury portion of any dwelling) and any structure covered below, located within the WSALQ Area, including the dwelling formerly located on Unit 10, may be replaced or enlarged, subject to the following standards:

25.6.1 Footprint:

“Footprint” means the actual square footage area of a dwelling determined by measuring along the outside of the foundation at ground level, or, in the case of a dwelling built on stone, concrete, or wood piers, measured from the outside edge of each pier, and in either case, including the square footage of any enclosed porch or framed and roofed open porch attached to the dwelling. The existing dwelling footprint may not be increased more than thirty percent (30%), but the resulting dwelling must conform to the size limitations set forth in Section 25.6.2 below.

25.6.2 Size Limit:

The maximum size of the replacement dwelling or reconstructed dwelling, calculated in accordance with the Connecticut Building Code, shall be as follows:

No dwelling shall exceed 35 feet in height;

No dwelling shall exceed 2,500 square feet of floor area;

No dwelling shall exceed 2 ½ floors of floor area;

No dwelling shall have more than 3 bedrooms.

25.6.3 Location and Setbacks Standards:

The existing dwelling footprint shall be permitted. The following location setback standards shall apply with respect to expansion of the existing dwelling footprint:

15 feet from street or common driveway line;

15 feet from vertical condominium unit boundary (side yard), or the existing distance if less;

No closer to Lake Quassapaug than existing dwelling;

No increase in impervious surfaces, unless approved by the Conservation Commission.

25.6.4 Design:

The design must be compatible with dwellings on neighboring Units, i.e. design elements will not adversely affect characteristics of the West Shore Condominium Community. If the West Shore Executive Board adopts design criteria the Commission will utilize such criteria in approving a proposed design. If, however, the West Shore Executive Board fails to adopt design criteria, the Commission in its discretion will make its own determination.

25.6.5 Utilities:

- a) Each dwelling shall connect to the common water supply system and the common sanitary septic system in accordance with West Shore Condominium and Town Standards.
- b) Water supply and sewage disposal must be designed to be compatible with the West Shore Condominium common water and septic systems in accordance with accepted engineering standards.

- c) Electrical service may: 1) stay where it is or 2) if relocated, cannot cross other Condominium Units.

25.6.6 Drainage/Water Runoff:

No Unit Owner shall divert water from their Unit onto other Condominium Units. The Building Site Plan shall contain a drainage plan.

25.6.7 Porches/Decks/Patios/Sheds/Docks:

Porches, decks, patios, sheds and docks may be located outside the footprint set forth herein, subject to sideline and setback standards of Section 25.6.3, and subject to any approvals required from the Planning & Zoning Commission and the Conservation Commission. Existing sheds and similar structures may remain and be replaced, remodeled or converted to another permitted use.

25.6.8 Garages:

A one (1) car or two (2) car garage may be permitted subject to sideline and setback standards of Section 25.6.3 and approvals provided for in Section 25.6.7. No garage may be higher than twelve (12) feet, and no living space may be included.

25.6.9 Waiver:

A waiver from one or more of these standards may be approved by the Planning & Zoning Commission; provided the Application for Waiver contains written consent of all abutting Condominium Unit owners, consent of the West Shore Executive Board, and further subject to any reasonable conditions that the Planning & Zoning Commission may attach to the Waiver.

25.6.10 Approvals:

All Applications for replacement or reconstruction of a dwelling, or other condominium unit improvement covered in this Section 26.6 shall be filed with the Planning & Zoning Commission, and be accompanied by evidence of approval by the West Shore Executive Board. All approvals for dwelling replacement or reconstruction shall be appropriately documented and recorded on the Land Records of the Town of Middlebury.

SECTION 27
PLANNED RESIDENTIAL RECREATION DEVELOPMENT OVERLAY
DISTRICT

27.1 **Purpose:**

The intent of the Planned Residential Recreation Development Overlay District ("PRRD") is to provide for recreation opportunities, to preserve significant areas of open space and wetlands and to construct a variety of housing types that are consistent with the goals and objectives of the Residential and Open Space Chapters of the 2000 Middlebury Plan of Development.

The regulation provides for increased flexibility by combining recreational and residential uses in order to maximize open space, wetlands, natural resources and property values.

27.2 **Qualifying Standards:**

No parcel of land shall be considered for a PRRD unless it complies with the following standards:

- 27.2.1 The parcel shall be located in (and thereafter if approved shall be designated in conjunction with) R-40, R-80 or CA40 zoning districts in the Town of Middlebury, such districts shall be designated on the zoning map as R-40 PRRD, R-80 PRRD and CA-40 PRRD. In addition, the project shall be integrated and contributed to the Open Space Resources Plan as found in Section. 5.2 of the 2000 Middlebury Plan of Development.
- 27.2.2 The tract shall consist of a single lot or number of contiguous lots under one ownership or control having a total area of not less 200 acres. For the purposes of this section property separated from other property by a town or state roadway shall be considered to be contiguous provided there is a minimum of 50 acres on each side of the roadway.
- 27.2.3 The PRRD must contain 200 ft. minimum road frontage on state highway Rte. 188 and Rt. 64. In addition to frontage on the foregoing roadways, the tract may have access on the other roads if the Planning and Zoning Commission finds traffic conditions warrant it.
- 27.2.4 The PRRD is only allowed where: (a) immediate access to existing sanitary sewer lines is available, provided the Water Pollution Control Authority has determined that sufficient capacity exists, and (b) immediate access to an existing public water system is available, provided the Water Commission has determined an adequate supply exists.

27.3 Density

27.3.1 Standard Density

The maximum number of units allowed in the PRRD shall be determined in the following manner: Calculate the net area of the parcel by subtracting from the total site acreage: (a) Ten (10) percent of the entire site for roads, (b) Fifty (50) percent of those areas classified as wetlands and watercourses as determined by a qualified professional and as agreed to by the Conservation Commission and the Planning and Zoning Commission, plus fifty (50) percent of the land in steep slopes (i.e.: slopes above twenty-five (25) percent. However, any portion of the parcel that is to be deeded to the Town of Middlebury for a municipal use, as provided for in Section 21.2.7, shall be included in the adjusted net area for the purpose of calculating the density. Divide the net area by one acre (43,560 square feet) and round down to the nearest whole unit to determine the maximum number of units allowed.

The maximum number of age restricted units shall be 6 dwellings per adjusted acre.

Cluster units and zero lot line units shall be determined by dividing the adjusted acres by the minimum lot requirement of the underlying zone.

The maximum density of senior units shall be 6 dwellings per 40,000 square feet.

27.3.2 Density Increase

To encourage the provision of affordable housing units, the applicant for approval of a PRRD may apply for a density increase of up to 50% above the base density. Such increase will only be approved if said applicant agrees that one-half of the extra units are set aside for affordable housing.

27.3.2 Provision of Affordable Units

- A. One half of all units allowed above the base density must be affordable units which are made available for sale or rent to moderate income households pursuant to Sections 22.7.1, 22.7.2, 22.7.3 and 22.7.4 of the Middlebury Zoning Regulation dated January 19, 2002. Where possible the affordable units shall not be segregated on the project site nor shall they be substantially different in finish or level of amenities offered. The different types of other housing units in terms of numbers of bedrooms shall generally be proportionately reflected in the types of affordable housing units.
- B. To encourage the provision of recreational uses, the applicant for approval of a PRRD may apply for a density increase whereby the maximum density shall be 1.5 dwellings per adjusted acre. Such density increase will only be approved if said applicant agrees to provide, as part of the proposed PRRD, a golf course containing either nine(9) or eighteen (18) holes, provided that the PRRD does not include a restaurant, banquet/eating facility with or without provision for outside dining on the premises, or an equestrian complex.

- C. To encourage the provision of large usable recreational open space communities, with a mixed residential and municipal use component, the applicant for approval of a PRRD may apply for a density increase whereby the maximum density may be up, to but shall not exceed, 1.25 dwellings per adjusted acre, with a maximum of 270 dwelling units, within the discretion of the Planning and Zoning Commission. Such density increase will only be approved if said applicant agrees to provide, as part of the proposed PRRD, the following components to be incorporated into the PRRD community: (a) a minimum of 150 acres of deeded or restricted usable recreational open space that is: (i) suitable for potential on-site walking and hiking trails to accommodate pedestrian circulation for or to residents of the development, or for members of the public; and (ii) will serve as a green corridor that will provide potential for wildlife passage, conservation of plant and wildlife communities, continuity of habitat throughout the development to adjacent natural resources, and a vegetative buffer for adjacent residential properties; and (b) a minimum of two acres of real property contiguous to the PRRD community to be deeded to the Town of Middlebury and restricted to municipal uses that are not inconsistent with the residential component of the PRRD community.

27.4 Procedure for Establishing planned Residential Recreational Development Overlay Districts

27.4.1 Establishment

All Planned Residential Recreation Development Districts shall be considered re-zonings subject to the requirements and procedures of Section 8-3 of the Connecticut General Statutes, except as noted herein. A Planned Residential Recreation Development District shall be established only in conjunction with approval of a Preliminary Development Plan for the entire District by the Planning and Zoning Commission. The purpose of the Preliminary Development Plan shall be to indicate the general intent and arrangement of the proposed development.

A. Zone Change Application

A completed application for zone change approval, with the required fee, shall be submitted to the Commission accompanied by ten (10) copies of the Preliminary Development Plan meeting the requirements of Subsection 27.4.2 below. Such application shall include the full text of the proposed zoning, amendment necessary for complete approval of the Planned Residential Development Overlay District, together with a statement of maximum proposed density and the calculation thereof in compliance with Subsection 27.3 above.

B. Public Hearing

After receipt of a complete zone change application, complete preliminary plan of development and required application fees, the Commission shall hold a public hearing and take action to approve, approve with modification, or disapprove the zone change and Preliminary Development Plan within the time limits provided in Sections 8-3 and 8-7d of the Connecticut General Statutes. The Commission, acting in its legislative capacity when it approves, approves with modification, or denies the zone change application and preliminary Plan of Development required by this regulation, has extensive discretion to determine compliance with the required standards.

27.4.2 Preliminary Development Plan Submission

Ten copies of the Preliminary Development Plan (PDP) shall be submitted to the Planning and Zoning Commission along with an application for a Certificate of Zoning Compliance. Such application shall include a clear statement explaining how the proposed zone change and PRRD meet the purposes set forth in Subsection 27.1 above. The Commission shall charge a fee, as may, be amended from time to time, to cover review costs of a PRRD submission. The Commission shall refer the plans to the Conservation Commission for a review of the project impacts on wetlands and water courses, to the Water Commission to review the public water impacts and to the Water Pollution Control Authority for a review of sewer impacts. In addition, plans may be submitted to the Architectural Review Board for comment under procedures established in Section 51.3 of the Zoning Regulations. The PDP plans shall include topography at two foot contour intervals. The Preliminary and Final development Plans must be developed by either a professional engineer, architect, registered landscape architect, registered land surveyor or a professional planner, or any combination of such professionals, each to limit himself to his particular area of expertise. The PDP shall include the following:

- A. The existing and proposed vehicular circulation system including major and minor thoroughfares, collector streets, local streets, parking and loading areas, and points of access to public easements and rights-of-way.
- B. A written report by a qualified traffic engineer evaluating the impact of the PRRD on the transportation system, including the amount of traffic projected within and for the proposed development and the adequacy of the surrounding streets and traffic controls to accommodate existing traffic, projected traffic from the proposed development, and a projected traffic from other approved developments in the area.

- C. The existing and proposed pedestrian circulation system including its interrelationships within the vehicular circulation system, open space system, and other areas of common use.
- D. A general landscape plan including the proposed treatment of common areas, usable open space, water courses and the treatment of the perimeter of the PRRD including materials and techniques to be used such as living screens, berms, fences and stone walls.
- E. Information on land areas adjacent to the proposed PRRD to indicate the relationship between the existing and proposed utilization of surrounding properties, including land uses, zoning, densities, height of structures, circulation systems, public facilities, and unique natural features.
- F. Proposed types, quantities, and general location of residential units including square footage and the number of bedrooms and densities for individual sections of phases of the development as well as for the PRRD as a whole.
- G. Examples of proposed product types for the residential units, typical lot and/or building layouts and elevations of all buildings (front, back and both sides) showing proposed textures, materials and colors. Identical buildings will not require multiple elevations.
- H. Proposed area regulations in conformity with this Section 27, and with Section 11 to the extent applicable and their justification.
- I. Proposed development schedule with projected completion date(s) for the PRRD and its individual phases.
- J. Proposed number of units by bedroom count.
- K. Identification of any historic structures or features on the site.
- L. Preliminary grading and drainage information of the same nature into the same extent required for a subdivision under the Commission's regulations and Board and of Selectmen's regulations and ordinances.

- M. A map showing all wetlands areas, water courses and slopes above 25% together with a calculation of the maximum allowable density on the site.
- N. A listing of all property owners by attacks parcel number, within 250 feet of the projected boundaries.
- O. A summary table indicating compliance with the development standards. The table shall show proposed phasing, the number and type of buildings and units, number of parking spaces required and provided, square feet and percent of a lot area covered by pavement and buildings, lot area, frontage and landscape requirements and amount of open space required and provided.
- P. A report discussing projected demands for public water and sewer and evidence that an undue burden will not be placed on the services by the proposed development.
- Q. The impact of the PRRD on schools, police, fire and other municipal services.
- R. Provisions for and location of all housing types as specified in this regulation.
- S. The areas of land laid out for any proposed golf course showing all 9 or 18 holes including tee, fairway, practice greens, driving ranges and putting greens, if applicable.

In addition, the Commission may require information which may be considered accessory to the course such as: storage and equipment buildings, clubhouse, restaurants and all banquet facilities, if applicable.

- T. The areas of land in building laid-out for any proposed equestrian center including barns, indoor arenas, paddock areas, pasture land and bridle trails, if applicable.
- U. Any other information the Commission deems appropriate for a proper and complete review of the PDP.

27.4.3

Findings

In order to approve a zone change and a Preliminary or Final Development Plan submitted under this Section, the Commission shall first make the following findings:

- A. The purpose is specified in Subsection 27.1 have been substantially met.
- B. The qualifying standards of Subsection 27.2 and the design standards of Subsection 27.9 have been met.
- C. Provisions for traffic, water, sewerage, storm water and open space are adequate, do not overburden existing streets, water, sewer and storm water drainage facilities on or off-site and do not create water problems off-site.
- D. No congestion in the streets surrounding the site will result from the PRRD and the proposed development design will not require upgrading of the street system of the Town of Middlebury. This requirement can only be waived if the Commission and the Board of Selectmen in their sole discretion elect to permit the necessary upgrading at the applicant's expense. To make the necessary analysis, the applicant may be required to provide additional information, plans and data at his expense.
- E. The proposed development design will not require upgrading of the existing on/off-site sewer, water and similar, municipal systems and drainage systems. This requirement can only be waived if the Commission in its sole discretion recommends and The Water Pollution Control Authority or the Water Commission, as to their respective utilities, elect to Permit the upgrading either on or off-site at the applicant's expense. To make the necessary analysis, the applicant may be required to provide additional information, plans and data as his expense.
- F. The need exists in the community for in different type of housing unit than is allowed under the base zone.
- G. The development and design of the PRRD will not have an adverse effect on the surrounding properties, will be in harmony with the neighborhood, and will not have an adverse effect on property values in the area.

- H. The proposed development will not have a significant adverse effect on the environment and in particular wetland and water course areas. In making this finding the recommendations of the Conservation Commission regarding the development will be taken into account.
- I. Where appropriate, the applicant has provided for continuing maintenance of private roads, parking areas, storm water drainage facilities, open space and other amenities not accepted by the Town of Middlebury.

27.4.4 Recording and Effective Date

The approved Preliminary Development Plan shall be endorsed by the Commission and recorded in the office of the Town Clerk of the Town of Middlebury within ninety (90) days of the date of approval, unless extended by the Commission for good cause shown: The Planned Residential Recreation Development District zone change contemplated by Subsection 27.4.1 shall be effective upon recording of such approved and endorsed PDP.

27.4.5 Final Development Plan Submission

Before development can begin, a Final Development Plan must be approved by the Planning & Zoning Commission with respect to all or, if the site is to be developed in phases, that portion of the PRRD District where phase I is located. If the PRRD is to be developed in phases each phase shall require a Final Development Plan. An applicant may submit one Final Development Plan that includes all phases, or may submit a final development plan on a phase by phase and basis. The Final Development Plan shall conform substantially to the approved PDP including, without limitation, the vehicular and pedestrian circulation system approved in the Preliminary Development Plan and shall adhere to all area regulations adopted by the Preliminary Development Plan.

- A. Final subdivision plan submission in accordance with Subdivision Regulations, if applicable.
- B. Site plans meeting the standards of Section 8 and Section 51 of these Regulations, and the standards for a site development plan required by the Subdivision Regulations.
- C. Detailed landscape plans for common areas, usable open space and perimeter areas including proposed grading, plant materials, and methods of maintenance.

- D. The provision for Senior, Age Restricted and Affordable housing, if applicable.
- E. A comprehensive water use management plan prepared by a qualified environmental consultant shall be provided that as a minimum addresses the following items: an Integrated Pest Management (IPM) system as endorsed by the Connecticut Institute of Water Resources in the document Report of the Advisory Committee on Potential Best Management Practice for Golf Course Water (Connecticut Institute of Water Resources Special Report No. 3 7), that specifies the application times and volumes of specified fertilizers, herbicides and pesticides, the periodic testing of the surface water flow at specified locations for chemicals used on the golf course, and the periodic testing of groundwater at specified monitoring well sites for the chemicals used on the golf course, and the periodic testing for the static level of the ground water near wells on adjacent properties if a public water supply is not available to these properties. As a minimum there shall be a surface water tests location at each point that water flows off-site in a perennial water course, and at least four groundwater monitoring wells. Testing shall begin before any development work starts, and if possible one year before development starts and shall continue for as long as the golf course operates. The water use management plan shall describe the chemical concentrations allowed by the Connecticut Department of Environmental Protection and it shall describe the procedures to follow if chemical concentrations exceed the allowable limits for any such chemical. If adjacent properties utilize private water supply wells, the water use management plan shall recommend a minimum static level in each monitoring well to protect levels in nearby private wells. If the minimum level is approached in a monitoring well, the golf course shall implement the Connecticut Drought Preparedness and Response Plan and progressively reduce withdrawals until the minimum level is achieved. Static ground water records for each monitoring well shall be obtained as often as once per week when irrigation equipment is being used or as otherwise required by the Town Sanitarian and shall be retained by the golf course superintendent and provided to the Town Sanitarian upon request. The water quality and water availability in wells on adjacent properties shall not be affected. The golf course owner shall at all times engage the services of a qualified environmental consultant and testing laboratory to conduct the water monitoring and other requirements of the water use management plan.
- F. Nothing in these Regulations and specifically this Section 27.0 shall prohibit an applicant for a PRRD from simultaneously submitting both a Preliminary Development Plan, and a Final Development Plan, to the Planning and Zoning Commission for review and approval.

27.4.6

Procedure

- A. The following procedure shall be followed with respect to the Final Development Plan. The Final Development Plan must be submitted within one year from the date of the Preliminary Development Plan approval. Otherwise the Preliminary Development Plan is null and void and the parcel will revert to the original underlying zone designation unless the Commission approves an extension of up to six months. Upon such reversion, the Commission shall take action to remove the PRRD District designation of the parcel from the zoning map. Application for a Final Development Plan may be for only part of the approved Preliminary Development Plan if the PDP as approved contemplates phases or if it is determined by both Commission that, as a result of the size of the project, it would be detrimental to the Town or neighborhood to allow development in a single phase, or it would be unreasonable to require a final application for the entire project. In no event, however, shall the first phase encompass less than twenty-five acres.

- B. The following procedure shall be followed with respect to the Final Development Plan: Final application for subsequent phases of the project shall be submitted at maximum intervals of three hundred sixty-five (365) days. Upon failure to submit any such application within said time limit, the provisions of Subsection 27.4.6A. above will apply as to such phase.

- C. The following procedure shall be followed with respect to the Final Development Plan: The Commission may hold a public hearing on the Final Development Plan if in its estimation the plan differs significantly from the Preliminary Development Plan or for any reason satisfactory to it. Otherwise, the Final Development Plan shall be processed in the same manner as a site development plan approval under Section 51 of these Regulations, but subject, however, to this Section 27, and shall be filed after approvals in accordance with those procedures.

24.4.7

Project Completion

If no Final Development Plan has been approved for all or a portion of the PRRD Within twenty-four (24) months after approval of the Preliminary Development Plan the Planned Residential Development District designation it may be revoked by the Commission. Notice of intent to revoke shall be given to the developer, or his successors and interest, by certified mail sent at least ten (10) days prior to the date of the meeting at which such action is proposed.

- A. Each portion or phase of a PRRD for which no Final Development Plan has been approved within 24 months of the approval of the Preliminary Development Plan, shall be deemed to be subject to revocation unless an extension of the 24 month time period has been granted as provided below.

- B. The applicant shall post a performance bond in accordance with Section 51 of these Regulations for completion of all improvements in the development, except residential units, at the time of approval of the Final Development Plan in accordance with procedures set forth in Section 51 of these Zoning Regulations. The performance bond requirement of Section 51 may be satisfied by an irrevocable letter of credit in the amount set by the Commission and in a form approved by Town Counsel.

- C. If less than 5% of the dwelling units in any approved phase of a PRRD have received certificates of occupancy within twenty-four (24) months of approval of such Final Development Plan, the PRRD shall be reviewed by the Commission to determine the developer's intent to proceed. The Commission may, for good cause, all offer extensions of up to one (1) year for completion of buildings, structures, or other improvements. If the Commission determines that the developer does not intend to proceed with the PRD, the Commission may revoke such Final Development Plan approval. Notice of intent to revoke shall be given to the developer, of his successors in interest, by certified mail sent at least ten (10) days prior to the date of the meeting at which such action is proposed. Revocation of the FDP approval, or any phase thereof, shall terminate PRRD approval as to such FDP as well and automatically revoke the zone change of the PRRD, subject to the right to complete all structures commenced in accordance with the FDP. Thereafter, all completed structures shall constitute preexisting nonconforming uses in accordance with these Regulations.

- D. In accordance with C.G.S. Sec. 8-3, the Commission shall state on its certificate of approval for the Final Development Plan the five year expiration for completion of all work in connection with the Final Development Plan.

27.4.8 Any proposed modification to an approved Preliminary Development Plan, and Final Development Plan, shall comply with the procedural requirements for the approval of such Plans as provided by Section 27.4. However, the Commission may, within its discretion, not require an applicant to submit the support information provided by Section 27.4, if the Commission determines that such is not necessary to act upon the requested a modification to the previously approved Preliminary Development Plan, and Final Development Plan.

27.5

Permitted Uses:

27.5.1

Residential Uses Permitted by the PRRD include the following:

- A. Senior Housing for persons age 62 or older
Stacked single family attached dwellings;
Two story apartment stacked units containing a single hallway.
- B. Age Restricted housing for persons age 55 years or older
Flat, stacked in building containing no more than eight (8) dwelling units with basement storage and parking;
One Half (1/2) acre, 20,000 square foot zero lot line duplex units.
- C. Unrestricted Housing
 - i. One Half (1/2) acre, 20,000 square foot lots containing single family units.
 - ii. Single family attached dwellings with a density bonus as provided by Section 27.3.2(B). Single family attached includes semi-detached Dwellings.
- D. There shall be a variety of residential uses as specified above. Under no circumstances shall there be only one type of housing constructed in the PRRD unless a golf course use is proposed pursuant to Sections 27.3.2(B); 27.5.1(C)(ii) and 27.5.2(A) or a large usable recreational open space community, with a mixed residential and municipal use component, is proposed pursuant to Sections 27.3.2(C), 27.5.1(E), and 27.8(D).
- E. A municipal use limited to a minimum of two acres of real property contiguous to the PRRD community to be deeded to the Town of Middlebury, shall be permitted subject to the requirements of Section 27.3.2(C) and all other applicable requirements of Section 27 the subject real property shall be restricted to a municipal use not inconsistent with the residential component of the PRRD community.

27.5.2

Recreation Uses Permitted in the PRRD include:

- A. A golf course containing nine or 18 holes with attendant facilities as defined in Section 9, Definitions. Supporting facilities for the course may include: a clubhouse, restaurant, banquet/catering facilities with provision for outside

dining on the premises swimming pool and/or tennis court. The swimming pool or tennis court shall be no closer than 200 feet to the nearest property line. The golf course with a residential density bonus as provided by Section 27.3.2(B) shall not have any of the aforementioned supporting facilities. However, the golf course with a residential density bonus as provided by Section 27.3.2(B) may have a private swimming pool and/or private tennis court(s) limited to use by the residents of the residential PRRD community.

B. Equestrian Complex:

An equestrian complex as defined in Section 9, Definitions. Supporting facilities for the equestrian facility may include stables private and/or commercial, barns, equipment storage structure, indoor arenas and paddock areas and living accommodations for a manager or caretaker of the facility. The complex shall be located on a minimum of five (5) acres.

- C. A large usable recreational open space community shall contain: (a) a minimum of 150 acres of deeded or restricted usable recreational open space that is: (i) suitable for potential onsite walking and hiking trails to accommodate pedestrian circulation for or to residents of the development, or for members of the public; and (ii) will serve as a green corridor that will provide potential for wildlife passage, conservation of plant and wildlife communities, continuity of habitat throughout the development to adjacent natural resources, and a vegetative buffer for adjacent residential properties; and (b) a minimum of two acres of real property contiguous to the PRRD community to be deeded to the Town of Middlebury and restricted to municipal uses that are not inconsistent with the residential component of the PRRD community as provided by Sections 27.3.2(C), 27.5',.1(0), 21.5.1(E), and 21.8(0).

27.6 Maintenance Requirement:

In order to ensure the long-term maintenance of common land and facilities and to prevent maintenance expenditures by the Town, the following shall be required:

- 27.6.1 PRRD projects shall be approved subject to the submission of a legal instrument(s) setting forth a plan or manner of permanent care and maintenance of open spaces, recreational areas, common parking areas, and other communally owned facilities. No such instrument shall be acceptable until approved by the Town Attorney as to legal form and effect.

27.6.2 Any Homeowner's Association (HOA) created shall be organized as a not for profit corporation with automatic membership in the HOA by any owner of property purchased in the PRRD. This shall be specified in the covenants which shall run with the land and be binding on all subsequent owners. Covenants for maintenance assessments shall also run with the land. Deeds shall specify the rights and responsibilities of property owners to the HOA. The HOA show also be responsible for liability insurance, local taxes, and the maintenance of all commonly held facilities through the use of a pro rata share formula for all property owners.

27.7 **Contract Requirements:**

All age restricted housing shall be required to establish and maintain a community association. Such association shall certify annually to the Town of Middlebury that the age restricted units are in compliance with the minimum requirements of this section. Such certification shall comply with requirements of the United States Department of Housing and Urban Development.

The burden of complying with the Fair Housing Act, as amended and regulations promulgated thereunder, shall be on the owner of the development or the association of homeowners of such development.

27.8 **Design Standards:**

27.8.1 **Open Space**

Provision of open space is one of the major purposes for using PRRD. A minimum of fifty percent (50%) of the total site acreage must be preserved as private, common and recreational open space. For this purpose roads, parking areas, drives, land within twenty-five (25) feet of the building, and strips of land less than twenty-five (25) feet wide shall not be counted as part of the land constituting open space. All remaining land not utilized for dwellings or private lots shall be considered land which is either dedicated as open space or owned in common and by unit owners, unless otherwise designated and approved by the Commission.

A. **Private Open Space**

No less than one hundred fifty (150) square feet of permanent open space per dwelling unit shall be provided and constructed immediately adjacent and accessible to each unit for private use consisting of decks, patios or porches. In the case of the senior apartment units a permanent open space buffer twenty-five (25) feet wide shall be provided around the entire building.

B. Recreational Open Space

Recreational open space is permanent open space providing immediate access for or to residents of the development for pedestrian circulation. Persons residing within the development shall have priority memberships to the recreational facilities, if applicable. Suitable pathways shall be provided from residential dwellings to recreational facilities. Land set aside as recreational open space may be developed as a golf course and shall include paved areas within the course, maintenance areas and walkways associated with the course which shall not include the clubhouse, tennis courts, swimming pool, assembly buildings, food service structures or parking areas.

In the event that any golf course ceases to be used for golf for a period of five (5) years the land as defined in Section 9 of these Regulations shall be dedicated as Town owned open space.

Any equestrian complex shall be considered open space except for barns, stables or indoor arena.

C. Public Path Access

A Commission shall determine if established hiking or bridle trails traverse the parcel proposed for the PRRD, and if such trails exist, the applicant shall incorporate the appropriate trail within the private or recreational open space whenever possible.

D. Large Usable Recreational Open Space

A large usable recreational open space community shall contain:

(a) a minimum of 150 acres of deeded or restricted usable recreational open space that is: (1) suitable for potential onsite walking and hiking trails to accommodate pedestrian circulation for or to residents of the development, or for members of the public; and (ii) will serve as a green corridor that will provide potential for wildlife passage, conservation of plant and wildlife communities, continuity of habitat throughout the development to adjacent natural resources, and a vegetative buffer for adjacent residential properties; and (b) a minimum of two acres of real property contiguous to the PRRD community to be deeded to the Town of Middlebury and restricted to municipal uses that are not inconsistent with the residential component of the PRRD community as provided by Sections 27.3.2(C), 27.5.1(0), 27.5.1(E), and 27.5.2(C).

27.8.2 Building Setbacks

No building may be placed within 50 feet of an existing property line, or within 100 feet of an existing dwelling on an adjacent parcel as determined at the time of application. Any two story building shall be 100 feet from existing property lines. Buildings shall be set back 100 feet from abutting external roadways and 100 feet from any state highway. Minimum setbacks from internal roadways shall be 25 feet, unless the Commission determines that as to particular structures a setback of as little as 15 feet would enhance the design and would not adversely affect residents of the structures.

27.8.3 Building Standards and Separation

The maximum number of units in any building shall be eight (8) except for the senior's apartment which shall contain a maximum of 16 units.

- A. No building shall extend within less than thirty (30) feet of any other dwelling, except that where any facing walls contain a window or door, such distance shall be increased by one (1) foot for each two (2) feet of height of the higher facing wall above the lowest adjacent elevation thereto. Any walls which are facing at an angle of thirty (30) degrees or less shall be considered facing walls. Enclosed stairwells and similar architectural appurtenances shall be considered as part of the wall and shall maintain the required setback. The distance between a single family detached dwelling and the garage of an adjacent single family attached dwelling shall be a minimum of twenty (20) feet. The distance between adjacent garages and single family dwellings shall be a minimum of fifteen (15) feet.
- B. The minimum floor area for units shall be 650 square feet for a single bedroom unit, 800 square feet for a two bedroom unit and 1000 square feet for a three bedroom unit.
- C. Maximum building length shall be 150 feet and not more than 30 feet of any exterior wall may be constructed without an offset of at least 2 feet.
- D. The maximum height shall be limited to 2 1/2 stories or 35 feet in building height as defined in Section 9 of these Zoning Regulations. Accessory buildings shall be limited to 1 1/2 stories or 25 feet and building height as defined in Section 9 of these Zoning Regulations.

- E. All buildings in the PRRD shall be of good quality design and appearance so as to blend harmoniously with the site and the neighborhood. Such design shall convey an impression and feeling to persons familiar with architecture that these dwelling units are of quality and substance and the PRRD is a desirable place to live. All dwellings within a neighborhood or phase shall be of a single consistent architectural style to create a harmonious appearance. However, a subsequent phase maybe of an alternative style of design provided it complements the architectural quality of the development and is reasonably compatible to that which exists in order to establish a conforming and consistent design.
- F. All utility lines and connections shall be underground, except terminal boxes and connections which are prohibited from being placed underground, as provided by the Commission.
- G. All above grade electric or telephone utility boxes and other apparatus shall be suitably screened with plant material or by an architectural screen compatible with the exterior materials of the dwelling units.

27.8.4

Parking

A. Residential

1. There shall be a minimum of two parking spaces per unit for resident parking, and a minimum of one-half (1/2) a parking space per unit for visitor parking. Parking for senior dwelling units shall comply with Section 24.7.4 of these Regulations.
2. At least one of the required dwelling unit spaces must be located in an enclosed garage or covered space within 50 feet of the dwelling unit. The senior apartment units shall be open parking and shall meet to the requirements as set forth in Section 24.7.4.
3. Both a garage space, and the pad in front of such garage, may count for the resident parking requirement.
4. Visitor parking spaces shall be located a maximum of (200) feet from the farthest dwelling unit to be served if the average topographical grade between the parking spaces and the dwelling units is less than five percent (5%). If the average topographical grade between the parking spaces and

the dwelling units is greater than five percent (5%), such parking shall be located within seventy-five (75) feet of the farthest dwelling unit to be served.

5. No parking may have as its only egress backing out onto a public street within the PRRD. Such parking off of cul-de-sacs may be permitted at the discretion of the Commission in instances where it would not present a safety hazard.
6. In Connection with parking, adequate, unobstructed space shall be provided for snow storage and clearance.

B. Nonresidential

The following parking standards apply to all non-residential uses within the development:

1. Clubhouse with banquet and catering facilities: One (1) space for each forty-five (45) square feet of patron area;
2. Tennis courts: Four (4) spaces for each tennis court;
3. Swimming pool: Thirty (30) spaces for each pool;
4. Golf course: Six (6) spaces for each tee;
5. Equestrian Complex: One (1) space for each 1000 square feet of arena space plus one (1) space for each horse stall. Two (2) spaces for each caretaker's living accommodations. Where appropriate space should be reserved for the parking of horse trailers. Such parking may be surfaced with permeable paving block;
6. Clubhouse, private swimming pool, and private tennis court for residential community development (without banquet and catering facilities): One (1) space for each two hundred (200) square feet of clubhouse floor area.

Where there is more than one use sharing the same lot or there are uses with low vehicle turnover rates, the Commission may allow up to 40% of the parking lot to be surfaced with permeable paving blocks.

Where a parking lot contains more than 50 spaces, the applicant may provide up to 20% of the total parking in compact car spaces, subject to approval by the Planning and Zoning Commission. A compact space shall not be less than nine (9) feet in width and sixteen (16) feet in length. The compact space shall be laid out in a group and shall be marked on the site.

Any lighting used to illuminate off-street parking shall be confined essentially to the property where it originated. The maximum height of such lighting shall be twenty-five (25) feet.

All parking shall comply with the provisions of Section 62, Subsection 62.6.3, of these Regulations entitled "Landscaping", to the extent said Subsection 62.6.3 is applicable.

27.8.5

Road Standards

- A. All roads within the PRRD shall be private and in general shall be designed to discourage through traffic. The Board of Selectmen must grant their approval before the Preliminary Development Plan is approved.
- B. In the case of private roads, the Commission may permit pavement widths down to twenty (20) feet where the Commission finds that density, length of road, projected traffic volumes, available parking and other relevant factors justify such reduction.
- C. Private driveways shall serve 1 to 3 units in shall have a pavement width of between 16 and 18 feet. Sidewalks are not required along private driveways, however, units located off private driveways shall be connected to the walkway system by appropriate pathways.
- D. Private streets serving 4 or more units may intersect roadways (whether public or private) connecting Town streets, but private driveways may not intersect such roadways connecting Town streets.
- E. The Planning and Zoning Commission may at its discretion require four foot wide sidewalks on only one side of the PRRD's streets, unless applicant agrees to provide sidewalks on both sides of the PRRD's streets, to serve portions or all of the proposed PRRD.
- F. No entry signs may be placed within the median of project roadways. One small sign per entrance (maximum 32 sq. ft.) announcing the project may

be placed outside the public right-of-way at no more than 3 entrances to the development.

27.8.6 Coverage

The maximum percentage of the parcel which may be covered by buildings is ten Percent (10%).

27.8.7 Landscaping

- A. All areas of the development adjoining other residential property shall contain a buffer strip of at least thirty (30) feet wide planted to substantially screen the buildings in the PRRD from neighboring residential areas.
- B. A preliminary landscape planned must be submitted with the Preliminary Development Plan and a final landscape and planting plan must be submitted with the Final Development Plan.
- C. All utility lines and connections must be placed underground, except terminal boxes and connections which are prohibited from being placed underground, as approved by the Commission. Terminal boxes and connections placed above ground shall be adequately landscaped to screen them from view and shall be shown on the PDP.
- D. Existing mature vegetation of the site shall be retained in areas not disturbed by construction. In areas disturbed by construction, or in areas where existing vegetation is sparse, new plant material (trees, shrubs) shall be provided as follows:
 - 1. Shade trees, evergreen trees and flowering trees shall be planted in, or adjacent to parking areas. At least one (1) tree shall be planted for each three (3) spaces, or fraction thereof: in locations approved by the Commission.
 - 2. Trees and/or shrubs shall be planted around foundations and between structures in manner approved by the Commission.
 - 3. Trees shall be suitably planted and maintained and shall not be less than two (2) inches caliper and 10 feet in height.

ARTICLE III

COMMERCIAL DISTRICTS

SECTION 31- COMMERCIAL DISTRICT CA-40

31.1 Permitted Uses

- 31.1.1 Store where goods are sold or services are rendered primarily at retail (including package stores) within a building containing less than 14,000 square feet of floor area. Buildings containing more than 14,000 square feet of floor area are subject to securing a Special Exception from the Planning and Zoning Commission in accordance with Section 52.
- 31.1.2 Business and professional offices, banks and other financial institutions; medical and dental clinics.
- 31.1.3 Restaurants where customers are served foods and beverage only when seated at tables or counters within an enclosed building. Such use may include a foot take-out service incidental to the primary permitted use but shall not include establishments where customers are served in motor vehicles or served primarily at food take out counters.
- 31.1.4 Planned Residential Development, subject to the securing of a Special Exception from the Planning and Zoning Commission in accordance with Section 52, containing multi-family dwelling units (a) designed exclusively to be occupied by and to meet the specific requirements and design standards suitable for occupancy by one or more elderly, disabled and handicapped persons, (b) which conform to the requirements of State or Federal programs providing for housing for the elderly as evidenced by a signed and sealed certified statement from the owner, his architect, and engineers that such housing conforms to the State or Federal agencies' program requirements for elderly housing whether or not such housing is constructed under such program, and (c) which meet the special criteria and standards set forth in Section 23. Site Plan approval is also required in accordance with Section 51 as set forth below except that the fifty (50) foot buffer strip, as required below, may be located wholly or partially in a residence zone.
- 31.1.5 Motor vehicle service station, subject to the securing of a Special Exception from the Planning and Zoning Commission, in accordance with Section 52.
- 31.1.6 The following accessory uses, when clearly subordinate and subsidiary to the uses permitted in Subsection 31.1.1, 31.1.2, 31.1.3, 31.1.4 and 31.1.5 of this Section and in accordance with the provisions of Section 8:

- A. Off street parking and loading, as provided in Section 62;
- B. Storage within a permanent structure;
- C. Outdoor storage enclosed by buildings, fences or walls so as to effectively screen the storage area from any other lot or from any street; and shall not extend into the area required for set back from a property line, street line or residence district boundary line, outdoor sales areas may be permitted by Special Exception in accordance with Section 52; and shall not exceed 5% (five percent) of the lot area nor 4,000 (four thousand) square feet, whichever is greater.
- D. Vehicular access;
- E. Electric, telephone, gas, water, sanitary sewer, sewer treatment facilities, storm drains, other utilities and outdoor lighting;
- F. Landscape material and features permanently maintained; and any area not covered by a building or structure, or paved, shall be landscaped with trees, shrubs, lawns or left in a natural state if already wooded. Site development shall preserve major trees and existing landscape features wherever possible. Along and adjacent to any Residential District boundary line, a strip of land not less than fifty (50) feet in width in a Commercial District shall be landscaped with trees and shrubs to effectively screen the commercial or industrial development from the residential district;
- G. Signs, as provided in Section 63.

31.2 Site Plan

Prior to approval of any application for a CERTIFICATE OF ZONING COMPLIANCE for a use permitted under this section, a site plan shall be submitted and approved in accordance with the provisions of Section 51.

31.3 Prohibited Uses:

Any use not specified above as permitted is prohibited. To assist in the interpretation of permitted uses in Commercial District CA-40, the following uses, the listing of which is not intended to be exhaustive, are specifically prohibited:

31.3.1 The prohibited uses specified in Section 6.

- 31.3.2 The sale of heavy equipment.
- 31.3.3 Motor Vehicle Dealerships, except in that limited area of the northeast corner of the Town described under “Special Exception Uses” below and then only if a Special Exception is granted.
- 31.3.4 Stores or arcades selling or displaying films, photos, books, videotapes or other items which are classified as pornographic under current valid statutory and judicial standards.
- 31.3.5 Electronic games for use and enjoyment on the premises.
- 31.3.6 Automobile junkyards and second hand or salvaged building materials yards.

31.4 Special Exception Uses:

- 31.4.1 Day Nurseries, subject to the Special Standards of Section 52 and Site Plan approval as required above.
- 31.4.2 An outdoor dining area as an accessory use to a full-service restaurant described above as a permitted use under this Section and which, as to said outdoor area, meets the following special criteria:
 - A. The area shall not have a permanent roof covering but may be shaded by a fabric awning or tables may be shaded by umbrellas.
 - B. Outdoor dining shall be in an area adjacent to an existing building and surrounded on three sides by such building or a wall no less than 30" in height.
 - C. The outdoor dining area shall not be located in any required front, rear or side yard setback areas.
 - D. The outdoor dining area shall not be located in any parking area.
 - E. The outdoor dining area shall not extend closer than eight (8) feet to any parking area traveled way.
 - F. The outdoor dining area shall not interfere with any required means of egress or ingress to the adjacent building.

- G. The outdoor dining area shall have a floor surface of impervious material such as concrete or brick pavers, that may be washed and swept easily and such floor shall be maintained daily; asphalt may not be utilized.
- H. Food and beverages shall be served by waiters and/or waitresses and the area shall not be utilized for takeout food.
- I. Alcoholic beverages may be served only with meals.
- J. All waste materials emanating from usage of the outdoor dining area shall be picked up and disposed of by the waiters and/or waitresses at the end of each seating and disposed of with the interior dining service. In no event shall waste material be deposited or stored at any time in outdoor receptacles.
- K. Disposable dishes, cups, glasses and tableware shall not be used. All such items shall be of materials designed for repeated re-use indefinitely.
- L. The seating capacity for any outdoor dining area shall not exceed 50% of the seating capacity for the indoor customer of the restaurant.
- M. Adequate parking for the outdoor dining area determined in accordance with the standard for restaurants under Section 62 of these regulations shall be available during those hours of the day when the outdoor dining area is to be in operation; and the Commission may, in its discretion, designate limited hours of operation as part of the granting of a special exception.

31.4.3 Motor Vehicle Dealerships if located in the area set forth on the Special Criteria below and then only in accordance with such Special Exception and in accordance with Section 52.

31.4.4 Accessory uses customary with and incidental to any aforesaid Special Exception Use. Special Criteria:

- A. A motor vehicle dealership may be located on a lot which has not less than 200 feet frontage on Straits Turnpike (Rt. 63) and has a southerly boundary no more than 830 feet from the Watertown (CT) town line. For the purpose hereof, the term lot shall mean one or more line and further than parcels of property which are contiguous, under unified ownership or control and designed and developed as a coherent group. That portion of the lot to be used for motor vehicle dealership purposes may not extend further than 830 feet south of the Watertown town 400 feet east or west of Straits Turnpike, said delineation to be perpendicular to said Straits Turnpike.

- B. A motor vehicle dealership may have outside storage of motor vehicles in

excess of the area set forth in Section 8 of these Regulations; provided, however, that such outside storage area for motor vehicles for sale by the motor vehicle dealership shall not exceed sixty percent (60%) of the area of the lot and provided that the outside storage area shall be effectively screened from adjoining property by fencing, landscaping or other ornamental screening.

- C. For purposes hereof, the setback requirements shall not apply to fencing, landscaping or other ornamental screening necessary to screen effectively any motor vehicle outside storage area from adjoining property.

31.4.5 A residential facility when located within a building used primarily for commercial purposes, subject to the Special Exception Standards of Section 52, Site Plan approval and the following special criteria:

- A. Residential facility to be used only by the owner(s) of the subject business and his or her spouse and children;
- B. Residential facility not to be located in a basement area;
- C. Residential facility to contain a minimum of 750 square feet;
- D. Residential facility to occupy no more than thirty percent (30%) of the entire building.

31.4.6 Canine Day Car and Grooming subject to the following criteria

- A. Shall provide a monitored indoor and fenced outdoor landscaped environment for dogs to socialize and participate in play activities and exercise.
- B. Open exercise area must be enclosed with fencing at least five (5) feet in height. Fencing shall provide privacy for the open exercise area and its contents to discourage visibility from the street. In addition, such area shall be maintained in a sanitary and odor free condition at all times.
- C. Parking shall be provided in accordance with Section 62.3.10 of these regulations.
- D. Dog waste shall be removed immediately and the area sanitized. Waste shall be contained in a closed container and disposed of weekly off-site

- E. Dog owners must provide proof of up-dated vaccinations (Rabies, DHFF, Bordetella) prior to the dog's acceptance and enrollment.
- F. Dogs enrolling must be spayed/neutered as applicable and shall be four (4) months of age or older.
- G. Individual dog barking that exceeds five (5) minutes is not allowed in an outdoor play area. A dog barking excessively will be relocated indoors.
- H. Hours of operation shall not be prior to 6:30 AM nor later than 8:00 PM.
- I. Shall not be located less than one hundred (100) feet from any other establishment.

SECTION 32 – PROFESSIONAL OFFICE 40

32.1 Permitted Uses

- 32.1.1 Any use permitted in a Residence District.
- 32.1.2 Professional office is when such use occupies not more than 2,500 square feet of floor area, subject to securing approval of a Site Plan from the Planning and Zoning Commission in accordance with Section 51.
- 32.1.3 Professional office is when such use occupies more than 2,500 square feet of floor area, subject to the securing of a Special Exception from the Planning and Zoning Commission in accordance with Section 52, and site plan approval in accordance with Section 51.
- 32.1.4 The following accessory uses, when clearly subordinate and subsidiary to the uses permitted in Subsections 32.1.1, 32.1.2 and 32.1.3 of this Section and in accordance with the provisions of Section 8.
- A. Off-street parking and loading, as provided in Section 62;
 - B. Storage within a permanent structure;
 - C. Outdoor storage enclosed by buildings, fences or walls so as to effectively screen the storage area from any other lots or from any street; and shall not extend into the area required for setback from a property line, street line or residence district boundary line; and shall not exceed 5% (five percent) of the lot area nor 4,000 (four thousand) square feet, whichever is greater;
 - D. Vehicular access;
 - E. Electric, telephone, gas, water, sanitary sewer, sewage treatment facilities, storm drains, other utilities and outdoor lighting;
 - F. Landscape material and features permanently maintained; and any area not covered by a building or structure, or paved, shall be landscaped with trees, shrubs, lawns or left in a natural state if already wooded. Site development shall preserve major trees and existing landscape features wherever possible. Along and adjacent to any Residential District boundary line, a strip of land not less than fifty (50) feet in width in a Commercial District shall be landscaped with trees and shrubs to effectively screen the commercial or industrial development from the residential district.

G. Signs, as provided in Section 63.

32.2 **Special Criteria**

32.2.1 A Professional Office 40 District shall be adjacent two or cross a street from a CA-40 District unless it results from rezoning such a CA-40 District. A Professional Office 40 District, when located across the street from a CA-40 District, shall not significantly extend beyond a point opposite a zone boundary line between a CA-40 or a PO-40 and a residential district across said street.

32.2.2 A Professional Office 40 District shall be located on a State Highway.

32.2.3 Existing buildings converted to Professional Offices shall retain their residential appearance on the exterior, but need not conform to the minimum floor area requirements of Section 11.

32.2.4 The site and all buildings and additions erected shall be of non-commercial appearance so as to blend with adjoining residential areas.

32.2.5 The Commission may grant a Special Exception for a building in excess of 10,000 square feet only if it finds that the design, shape, location on the lot, materials and landscaping adequately minimize the size so that its presence will enhance the value and enjoyment of the adjacent residential areas rather than detract from such value and enjoyment.

32.3 **Site Plan**

32.3.1 Prior to approval of any application for a CERTIFICATE OF ZONING COMPLIANCE for a use permitted under this section, a site plan shall be submitted and approved in accordance with provisions of Section 51.

32.4 **Special Exception Uses**

32.4.1 Day Nurseries, subject to the Special Standards of Section 52 and site plan approval as required above.

32.4.2 Accessory Uses customary with an incidental to any aforesaid Special Exception Use.

SECTION 33 – COMMERCIAL RECREATION DISTRICT

33.1 **Permitted Uses**

- 33.1.1 Administrative offices, public restrooms.
- 33.1.2 Bath house, with lockers, dressing areas and restrooms.
- 33.1.3 Restaurants and snack bars that are intended and used for the preparation and sale of food and beverages accessory thereto, that are consumed by the purchaser seated at tables or counters located within the building or outside the building. Window service is permitted.
- 33.1.4 Barbecue or clambake shelter and fireplaces.
- 33.1.5 Picnic shelter with tables and fireplaces.
- 33.1.6 Amusement arcades housing several activities, such as shooting galleries, dart and pitch games, etc.
- 33.1.7 Mechanical rides for all age groups.
- 33.1.8 Boat docks and other water related services.
- 33.1.9 Caretakers year round residence and four (4) residential dwelling units for seasonal staff quarters.
- 33.1.10 First-aid station.
- 33.1.11 Dance, skating or auditorium.
- 33.1.12 Off-street parking facilities.
- 33.1.13 Signs as provided in Section 63.
- 33.1.14 Accessory uses customary width and incidental to any aforesaid permitted uses, provided that 1- Outdoor storage enclosed by buildings, fences or walls so as to effectively screen storage area from any other lot or from any street; and shall not extend into the area required for setback from a property line, street line or residence district boundary line; and shall not exceed 5% (five percent) of the lot area no more 4,000 (four thousand) square feet, whichever is greater.

And that 2- Landscape material and features permanently maintained; and any area not covered by a building or structure, or paved, shall be landscaped with trees, shrubs, lawns or left in an actual state if already wooded. Site development shall preserve major trees and existing landscape features wherever possible. Along an adjacent to any Residential District boundary line, a strip of land of not less than fifty (50) feet in width in a Commercial District shall be landscaped with trees and shrubs to effectively screen the commercial or industrial development from the residential district.

33.2 Lot Coverage

All commercial recreation business, services and accessory facilities are limited to twenty (20) percent of the total land area for permanent or semi-permanent amusement installation (i.e. bathhouse, amusement rides, restaurant and snack bar, office, ticket booth, and pavilions). At least twenty-five (25) percent of the total land area must be devoted to landscaped open space for walks, buffer strips, play fields, sitting and picnic areas, sun decks, etc. The remaining fifty-five (55) percent is restricted to parking use and service roads. Deck parking is permitted. However, the total allowed land coverage may not be exceeded.

33.3 Site Plan

Prior to the approval of any APPLICATION FOR CERTIFICATE OF ZONING COMPLIANCE for a use permitted under this section a SITE PLAN shall be submitted and approved in accordance with the provisions of Section 51. Each SITE PLAN submitted hereunder must show a strip of land not less than fifty (50) feet wide in all side and rear yards where adjacent to a Residence or Rural District which strip of land shall be suitably landscaped and not used for parking or for any use prohibited in such adjacent Residence District.

SECTION 34 – GATEWAY INDUSTRIAL DESIGN DISTRICT (G.I.D.D.)

34.0 Purpose:

The purpose of the gateway industrial design district is to permit and encourage the orderly development of this area with community scale commercial development that will support the surrounding industrial and residential uses. The modern site design standards required in the district will ensure orderly and well-designed sites.

34.1 Permitted Uses

- 34.1.1 Executive offices.
- 34.1.2 Business offices.
- 34.1.3 Research laboratories.
- 34.1.4 Warehousing.
- 34.1.5 Light manufacturing, processing or assembly of products and the packaging of foods, beverages, toilet supplies, pharmaceuticals, perfumes and similar products.
- 34.1.6 Retail stores, personal service, professional service, and Financial Services where goods and services are rendered primarily at retail within a building containing less than 14,000 square feet of floor area. Buildings containing more than 14,000 square feet of floor area are subject to securing a Special Exception from the Planning and Zoning Commission in accordance with Section 52.
- 34.1.7 Restaurants where customers are served food and beverage only once seated at tables were counters with in an enclosed building. Such use may include a food takeout service incidental to the primary permitted use but shall not include establishments where customers are served in motor vehicles or served primarily add food takeout counters.
- 34.1.8 Commercial health club facilities.
- 34.1.9 Museums.
- 34.1.10 The following accessory uses, when clearly subordinate and subsidiary to the uses permitted in Subsections 34.1.1, 34.1.2, and 34.1.3 of this Section and in accordance with the provisions of Section 8:

- A. Off street parking and loading, as provided in Section 62;
- B. Storage and within a permanent structure;
- C. Outdoor storage enclosed by buildings, fences or walls so as to effectively screen the storage area from any other lot or from any street; street line or residence district boundary line, outdoor sales areas may be permitted by Special Exception in accordance with Section 52; and shall not exceed 5% (five percent) of the lot area nor 4,000 (four thousand) square feet, whichever is greater.
- D. Vehicular access;
- E. Electric, telephone, gas, water, sanitary sewer, sewer treatment facilities, storm drains, other utilities and outdoor lighting.
- F. Landscaped material and features permanently maintained; and any area not covered by a building or structure, or paved, shall be landscaped with trees, shrubs, loans or left in a natural state if already wooded. Site development shall preserve major trees in existing landscape features whenever possible. Along and adjacent to any Residential District boundary line, a strip of land not less than twenty (20) feet in width in A Commercial District shall be landscaped with trees and shrubs to effectively screen the commercial and industrial development from residential district.
- G. Signed shall be provided in accordance with Section 63. In the G.I.D.D. Size shall require a Zoning Permit or approved as part of a site plan application. Signs shall not require a special exception.

34.2 Site Plan

Prior to approval of any application for a Certificate of Zoning Compliance for a use permitted under this section, a site plan shall be submitted and approved in accordance with the provisions of Section 51.

34.3 Prohibited Uses:

Any use not specified above as permitted is prohibited. To assist in the interpretation of permitted uses in Gateway Designed District, the following uses, the listing of which is not intended to be exhaustive, are specifically prohibited:

- 34.3.1 The prohibited uses specified in Section 6.1 unless allowed as a Special Exception Use herein.
- 34.3.2 The sale of heavy equipment.
- 34.3.3 Motor Vehicle Dealership.

- 34.3.4 Stores or arcades selling or displaying films, photos, books, videotapes or other items which are classified as pornographic under current valid statutory in judicial standards.
- 34.3.5 Electronic games for use and enjoyment on the premises.
- 34.3.6 Automobile junkyards and secondhand or salvaged building materials yards.
- 34.3.7 Residential uses.
- 34.3.8 Motor vehicle service and filling stations, unless allowed as a Special Exception Use herein.
- 34.3.9 Ground level utility boxes.

34.4 Special Exception Uses:

- 34.4.1 Day nurseries, subject to the Special Standards of Section 52 and Site Plan approval as required above.
- 34.4.2 Liquor stores.
- 34.4.3 An outdoor dining area as an accessory use to a full service restaurant described above is the permitted use under this Section and which, as to set up your area meets the special criteria:
 - A. The areas shall not have a permanent roof covering but may be shaded by a fabric awning or tables may be shaded by umbrellas.
 - B. The outdoor dining area shall not be located in any required front, rear or side yard setback.
 - C. The outdoor dining shall not be located in any parking area.
 - D. The outdoor dining areas shall not extend a closer than eight (8) feet to any parking area traveled way.
 - E. The outdoor dining areas shall not interfere with any required means of egress or ingress to the adjacent building.
 - F. The outdoor dining areas shall have a floor surface of impervious material such as concrete or brick pavers, that may be washed and swept easily and such floor shall be maintained a daily; asphalt may not be utilized.
 - G. Food and beverages shall be served by wait staff and the areas shall not be utilized for takeout food.
 - H. All waste materials emanating from the usage of the outdoor dining area shall be picked up and disposed of by wait staff at the end of each seating and

disposed of with the interior dining service. In no event shall waste materials be disposed of or stored at any time in outdoor receptacles.

- I. Disposable dishes, cups, glasses, and tableware shall not be used. All such items shall be of materials designed for repeated re-use.
- J. Seating capacity for any outdoor dining area shall not exceed 50% of the seating capacity for the indoor customer of the restaurant.
- K. Adequate parking for the outdoor dining area determined in accordance with the standard for restaurants under Section 62 of these regulations shall be available during those hours of the day when the outdoor dining area is to be in operation; and the Commission may, in its discretion, designate limited hours of operation as part of the granting of a special exception.

34.4.4 Motor vehicle gasoline/fuel sales and/or a commercial carwash facility, subject to the following criteria:

- A. Motor vehicle gasoline/fuel sale is defined as a facility which provides the sale of gasoline or motor vehicle fuel, but specifically excluding repair, overhaul, removing, adjusting, replacement/assembly or disassembly of any part of any motor, engine or vehicle, storage of any motor vehicle, and commercial towing and or wrecker business.
- B. Commercial car wash facilities is defined as full service automobile facilities, but specifically excluding any self-wash activities.
- C. Commercial car wash facility shall be limited to vehicles of less than 10,000 pounds gross vehicle weight.
- D. To be eligible for this use and this zone, the subject parcel must contain a minimum of 2.00 acres, and be serviced by public water and sanitary sewer services.
- E. Signs shall be approved in accordance with Section 63 and Section 34.1 of the Middlebury Zoning Regulations.
- F. Except is modified by this Section, and all other respects, the remainder of Section 34 including the prohibited uses set forth in Section 34.3 shall remain in full force and effect.

34.5 Height, Area and Yard Requirements:

34.5.1 As stated in Section 11 Height, Area and Yard Requirements.

34.6 Outdoor Lighting:

All illumination on all sites shall be designed and constructed in accordance with the following standards:

- 34.6.1 Any outdoor lighting shall be directed to avoid glare outside the property line or boundary.
- 34.6.2 Any lighting used to illuminate any required off-street parking, loading area, or building shall be so arranged that illuminated area shall be confined to the areas where it originates.
- 34.6.3 The maximum height of lighting shall be 18 feet.
- 34.6.4 All lighting shall be shown on the Site Plan and a photometric plan may be required by the Commission.
- 34.6.5 Flood lighting shall be avoided except for loading areas.
- 34.6.6 Lighting fixtures shall be full cut off with low glare and directed lighting.
- 34.6.7 All non-essential lighting not necessary for security purposes shall be turned off after hours.

34.7 Landscaping and Streetscape:

Any area not paved or covered by a building or structure shall be maintained in ground cover, landscaping or natural plant materials.

In front of all exposed building foundations or masonry walls visible from any street or abutting property, evergreens shall be planted in good soil and in sufficient quantity to have, at the time and planting, a silhouette equal to 20 percent of the visible foundation.

All lawns and plant material are to be kept in neat and good appearance. Such maintenance shall include fertilizing, watering, pruning, mowing, re-seeding and replacement of dead plant materials.

To the maximum extent possible, existing healthy shade trees having a caliber of five (5) or more inches and flowering trees have the caliber of one (1) or more inches shall be retained.

All landscaping materials and plants shall be provided in accordance with good landscaping practice. All plant materials shall be clearly located and identified on the Site Plan submitted in Section 8 of the Zoning Regulations; and a plant listing shall be included giving the botanical name, common name, height and/or caliper, quantity and spacing where appropriate.

All landscaping designs should include streetscape improvements with street trees to create a unified streetscape throughout the district. The Commission shall determine the type and size of streetscape trees. The Commission may require that the developer install public sidewalks or any other pedestrian circulation facilities, if it finds that it would promote public safety and pedestrian utilization of the area. All public sidewalks shall be within the public right- of-way, in a location approved by the Planning and Zoning Commission, upon advice and input from the Department of Transportation of the State of Connecticut,/and or the Town Engineer of the Town of Middlebury, as appropriate.

34.8

Maintenance:

All exterior surfaces of buildings and other structures requiring periodic maintenance shall be painted, cleaned, repaired, or restored as appropriate on a regular and thorough basis so as to maintain a neat and clean appearance at all times.

All buildings and appurtenances shall be maintained at all times. This includes, but not limited to, the prompt repair of paved areas, soil erosion measures, curbs, gutters, downspouts, windows, awnings, signs, walls, terraces, fountains, sculpted material, benches and lighting.

All private storm drains, culverts, catch basins and gutters are to be kept free of debris, snow or other obstructions at all times.

34.9

Refuse Storage:

This section is intended to control the number, size, location, and screening of refuse storage areas in order to protect the public health, safety and general welfare.

- 34.9.1 Facilities for the storage of refuse and garbage shall be located in such a manner as to make the facilities inconspicuous to the general public.
- 34.9.2 Refuse storage areas shall be enclosed and screened from view with fencing, wall or hedge/shrubs unless waived by the Commission.
- 34.9.3 Refuse storage areas shall be easily accessible for service vehicles and building occupants and shall not interfere with required parking spaces or travel lanes.
- 34.9.4 Refuse storage areas shall have a concrete pad, unless waived by the Commission.
- 34.9.5 No other outside sheds or storage bins for refuse will be allowed unless specifically approved by the Commission.

34.10 Access Management:

This section is intended to control the number, size, and location of driveways and access points for business uses, especially those that front on heavily trafficked roads and state highways, in order to promote overall traffic control and promote public safety and welfare.

34.10.1 The Commission shall review parking layout and configuration, traffic circulation within the site, the number and location of the access points two in from the site, the nature and type of traffic circulation on adjacent roadways, and the type and condition of the adjacent roadways to ensure the public safety and welfare is promoted with the greatest efficiency.

34.10.2 Where a parcel has adequate frontage, the center lines of access drives on the same side of the street shall be no closer than 150 feet apart. In all other cases, they shall not be less than 100 feet apart. This requirement may be modified by the Commission to accommodate requirements of the State Department Transportation or State Traffic Commission

34.10.3 Where street geometry, traffic volumes or traffic patterns of warrant, the Commission may:

- Limit the number of driveways that serve a specific site;
- Designate the location of any driveway;
- Require the use or provision of a share driveway with associated easements.

34.10.4 As part of the application approval, the Commission may require an applicant or owner to:

- Established mutual driveway or other in easements to provide a single point of access for two or more abutting properties in a location acceptable to the commission:
- File easements on the LAN records in the favor of the abutting property owners and/or the town as a shall be acceptable to the commission and the Town Attorney:
- Utilize a mutual driveway or other easement that exists on abutting property in lieu of having a separate curb cut onto a road or street.

34.10.5 Any easement filed shall be in a form legally acceptable to the Town.

34.11 Architecture:

This section is intended to allow the Commission to control the general architectural characteristics of buildings in the Gateway Design District.

- 34.11.1 The choice of building facing materials, particularly for facades visible from a street, shall be permanent, durable materials, such as wood, natural brick, quarry tile, poured in place or precast concrete, and stone. The architectural design of buildings should be compatible, in size, scale, and design, with the small town character of Middlebury.
- 34.11.2 Buildings in structures shall be designed to screen or hide any large air conditioning, ventilation, water storage or ductwork that can be seen from a street or residential district.
- 34.11.3 The design of accessory buildings in structures shall match the design of primary buildings in structures.
- 34.11.4 Architectural renderings shall be provided as part of the Site Plan application and shall include a detailed list of materials and colors.

34.12 Required Parking:

Parking shall be provided and designed in accordance with Section 62 of these regulations and the following:

- A. A minimum ten (10) foot setback of parking areas from public right-of-ways shall be provided for landscaping;
- B. Parking in the front of a property shall be limited to one double aisle.

SECTION 11-HEIGHT, AREA AND YARD REQUIREMENTS

	G.I.D.D.
Min. Lot Area	40,000 S.F.
Min. Lot Area for Family Unit	N/A
Min. Lot Area Interior Lot	40,000 S.F.
Min. Square	150'
Min. Frontage	150'
Min. Setback from Street	50'
Min. Setback from other Property Line	20'
Min. Setback from State Highway	75'
Max. Stories	2.5
Max. Height	35'
Max. Lot Coverage	35%
Max. Floor Area	30%

ARTICLE IV

LIGHT INDUSTRIAL DISTRICT

SECTION 41 – LIGHT INDUSTRIAL – 80 DISTRICT

41.1 Permitted Uses:

The following uses are permitted in a Light Industrial District when in conformance with Section 61 and 8-12.

- 41.1.1 Light manufacture, processing or assembly of products and the packaging of foods, beverages, toilet supplies, pharmaceuticals, perfumes and displaying of such products that are primarily available by catalogue.
- 41.1.2 Warehousing.
- 41.1.3 Office building for executive, business and professional use.
- 41.1.4 Research laboratories.
- 41.1.5 Public utility company electric, gas and telephone, substations and public utility company water storage facilities, treatment facilities and pump stations and Town facilities.
- 41.1.6 Motor vehicle service station, subject to the securing of a Special Exception from the Planning and Zoning Commission in accordance with Section 52.
- 41.1.7 Farms, including truck gardens, forestry and the keeping of livestock and Poultry, subject to the provisions of Section 8.
- 41.1.8 The following accessory uses, when clearly subordinated and subsidiary to the uses permitted in Subsections 41.1.1, 41.1.2, 41.1.3, 41.1.4, 41.1.5, 41.1.6, and 41.1.7 of this Section.
 - A. Off-street parking and loading, as provided in Section 62;
 - B. Garages for storage of company, employee or visitor vehicles;
 - C. Dining facilities, clinics, recreational facilities and transient guest lodges, which shall be used only by those actually employed by the concern or by business visitors on the premises;
 - D. Storage with a permanent structure:

- E. Outdoor storage enclosed by buildings, fences or walls so as to effectively screen the storage area from any other lot or from any street; and shall not extend into the area required for set back from a property line, street line or residence district boundary line and shall not exceed 5 percent of the lot area, or 4,000 square feet, whichever is greater.
- F. Vehicular access;
- G. Electric, telephone, gas, water, sanitary sewer treatment facilities, storm drains, other utilities and outdoor lighting;
- H. Landscaping: Landscape material and features permanently maintained any area not covered by a building or structure, or paved, shall be landscaped with trees, shrubs, lawns or left in a natural state if already wooded. Site development shall preserve major trees and existing landscape features wherever possible. Along and adjacent to any Residential District boundary line, a strip of land not less than one hundred (100) feet in width in an Industrial District shall be landscaped with trees and shrubs to effectively screen the commercial or industrial development from the residential district.
- I. Outdoor recreational facilities used only by those employed on the premises or by business visitors on the premises;
- J. Signs, as provided in Section 63;
- K. Direct sales of catalogue products to customers, provided that such use occupies no more than twenty-five (25%) of the total square feet of floor area of the permitted use.

41.2 Site Plan:

Prior to approval of any application for CERTIFICATE OF ZONING COMPLIANCE for a use permitted under this Section, a site plan shall be submitted and approved in accordance with the provisions of Section 51.

41.3 Prohibited Uses:

Any use not specified above as permitted is prohibited. To assist in the interpretation of permitted uses in Light Industrial – 80 District, the following uses, the listing of which is not intended to be exhaustive, are specifically prohibited.

- 41.3.1 The prohibited uses specified in Section 6 and Section 31 and 8.12.
- 41.3.2 Metal plating and finishing other than lacquering and anodizing.
- 41.3.3 Manufacturing and processing of food and kindred products.
- 41.3.4 The use of polychlorinated biphenyls or hydrocarbon mixtures containing polychlorinated biphenyls in concentrations greater than two (2) parts per million, including the storage thereof.
- 41.4 Special Exception Uses:**
- 41.4.1 Employee Stores, subject to the Special Standards of Section 52 and, if improvements constituting a new structure or affecting the outside of existing structures is involved, site plan approval as required above.
- 41.4.2 Day Nurseries, subject to the Special Standards of Section 52 and Site Plan approval as required above.
- 41.4.3 Metal finishing limited to anodizing.
- 41.4.4 Indoor recreational facility to be used for physical development and entertainment of children ages 2-14. The facility will also be available for parties anticipated to be held on weekends and occasionally midweek. The maximum number of persons shall be seventy (70) on weekend days thirty (30) on midweek days. The number of vehicles midweek shall be limited to fifteen (15). The hours of operation shall be from 10:00 AM to 8:00 PM. Not outdoor displays shall be allowed. Signage will comply with the Zoning Regulations Section 63, as amended.
- 41.4.5 Accessory uses customary with incidental to any aforesaid Special Use.
- 41.4.6 Full-Service Restaurants where customers are served foods and beverage only when seated at tables or counters within an enclosed building. Such use may include a food take-out service incidental to the primary permitted use but shall not include establishments where customers are served in motor vehicles or served primarily at food take-out counters, and which full-service restaurant meets the following special criteria:
- A. The square footage allocated to the Restaurant shall not consist of greater than 25% of the usable square footage of the building in which it is located.
- B. The perimeter of the Restaurant footprint, and if applicable its

accessory outdoor dining area perimeter footprint, shall be located at least 100 feet from the nearest road and at least 200 feet from the nearest residential zone.

41.4.7

An outdoor dining area as an accessory use to a full-service restaurant described above as a permitted use under this Section and which, as to said outdoor area, meets the following special criteria:

- A. The area shall not have a permanent roof covering but may be shaded by a fabric awning or tables may be shaded by umbrellas.
- B. Outdoor dining shall be in an area adjacent to an existing building and surrounded on three sides by such building or a wall no less than 30" in height.
- C. The outdoor dining area shall not be located in any required front, rear, or side yard setback area.
- D. The outdoor dining area shall not be located in any parking area.
- E. The outdoor dining area shall not extend closer than eight (8) feet to any parking area traveled way
- F. The outdoor dining area shall not interfere with any required means of egress or ingress to the adjacent building.
- G. The outdoor dining area shall have a floor surface of impervious material such as concrete or brick pavers, that may, be washed and swept easily and such floor shall be maintained daily, asphalt may not be utilized.
- H. Food and beverages shall be served by waiters and/or waitresses and the area shall not be utilized for takeout food.
- I. Alcoholic beverages may be served only with meals.
- J. All waste materials emanating from usage of the outdoor dining area shall be picked up and disposed of by the waiters and/or waitresses at the end of each seating and disposed of with the interior dining service. In no event shall waste material be deposited or stored at any time in outdoor receptacles.

- K. Disposable dishes, cups, glasses and tableware, shall not be used. All such items shall be of materials designed for repeated re-use indefinitely.
- L. The seating capacity for any outdoor dining area shall not exceed 50% of the seating capacity for the indoor customer of the restaurant.
- M. Adequate parking for the outdoor dining area determined in accordance with the standard for restaurants under Section 62 of these regulations shall be available during those hours of the day when the outdoor dining area is to be in operation; and the Commission may, in its discretion, designate limited hours of operation as part of the granting of a special exception.

SECTION 42 – LIGHT INDUSTRIAL – 200 DISTRICT

42.1 Permitted Uses:

Land, buildings and other structures shall be used for one (1) or more of the following uses and no other when in compliance with Section 61 and 8-12 of these regulations.

- 42.1.1 Executive offices.
- 42.1.2 Business offices.
- 42.1.3 Research laboratories.
- 42.1.4 Light manufacture, processing or assembly of products and the packaging of foods, beverages, toilet supplies, pharmaceuticals, perfumes and similar products.
- 42.1.5 Warehousing.
- 42.1.6 Public utility substations, company electric, gas and telephone substations and public utility company water storage facilities, treatment facilities and pump stations and Town facilities.
- 42.1.7 Open space and farms, including truck gardens, forestry and the keeping of livestock and poultry, subject to the provisions of Section 8.
- 42.1.8 The following accessory uses, when clearly subordinate and subsidiary to the uses permitted in Subsection 42.1.1, 42.1.2, 42.1.3, 42.1.4 and 42.1.5 of this Section.
 - A. Off-street parking and loading, as provided in Section 62;
 - B. Garages for the storage of company, employee or visitor vehicles;
 - C. Dining facilities, clinics, recreational facilities and transient guest Lodges, which shall be used only by those actually employed by the Concern or by business visitors on the premises;
 - D. Storage within a permanent structure;
 - E. Outdoor storage enclosed by buildings, fences or walls so as to effectively screen the storage area from any other lot or from any street; and shall not extend into the area required for set back from

a property line or residence district boundary line and shall not exceed 5% (five percent) of the lot area or 4,000 (four thousand) square feet whichever is greater.

- F. Vehicular access;
- G. Electric, telephone, gas, water, sanitary sewer, sewage treatment facilities, storm drains, other utilities and outdoor lighting;
- H. Landscape material and features permanently maintained and any area not covered by a building or structure, or paved, shall be landscaped with trees, shrubs, lawns or left in a natural state if already wooded. Site development shall preserve major trees and existing landscape features wherever possible. Along and adjacent to any Residential District boundary line, not less than one hundred (100) feet in width in an Industrial District shall be landscaped with trees and shrubs to effectively screen the commercial or industrial development from the Residential District;
- I. Outdoor recreational facilities used only by those employed on the premises or by business visitors on the premises;
- J. Signs, as provide in Section 63;
- K. Direct sales of catalogue products to customers, provided that such use occupies no more than twenty-five percent (25%) of the total square feet of floor area of the permitted use.

42.2 Height, Area and Yard Requirements

The height area and yard requirements set forth in Section 11 for Light Industrial-80 Districts shall apply in all LI-200 Districts, except as follows:

- 42.2.1 Parcel Size and Setbacks:
Each lot, including rear lots, shall have a minimum area of 5 acres.
- 42.2.2 Setbacks:
No building or structure shall extend closer than 100 feet from any street Line or other property lines; and no building or structure shall extend within fifty (50) feet of any wetland or watercourse.
- 42.2.3 Intensity of Development:
The aggregate lot coverage of all buildings and structures shall not exceed 20 percent (20%) of the lot area; and the total floor area of all buildings

and structures shall not exceed 30 percent (30%) of the area of the lot. The ground coverage of all buildings, structures, outdoor storage area and off street parking and loading areas on any lot shall aggregate no more than 60 percent (60%) of the area of the lot.

42.2.4 Height of Buildings:

The Commission may grant a Special Exception, under Section 52 of these Regulations to permit an increase in the height of executive offices, business offices, water storage facilities, communications facilities, elevator penthouses, and heating and cooling facilities.

42.3 Site Plan:

Prior to approval of any APPLICATION FOR CERTIFICATE OF ZONING COMPLIANCE for a use permitted under this section, a SITE PLAN shall be submitted and approved in accordance with the provisions in Section 51.

42.4 Special Exception Uses:

42.4.1 Day Nurseries, subject to the Special Standards of Section 52 and site plan approved as required above.

42.4.2 Metal finishing limited to lacquering or anodizing.

42.4.3 Museums.

42.4.4 Commercial Health Club Facility – including exercise room(s) containing exercise apparatus, tennis courts and swimming pool facilities which may be located indoors and/or outdoors, together with accessory uses thereto. Permitted accessory uses shall include bath houses with lockers, dressing rooms, showers and restrooms, retail sale of apparel, accessories and supplies applicable to the permitted uses; snack bars which are intended for the preparation and sale of food and beverages on site; picnic shelters and tables, on-site parking and incidental buildings for the storage of supplies and housing of mechanical equipment. No off-street parking shall be permitted within thirty (30) feet of any street. Notwithstanding the other regulations for street and side-yard setbacks as required in the LI-200 Zone, the minimum setback for tennis courts and ancillary fencing shall be thirty-five (35) feet from the sideline. A landscaped buffer shall be required along such fencing and/or tennis courts to substantially screen the fencing and tennis courts from the street and adjacent property.

To be eligible for this use in this zone, parcels shall contain a minimum of ten (10) acres; have immediate access to existing sanitary sewer lines and

to any existing public water system provided that both the Water Pollution Control Authority and the Water Commission have determined that sufficient sewer capacity and an adequate water supply exist to service the facility.

42.4.5 Accessory uses customary with the incidental to any aforesaid Special Exception.

42.5 Special Standards:

In addition to the requirements and standards set forth in Section 8 (Additional Standards), Section 51 (Site Plans), Section 61 (Performance Standards), Section 62 (Parking and Loading) and Section 63 (Signs) of the Regulations, the following special standards shall apply and shall prevail over any conflicting standards contained in any of said Sections.

42.5.1 Public Utilities:
All electrical and telephone utilities on an industrial lot shall be located underground.

42.5.2 Parking:
Off-street parking and loading spaces shall be provided in accordance with Section 62 of these Regulations. Where such off-street parking or loading spaces are inadequate, additional off-street parking or loading spaces shall be provided to meet the requirements of the use.

Off-street parking in front of principal buildings or structures shall be limited to one aisle and adjoining parking stalls for handicapped, visitor and reserved parking.

No part of any setback adjacent to a residential zoning district shall be used for off-street parking or loading. Notwithstanding the foregoing, for properties zoned LI-200 as of May 1, 2001 which are adjacent to property subsequently changed from LI-200 to R-40/PRD, the minimum setback for parking shall be ten (10) feet.

No off-street parking shall be permitted within fifty (50) feet of any street.

Loading areas shall be located to the rear or side of all buildings and structures and shall be enclosed except for necessary access, by buildings and/or by walks, landscaped embankments or evergreen shrubs or trees so as to screen the loading area from any street or abutting properties.

All off-street parking areas shall be graded, stabilized and paved with

bituminous concrete or armor coat and maintained so as to cause no nuisance or danger. Curbs, walls or embankments shall be provided so that vehicles will not overhang sidewalks or pedestrian areas.

All commercial vehicles shall be kept within designated storage or parking areas, except for brief periods required for loading or unloading.

42.5.3

Traffic:

Driveways shall be designed in such a manner that any vehicles, including trucks, can execute normal turning movements onto the street without resorting to wide turns or hazardous maneuvers.

Nothing shall be placed at the entrance of the driveway which would obstruct the view of anyone entering or exiting the street or driveway.

No parking, loading, deliveries or standing will be allowed on any public street. Owners and occupants are required to exercise their full authority to enforce this restriction.

42.5.4

Signs:

The lettering and graphics of a sign on one façade may consist of one line of a maximum letter height of one foot and one line of a maximum letter height of nine inches. Lettering and graphics must be parallel to the building face and must not protrude more than twelve inches from building face. The aggregate area of all lettering and graphics on a façade, of which the lettering or graphics shall be a part, or 120 square feet, whichever is less.

One free standing sign, supported by one or more columns or uprights which are firmly embedded in the ground, shall not exceed 10 feet in height or an area of 50 square feet; and shall be set back from any street line not less than 10 feet.

Private warning and traffic control signs, each not exceeding three square feet in area, shall be located and intended only for warning and traffic control purposes.

All lighting of signs shall be indirect, with the source of illumination not visible beyond any street or property line.

Any exterior sign, except for warning and traffic control signs, shall pertain to or identify the business conducted within the property.

42.5.5 Outdoor Lighting
All outdoor lighting shall be directed so that the source of illumination is not visible beyond the property line or lot.

All areas subject to pedestrian and vehicular traffic during hours of darkness shall be lighted.

42.5.6 Architecture:
Choice of building facing materials, particularly for facades visible from a street, shall be permanent, durable materials, such as natural brick, quarry tile, poured in place or pre-cast concrete, stone and architectural metal panels and siding, if the surfaces are dull and the finish is factory applied, in earth tone colors.

Buildings and structures shall be designed to screen or hide any large air conditioning, ventilations, water storage or duct work that can be seen from a street or a residential zoning district.

42.5.7 Accessory Buildings:
All accessory buildings or structures shall have the same architectural character as the principal building.

42.5.8 Performance Standards:
Garbage and waste materials stored or placed outdoors shall be kept in covered waterproof and sanitary containers or dumpsters. Garbage and waste materials shall not be allowed to accumulate.

Except in areas designated for clean fill, free from unsuitable and unstable material, in connection with a site plan approved in conformance with the Zoning regulations of the Town of Middlebury, no dumping of any material is allowed.

42.5.9 Landscaping:
Any area not paved or covered by a building or structure shall be maintained in ground cover, landscaping or natural plant materials.

In front of all exposed building foundations or masonry walls visible from any street or abutting property, evergreens shall be planted in good soil and in sufficient quantity to have, at the time of planting, a silhouette area equal to 20 percent (20%) of the visible foundation or wall.

All lawns and plant material are to be kept in neat and good appearance. Such maintenance shall include fertilizing, watering, pruning, mowing, re-seeding and replacement of dead plant material.

To the maximum extent possible, existing healthy shade trees having a caliber of five (5) or more inches and flowering trees having a caliber of one (1) or more inches shall be retained.

All landscape materials and plants shall be provided in accordance with good landscaping practice. All plant materials shall be clearly located and identified on the Site Plan submitted under Section 8 of the Zoning Regulations of the Town of Middlebury; and a plant listing shall be included giving the botanical name, common name, height and/or caliper, quantity and spacing where appropriate.

42.5.10

Outside Storage:

All outside storage areas, including sanitary containers and dumpsters, shall be enclosed, except for necessary access, by buildings and/or by walls, landscaped embankments or evergreen shrubs or trees so as to screen the storage area from view from any street or abutting property.

Outside storage of corrosive, combustible, hazardous, malodorous or poisonous materials shall not be permitted.

Outside storage areas shall not extend into any area required for setback or within fifty (50) feet of any wetland, watercourse or other environmentally sensitive areas.

Outside storage shall not exceed 5 percent (5%) of the lot area or 4,000 (four thousand) square feet whichever is greater.

42.5.11

Erosion Control:

Both short term and permanent erosion control practices, recommended by the Soil Conservation Services of the U.S. Department of Agriculture, shall be provided and properly maintained. The Site Plan submitted under Section 8 of these Regulations shall specify the individual responsible for erosion control during construction.

42.5.12

Maintenance:

All exterior surfaces of buildings and other structures requiring periodic maintenance shall be painted, cleaned, repaired or restored as appropriate on a regular and thorough basis so as to maintain a neat and clean appearance at all times. Changes in color are subject to the approval of the Commission.

Snow removal from walks, driveways, parking areas, drainage structures, loading docks, etc., are the responsibility of the owner or occupant. All

such areas shall be cleared promptly and neatly and in such a manner so as not to interfere with the public traffic or private access for employees.

All buildings and appurtenances shall be maintained at all times. This includes, but is not limited to, the prompt repair of paved areas, soil erosion measures, curbs, gutters, downspouts, windows, awnings, signs, walls, terraces, fountains, sculptured material, benches and lighting.

All private storm drains, culverts, catch basins and gutters are to be kept free of debris, snow or other obstructions at all times.

42.6 Special Procedures:

In obtaining Site Plan approval, the following special procedures shall be adhered to by the Applicant and the Commission:

- 42.6.1 Copies of the Site Plan and Architectural Plans required by Section 8 and Section 51 of these Regulations shall also be submitted to the Middlebury Economic and Industrial Development Commission for review by said Commission, in sufficient detail and completeness to show that the proposed improvements will be in accordance with the controls, restrictions and standards contained in this Section 42.

- 42.6.2 A report, identifying the amount and composition of all industrial wastes and the proposed method and location of disposal of such wastes, shall be submitted to the Economic and Industrial Development Commission, concurrently with copies of the Site Plan and Architectural Plans, for review and recommendation. Any changes in the type of industrial waste, the method and location of disposal shall be reported to the Economic and Industrial Development Commission for review and recommendation.

- 42.6.3 The Middlebury Economic and Industrial Development Commission shall review the Site Plan and Architectural Plans, and issue a written report to the Planning & Zoning Commission, within forty (40) days after official receipt of all of said plans, stating their recommendations and reasons thereof. Neither failure to issue such report nor an adverse report shall preclude approval by the Commission.

- 42.6.4 An “as-built” or “record drawing” of all required improvements, prepared, signed and sealed by a land surveyor, licensed to practice in the State of Connecticut, shall be submitted to the Planning & Zoning Commission and Economic and Industrial Development Commission prior to issuance of a Certificate of Occupancy.

42.6.5 With respect to the application of Section 10 of these regulations to non-conforming lots located in a LI-200 Zone, the Five (5) year limitation contained in Subsection 10.5.3 of these regulations (as presently printed) shall not apply and in its place there shall be substituted a ten (10) year limitation solely for purposes of this Section 42.

42.7 Prohibited Uses:

Any use not specified above as permitted is prohibited. To assist in the interpretation of permitted uses in Light Industrial-200 District, the following uses, the listing of which is not intended to be exhaustive, are specifically prohibited:

42.7.1 The prohibited uses specified in Section 4, Section 6, and Section 31 and 8.12.

42.7.2 Metal plating and finishing other than lacquering or anodizing.

42.7.3 Manufacturing and processing of food and kindred products.

42.7.4 The use of polychlorinated biphenyls or hydrocarbon mixtures containing polychlorinated biphenyls in concentrations greater than two (2) parts per million, including the storage thereof.

ARTICLE V

SITE PLANS, SPECIAL EXCEPTIONS

&

SPECIAL DISTRICTS

SECTION 51 – SITE PLANS

51.1 General:

The following regulations shall apply to the submission and administrative approval of SITE PLANS for the establishment of certain uses of land, buildings and other structures as specified in Business and Industrial Districts. All provisions of this Section are in addition to other provisions applicable in the district in which the use is to be located.

51.2 Application:

The SITE PLAN, submitted to the Zoning Enforcement Officer with an APPLICATION FOR CERTIFICATE OF ZONING COMPLIANCE, shall include the following:

51.2.1 Statement of Use:

A written statement describing the proposed use in sufficient detail to determine compliance with the use provision of the Regulations and the performance standards of Section 61: four (4) copies shall be submitted.

51.2.2 Site Plans:

Four (4) copies of a site plan, in accordance with the provisions of Section 8.

51.2.3 Architectural Plans:

Four (4) copies of architectural plans, which may be in preliminary form, in accordance with the provisions of Section 8.

51.2.4 Waiver:

The Zoning Commission, upon written request by the applicant, may by resolution waive the required submission of that part of the information specified under Subsections 51.2.2 and 51.2.3 which pertains to existing buildings, structures and/or site development that are not proposed to be altered or changed if the Commission finds that the information is not necessary in order to decide on the APPLICATION.

51.2.5 Additional Information:

The Commission reserves the right to require the applicant to furnish such additional information as the Commission may deem necessary in processing any application hereunder.

A CERTIFICATE OF ZONING COMPLIANCE granted under this Section shall be valid only if execution of the plan is substantially underway within a period of 18 months from the date of approval, and is completed within three (3) years after said date of approval.

51.3 Duties of the Commission:

In acting upon an application, the Commission shall consider the following regarding the acceptability of the proposed site plan:

51.3.1 General:

The proposed use, buildings and other structures, including outside storage areas, site development, and off-street parking and loading, shall conform to all of the requirements of these Regulations, including those hereinafter set forth.

51.3.2 Neighborhood:

The site plan and architectural plan shall be related harmoniously to the terrain and to existing buildings in the vicinity that have a visual relationship to the proposed buildings. They shall aspire to accomplish the transition in character between areas of unlike character, to protect property values, and to preserve and enhance the appearance and beauty of the community. Considerations may include the enclosure of space in conjunction with other existing buildings or other proposed buildings and the creation of focal points with respect to avenues of approach, terrain features and other buildings.

51.3.3 Landscape:

The landscape shall be preserved in its natural state insofar as practical, by minimizing tree and soil removal, and any grade changes shall be in keeping with the general appearance of neighboring developed areas.

51.3.4 Drives, Parking and Circulation:

With respect to vehicular and pedestrian circulation, including walkways, interior drives and parking, special attention shall be given to location and number of access points to avoid undue hazards to traffic and undue traffic congestion on any public or private street, to general interior circulation, separation of pedestrian and vehicular traffic, and arrangement of parking areas that are safe and convenient and, insofar as practical, do not detract from the design of proposed buildings and structures in the neighboring property.

51.3.5 Utility Service:

Electric and telephone lines shall be underground wherever feasible. The proposed method of sanitary sewerage shall be indicated and shall be in accordance with applicable standards of the Director of Health of the Town of Middlebury, The Connecticut State Health Department and the Connecticut Department of Environmental Protection.

- 51.3.6 Paving and Drainage:
All off-street parking and loading areas and driveways shall be suitably paved and shall be drained so that removal of surface waters will not adversely affect neighboring properties or the public storm drainage system. Storm water shall be removed from all roofs, canopies and paved areas and carried away in an underground drainage system. Surface water shall be collected at intervals so that it will not obstruct the flow of vehicular or pedestrian traffic and will not create puddles in the paved area.
- 51.3.7 Advertising Features:
The size, location, design, color, texture, lighting and materials of all permanent signs and outdoor advertising structures or features shall not detract from the design of proposed buildings and structures and the surrounding properties.
- 51.3.8 Special Features:
Exposed storage areas, exposed machinery installations, service areas, truck loading area, utility buildings and structures and similar accessory areas and structures, shall be subject to such setbacks, screen plantings or other screening methods as shall reasonably be required to prevent their being incongruous with the existing or contemplated environment and the surrounding properties
- 51.3.9 Effect on Residential Areas:
Adequate natural screening and buffer zones shall be provided to substantially insulate the proposed use, buildings and other structures, including outside storage areas, off-street parking and loading from adjacent residential areas, and to substantially block the view of the foregoing from the first floor windows of existing residences immediately adjacent thereto. Outdoor illumination, including signs, shall strictly comply with Section 63 of these Regulations and shall not glare in the windows of any adjacent residences.
- 51.3.10 Application:
The standards herein contained shall also apply to all accessory buildings, structures, free-standing signs and other site features however related to the major buildings or structures

51.4 Architectural & Site Plan Review:

The Commission shall refer each site plan application to the Beautification Committee appointed by the Board of Selectmen, or to an architectural review board, if one exists under the Regulations, or to any other architectural advisor which the Commission may

select, who shall review the application and all material submitted with it for the purpose of advising the Commission whether, in the opinion of such Committee, Board of advisor, the completed project will meet the criteria for acceptability set forth under the duties of the Commission above. Such report shall be presented in writing or by testimony before the Commission before any action is taken on the application. The contents of said report and any recommendations contained therein shall not be binding in any way upon the Commission, but shall only be advisory and may be used by the Commission to assist it in performing its duties under these Regulations.

51.5 Approval:

The Commission may approve, disapprove, or approve with modification an application to develop land under this Article. When acting to approve any application, the Commission shall file with the Town Clerk at least once copy of the approved site plan, showing the Commission's modifications, if any, and no development or significant alteration shall be permitted except in conformity with an approved plan.

51.6 Performance Bond:

Before approval by the Commission, the applicant shall post a performance bond in form and amount satisfactory to the Commission, and with a bonding company licensed to do business in the State of Connecticut as surety conditioned on the carrying out of the above conditions and any other safeguards imposed, and providing that in case of default, the surety shall promptly take any and all steps necessary to comply with said conditions. The bond furnished hereunder shall contain a provision that the surety will not release said bond until all the work called for therein has been performed to the satisfaction of the Commission and the Commission has so notified the surety.

51.7 Referral:

All site plans shall be referred to the Middlebury Police Department and to the Middlebury Fire Department for comment.

SECTION 52 – SPECIAL EXCEPTIONS

52.1 **Purpose**

The purpose of the Special Exception regulations is to provide a comprehensive review of the proposed plan for the layout of the building(s), structure(s) or use(s) in relationship to the topographical, geological and other natural features of the land, and of the impact of the use(s) upon the environment, health, safety, welfare and convenience of the members of the community. It is intended to ensure that the design and layout of the site and the proposed use(s) will constitute suitable and appropriate development in character with the neighborhood and will not result in a decrease in property values or a detriment to the present and potential use of the area in which it is to be located. Special exception procedures are also intended to assure that proposed buildings, structures and uses will provide for the maintenance of air, surface water and groundwater quality and will not be detrimental to existing sources of potable water or other natural or historic resources.

52.2 **When Required**

A special exception must be issued by the Commission before any person may establish or change any land use, or use, erect, construct, move, enlarge or alter any building or structure, in whole or in part, if the use, structure, or building resulting from such activity is listed as a use requiring a special permit under Articles II, III, IV, and VI of these Regulations for the zone in which it would be located.

52.3 **Application**

Applications for special exceptions shall be filed with the Commission on a form provided by the Commission. If the applicant is not the owner of the property on which the activity is proposed, the relationship of the applicant to the owner shall be described on the application form. The application shall contain a written statement by the owner of the property or his/her authorized agent giving consent for the Commission and its agent(s) to inspect the property. Two (2) copies of each application shall be submitted, accompanied by five (5) copies of the special exception plan, which shall be based upon and include a Class A-2 survey prepared by a Connecticut-licensed surveyor and shall contain the embossed seal and original signature of the land surveyor, showing all revision dates and necessary definitions and legends, and a scale of one inch (1”) equal to no more than forty feet (40’), and also showing:

- 52.3.1 All the information specified for a site plan under Section 8 of these Regulations.
- 52.3.2 A key map and a scale of one inch (1”) equal to not more than one thousand feet (1,000’) to assist in locating the property.
- 52.3.3 The direction of true North.
- 52.3.4 The location of all required setback and yard lines and all easements.
- 52.3.5 The names and addresses of all owners of record of both the lot and all land abutting or within one hundred (100) feet of the lot.
- 52.3.6 The location in names of the Town or State streets, roads or highways that adjoin or pass through the lot.
- 52.3.7 The location of all flood prone areas.
- 52.3.8 The location of all zone boundaries within, abutting or within one hundred (100) feet of the lot.
- 52.3.9 The location of all soil test pits and test borings and a description of the soils encountered in such pits or borings.
- 52.3.10 The location of all existing lighting or signs.
- 52.3.11 The nature an amount of all hazardous materials or wastes to be produced, used, stored or disposed of on the lot, and the manner in which such production, use, storage or disposal will be carried out.
- 52.3.12 The nature of existing land uses on abutting properties.
- 52.3.13 The location of all slopes in excess of fifteen (15) percent, rock outcroppings and forested areas on the lot.
- 52.3.14 The location and a description of all measures to be used to prevent soil erosion and sedimentation.
- 52.3.15 Spaces on each sheet for the signature of the Commission chairman, the date of the chairman’s signature, and the date on which of the special exception approval will expire.

- 52.3.16 Each application for a special exception show also be accompanied by five (5) copies of:
- A. A written statement describing the proposed use in sufficient detail to determine compliance with these Regulations.
 - B. A written analysis of the ability of the proposed building, structure or use to meet the Performance Standards set forth in Section 61 and to provide groundwater protection.
 - C. A traffic report prepared by a traffic engineer indicating existing traffic conditions at normal and peak travel times for, at a minimum, all streets abutting or passing through the property affected by the application and all streets within three miles of such property, and also indicating the projected impact of the proposed use on such traffic conditions.
 - D. The schedule for all construction or other development activities, including, but not limited to, erection of or other work on any buildings or structures, grading, removal of vegetation, landscaping, drainage and other improvements.
 - E. A statement as to whether the lot is within the watershed of a water company, as defined in Section 16-1 of the General Statutes. When an application, petition, request or plan is filed concerning any project on any sight within the watershed of a water company, the applicant shall mail written notice of such projects, including a copy of the application and a full set of plans, to the water company by certified mail, return receipt requested, within seven (7) days after the date of the submission of the application
 - F. A report from the Fire Marshall attesting as to the safety of the proposed location, site plan, buildings and facilities.
 - G. A report from the Director of Health of the Town attesting to the adequacy of the proposed location, site plan, buildings and facilities for its intended use.

52.3.17 All the information specified for architectural plans under Section 8 of these Regulations.

52.4 Waiver of Certain Requirements for Special Exception

52.4.1 The commission may waive any of the requirements for special exception plans

under Subsections 52.3.1 through 52.3.14 of these Regulations if, and only if, the following conditions exist or are met:

- A. The proposed activity does not involve the construction, erection, alteration, enlargement, removal or other modification of a principle building or structure; and
- B. The proposed activity will not require the use of new wells or new or larger private sewage disposal facilities.

52.4.2 The Commission may waive any of the requirements of Subsection 52.3.16 of these Regulations if, and only if, the Commission determines that the requirements sought to be waived are not a reasonably necessary to a proper disposition of the application.

52.4.3 No waiver under this section shall be granted unless the applicant submits to the Commission, in writing, at the time of and together with the submission of the application, a request for a waiver specifying the requirements the applicant seeks to have waived and the reasons why the applicant believes those requirements should be waived. The Commission shall render a decision on any timely filed request for waiver within 35 days after the day of receipt of the application to which it pertains. If the Commission fails to act on any request for a waiver within such 35 days, the request waiver shall be deemed to be denied.

52.5 Additional Requirements for Application

The Commission may require the applicant to submit additional information if the Commission finds that such information is necessary or would be helpful in determining whether the proposed buildings, structures or uses conform to these Regulations. Such information may include, but is not limited to, the following:

52.5.1 Chemical analyses of existing surface water and groundwater;

52.5.2 Hydrological analyses of runoff and peak flows, both before and after development;

52.5.3 Analyses of local air quality, both before and after development;

52.5.4 Depths to seasonal high groundwater levels and bedrock;

- 52.5.5 Analyses of wildlife habitats on and near the site and the impact of the proposed use on such use on such habitats;
- 52.5.6 A description of vegetation types, including any rare or endangered species on the lot to be used under the application;
- 52.5.7 A list of all other federal, state or municipal permits or licenses the applicant will need to implement the uses applied for and the status of any application for such permits or licenses;
- 52.5.8 Architectural or engineered drawings of any proposed buildings or structures;
- 52.5.9 Existing and proposed (finished grade) contours at intervals of not less than two (2) feet;

52.6 Standards for Special Exceptions

All buildings, structures and uses for which a special exception is required under these Regulations must meet the applicable standards set forth throughout these Regulations and, in addition, the following standards:

- 52.6.1 Preservation of Landscape
A landscape shall be preserved in its natural state insofar as practicable by minimizing grading and the removal of vegetation and soil. Where the vegetative covered does not exist or has been removed, new plantings may be required. Finished site contours shall depart only minimally from the character of the natural site and the surrounding properties.
- 52.6.2 Relation of Buildings to Environment
The signs, intensity and design of the proposed project of development shall be related harmoniously to the terrain and to the use, scale and siding of existing buildings in the vicinity of the site. All buildings and other structures shall be sited to minimize disruption of the topography and the character of the neighborhood. Strict attention shall be given to the proper functional, visual and spatial relationships of all structures, buildings, and landscape elements and paved areas. The use shall not create a nuisance to neighboring properties, whether by noise, air or water pollution, offensive odors, dust, smoke, vibrations, lighting or other effects.

52.6.3

Buffer Areas

All buffered and/or screened areas, including setback areas (landscaped and the usable), shall be so designed as to be consistent and compatible with residential uses.

52.6.4

Circulation

With respect to vehicular and pedestrian circulation, including entrances, ramps, walkways, drives and parking, special attention shall be given to location and number of access points to the public streets, width of the interior drives and access points, general interior circulation, separation of pedestrian and vehicular traffic, accessibility of emergency vehicles, access to community or public facilities, and arrangement of parking areas that are safe and convenient and, insofar as practicable, do not detract from the use and enjoyment of proposed buildings and structures and the neighboring properties.

52.6.5

Surface Water Drainage

Special attention shall be given to proper surface drainage so that surface waters will not adversely affect neighboring properties or public storm drainage facilities, will not obstruct the flow of vehicular or pedestrian traffic and will not create standing water in paved or pedestrian areas. All surface water drained from roofs, streets, parking lots and other site features shall be disposed of in a safe and efficient manner that will not create problems of water runoff or erosion on the site or on neighboring sites or pollution of surface water or groundwater. Insofar as possible, natural drainage courses and swales shall be properly stabilized and drainage-impounding areas shall be utilized to dispose of water on the site through natural percolation to what degree equivalent to that prior to development. Also, appropriate erosion control measures shall be employed, including slope of stabilization measures and seeding of exposed areas to replace a vegetative cover.

52.6.6

Preservation of Water Quality and Quantity

The proposed use shall be designed to minimize any risk of surface water or groundwater pollution, soil erosion and sedimentation and water diversion. Groundwater recharge shall be maximized to an extent consistent with the protection of groundwater quality. Where groundwater elevations are close to the surface, extra site grading precautions may be required to maintain the protective function of the overburdened.

52.6.7

Utilities

The placement of the electric, telephone or other utility lines and equipment shall

be underground where possible, so located as to provide no adverse impact on groundwater levels and coordinated with other utilities.

52.6.8 Other Site Features

Exposed storage or utility areas, exposed machinery installations and service areas shall be designed with screen plantings, fencing or other screening methods to be compatible with the environment in the surrounding properties.

52.6.9 Safety

All open and enclosed spaces shall be designed to facilitate evacuation and to maximize accessibility by fire, police and other emergency personnel and equipment.

52.6.10 Neighboring Properties

The proposed uses shall not adversely affect the value of properties in the general vicinity thereof, or cause undue concentration of population or structures.

52.6.11 Natural and Historical Resources

The proposed uses shall not unreasonably destroy, damage or threaten locally significant natural or historical resources.

52.7 Conditions

The Commission may place on any special exception whatever conditions the Commission may reasonably deem necessary to assure that any proposed building, structure or use (1) will conform to the standards and limitations set forth in these Regulations, including, but not limited to, the Performance Standards in Section 61; (2) will protect the rights of individuals and their health, safety, welfare and convenience of local residents and the community; (3) will protect local property values; and (4) will meet the specific standards set forth in Subsection 52.6 and other applicable sections of these regulations. The conditions may relate to, without limitation, the architectural in spatial design and layout of buildings, structures and uses; provisions for lighting, parking, loading, surface and subsurface drainage, sanitary facilities, waste disposal, vehicle and pedestrian circulation, landscaping, screening, and protection of the environment and of natural and historic resources; construction or other development schedules; and hours of operation of the proposed building, structure, or use. The Commission may also condition the issuance of any special exception on the posting of a bond or other security, in an amount and with surety satisfaction to the Commission, to secure the performance of all conditions in the completion of all improvements required under such special exception.

52.8 Special Exception Procedure

52.8.1 Public Hearing

Within sixty-five (65) days after the day of receipt of an application for a special exception, the Commission shall commence a public hearing on the application. For the purposes of this Section, the day of receipt of an application shall be deemed to be the day of the next regularly scheduled meeting of the Commission immediately following the day of submission of the application to the Commission or its authorized agent, or thirty-five (35) days after such submission, whichever is sooner. The hearing may be continued one or more times, but it must be concluded not later than thirty (30) days after the date of commencement.

52.8.2 Notice of Public Hearing

Notice of the time and place of the commencement of the public hearing shall be published at least twice in the form of a legal advertisement in a newspaper having a substantial circulation in the Town of Middlebury, at intervals of not less than two (2) days, the first notice to be published not more than fifteen (15) days nor less than ten (10) days, at the last not less than two (2) days before the date of commencement of the hearing.

52.8.3 Decision

Within sixty-five (65) days after the completion of the public hearing, the Commission shall either: (1) approve the special exception and the special exception plans as submitted; (2) approve the special exception and a special exception plan with conditions or modifications, as provided under these Regulations; or (3) deny the special exception and special exception plan. The Commission shall state the reasons for its decision on its records. Notice of the decision shall be published in the form of a legal advertisement in a newspaper having a substantial circulation in the Town of Middlebury, and also sent by certified mail to the applicant within fifteen (15) days after the decision has been rendered.

52.8.4 Extension of Time

The applicant may consent to extensions of the time periods for (1) commencing a public hearing after the receipt of an application, (2) concluding a public hearing, and (3) rendering the decision. The total extension of any such period shall be no longer than the original period as specified in these Regulations.

52.8.5

Final Special Exception Plan

- A. Any special exception plan approved by the Commission without modifications or conditions shall become the final special exception plan upon the signature of the Commission chairman. If the Commission approves a special exception plan with modifications or conditions, a final special exception plan that incorporates such modifications or conditions must be submitted to the Commission by the applicant within sixty-five (65) days after the date of approval. For good cause shown, the Commission may extend the time for filing the final special exception plan. If a final special exception plan is not filed within such sixty-five (65) day period or within any period of extension, the approval of the special exception plan shall be void.

- B. The Commission approval shall state that the approval will automatically expire five years from the date of approval, or at such other time as is provided by state law, and shall specify such expiration date. The applicant shall file the final special exception plan in the office of the Middlebury Town Clerk and shall pay all required filing fees. No special exception permit shall be effective until the special exception plan has been filed in the office of the Middlebury Town Clerk.

52.8.6

of the special permit, (3) state the regulation under which the special permit is issued, and (4) state the names of all owners of record of the premises. The applicant or record owner shall be responsible for filing and recording the special exception permits and shall pay all filing and recording fees.

52.8.7

Re-application

No special exception permit shall be granted to any applicant for a building, structure or use if a previous application by the applicant, or by a different applicant on behalf of the same party in interest, for substantially the same building, structure or use on the same property has previously been denied by the Commission on its merits within two (2) years prior to the submission of the new application to the Commission.

52.8.8

Expiration

All special exceptions will expire five (5) years from the date of approval. A renewal for a special exception must be applied for in a timely manner.

A renewal may not require an additional public hearing. The Commission, in review of the application for renewal may take into account the compliance with or failure to comply with the criteria of the special permit during the preceding five (5) years.

52.9 **(Reserved)**

52.10 **Special Standards**

52.10.1 **Roadside Stands**

Roadside stands shall be established only for the display and sale of farm products grown on the premises where the stand is located, shall not exceed a maximum ground coverage of 400 square feet, shall observe all setbacks required for buildings and other structures and shall be provided with at least one (1) off-street parking space for each 50 square feet of ground coverage.

52.10.2 **Day Nurseries**

Day nurseries shall conform to the following Special Standards:

- A. The use shall be limited to daytime group care programs for children or adults.
- B. The application shall be accompanied by a report from the Director of Health of the Town attesting that the proposed location, site plan, buildings and facilities complying in all respects with applicable Town and State health laws and regulations and will be adequate, safe and suitable for the intended use;
- C. The Special Exception shall be granted for a limited period of time not to exceed five (5) years.
- D. Day nurseries which care for more than six children shall be located on a lot having at least 40,000 square feet, unless the day nursery cares for more than forty children, in which case, it shall be located on a lot having at least 80,000 square feet.
- E. A day nursery located in a Commercial, Professional Office and Light Industrial Zone (presently CA-40, PO-40, LI-80 and LI-200, but including any other commercial, professional or industrial zone, hereafter enacted) shall conform to the following additional Special Standards.

1. Access shall not require children to cross large parking lots or busy driveways (except driveways with crossing lights or crossing guards).
2. For Children Day Nurseries only, there shall be a grass play area at least one half acre in size immediately adjacent to the day nursery, suitable for play by the children.
3. The day nursery shall not be located where it is subject to noise, odors or fumes from other businesses located in the immediate area.
4. The Commission shall not grant a SPECIAL EXCEPTION in such zones if it reasonably believes that the use of the property for a day nursery will conflict with the planned development for the area or will not further the Town Plan or be an unreasonable impediment to anticipated development in the area.

52.10.3 Convalescent Homes and Hospitals:

Convalescent homes, private hospitals and sanitariums shall be licensed by the State of Connecticut and shall conform to the following Special Standards:

- A. The use shall be located on a lot having a minimum area of 10 acres, and there shall be no more than one (1) patient bed for each 10,000 square feet of lot area.
- B. No building or other structure established in connection with such use shall extend within less than 100 feet of any property or street line.
- C. The use shall comply in all respects with applicable laws and regulations of the State of Connecticut.

52.10.4 Clubs:

Golf, tennis, swimming or other similar clubs shall be located on a lot of not less than 10 acres, and no building, structure or recreation facility established in connection with such use shall extend within less than 100 feet of any property or street line.

52.10.5 Commercial Kennels and Stables:

Commercial kennels, livery and boarding stables and riding academies shall be located on a lot of not less than ten (10) acres. Dogs shall be kept in buildings, enclosures or runs located not less than 200 feet from any property or street line. Any building in which livestock are kept shall be located not less than 100 feet from any property or street line.

52.10.6 Public Utility Substations:
Public utility substations and telephone equipment buildings shall conform to the following Special Standards:

- A. Any equipment or utility facilities not located in a building shall be enclosed on all sides by evergreen shrubs or trees or by buildings, fences, walls or embankments so as to be screened from view from any other lot or from any street

52.10.7 Supportive Rental Housing for Persons with Ph^ysical Disabilities:

- A. The use shall be located on a lot having a minimum area of 40,000 square feet and there shall be no more than one rental dwelling unit per 8,000 square feet of lot area.
- B. The minimum lot frontage on a street shall be 150 feet and the lot shall be of such a shape that a square of 160 feet on each side will fit on the lot.
- C. The use shall be on a lot adjacent to or across the street from a CA-40 district.
- D. All utilities shall be located underground. Each such dwelling and all dwelling units shall be served by public sanitary sewer and by adequate water supply as determined by State of Connecticut standards.
- E. The building height shall not exceed one story and necessary roof structure with total height not to exceed 35 feet.
- F. There shall be a buffer having a minimum width of 20 feet landscaped to provide limited screening from adjoining properties to the satisfaction of the Commission.
- G. All exterior lighting shall be located and arranged so as not to cause off-site glare and shall be residential in character.
- H. Driveway and parking areas shall be bituminous concrete.
- I. The site plan and architectural plans shall be of a character as to harmonize with the neighborhood, to accomplish a transition in character between areas of unlike character, to protect property values and to preserve and enhance the appearance and beauty of the community.
- J. Passive interior recreation space shall be provided at a minimum of 40 square feet per dwelling unit.
- K. Passive exterior recreation space shall be provided at a minimum of 200 square feet per dwelling unit.

52.10.8 An outdoor dining area as an accessory use to a full-service restaurant.

An outdoor dining area as an accessory use to a full-service restaurant described above as a permitted use under this Section and which, as to said outdoor area, meets the following special criteria:

- A. The area shall not have a permanent roof covering but may be shaded by a fabric awning or tables may be shaded by umbrellas.
- B. Outdoor dining shall be in an area adjacent to an existing building and surrounded on three sides by such building or a wall no less than 30" in height.
- C. The outdoor dining area shall not be located in any required front, rear or side yard setback areas.
- D. The outdoor dining area shall not be located in any parking area.
- E. The outdoor dining area shall not extend closer than eight (8) feet to any parking area traveled way.
- F. The outdoor dining area shall not interfere with any required means of egress or ingress to the adjacent building.
- G. The outdoor dining area shall have a floor surface of impervious material such as concrete or brick pavers, that may be washed and swept easily and such floor shall be maintained daily; asphalt may not be utilized.
- H. Food and beverages shall be served by waiters and/or waitresses and the area shall not be utilized for takeout food.
- I. Alcoholic beverages may be served only with meals.
- J. All waste materials emanating from usage of the outdoor dining area shall be picked up and disposed of by the waiters and/or waitresses at the end of each seating and disposed of with the interior dining service. In no event shall waste material be deposited or stored at any time in outdoor receptacles.
- K. Disposable dishes, cups, glasses and tableware shall not be used. All such items shall be of materials designed for repeated re-use indefinitely.

- L. The seating capacity for any outdoor dining area shall not exceed 50% of the seating capacity for the indoor customer of the restaurant.
- M. Adequate parking for the outdoor dining area determined in accordance with the standard for restaurants under Section 62 of these regulations shall be available during those hours of the day when the outdoor dining area is to be in operation; and the Commission may, in its discretion, designate limited hours of operation as part of the granting of a special exception.

52.10.9

Motor Vehicle Dealerships:

- A. A motor vehicle dealership may be located on a lot, which has not less than 200 feet frontage on Straits Turnpike (Rt. 63) and abuts the Watertown town line. For the purpose hereof, the term "lot" shall mean one or more parcels of property, which are contiguous, under unified ownership or control and designed and developed as a coherent group. The portion of the lot to be used for a motor vehicle dealership purpose may not extend further than 570 feet south of the Watertown town line and further than 400 feet east or west of Straits Turnpike, said delineation line to be perpendicular to said Straits Turnpike.
- B. A motor vehicle dealership may have outside storage of motor vehicles in excess of the area set forth in Section 8 of these Regulations; provided, however, that such outside storage area for motor vehicles for sale by the motor vehicle dealership shall not exceed sixty percent (60%) of the area of the lot and provided that the outside storage area shall be effectively screened from adjoining property by fencing, landscaping or other ornamental screening.
- C. For purposes hereof the setback requirements shall not apply to fencing, landscaping or other ornamental screening necessary to screen effectively any motor vehicle outside storage area from adjoining property.

52.10.10

Signs:

- A. Purpose: Signs permitted by SPECIAL. EXCEPTION are those unusual as to size, location, number or content but which under favorable circumstances will be appropriate and harmonious in their location provided they are considered on an individual basis.
- B. Criteria: The Commission must find that there are one or more special circumstances or conditions which are unique to the premises and are not shared by a majority of other premises in the neighborhood. These circumstances or conditions must include one of the following items:

1. Location of the building on the lot;
 2. Location of buildings on adjacent lots in relation to the applicant's building;
 3. Front yard visual barrier or landscaping;
 4. Topography of the lot;
 5. Configuration or size of the lot.
- C. The Commission must determine that one or more of the above circumstances or conditions:
1. Substantially diminish recognition of the principal business conducted thereon;
 2. Substantially limit easy identification of a group of stores or a shopping center.
- D. The Commission shall determine that the material of construction, the design and location of the sign will be in harmony with the architecture of the building, the design of the site and the character of the area. The major elements of detached signs shall be constructed of natural material unless other materials are specifically approved by the Commission, and the signs shall be located within a landscaped area,

52.10.11

Employee Stores:

Employee stores shall conform to the following Special Standards:

- A. The employee store shall be located in a plant, warehouse or office building occupied by the employer, which is more than 500 feet from any town line.
- B. The employee store shall sell only products manufactured, assembled or sold by the employer.
- C. Such store may be opened to the public primarily to conduct market research, to test inventoried control systems, to gather sales information and/or to test product presentation and display alternatives, or similar employer business related matters.

- D. If the employee store is open to the public it shall provide adequate parking in accordance with Section 62 and may have signage provided such signage conforms to Section 63, but in no event shall any sign exceed 16 square feet in area.

52.10.12 The Sale of Alcoholic Beverages in a Family Restaurant:

The sale of alcoholic beverages in a family restaurant, as defined hereafter, shall conform to the following Special Standards:

- A. A family restaurant use shall be limited to no more than two (2) such uses within a 1,500 foot radius of any other family restaurants or situated within a 500 foot radius of any other parcel of land which is used for public or private school, a public park, place of worship, charitable institution, a hospital or library.
- B. Such use shall be at least 200 feet from any establishment selling all classes of alcoholic beverages by the glass, as measured from entrance to entrance.
- C. For the purpose of this section, “family restaurant” is defined as a restaurant serving indoor, sit down meals, maintaining hours opening in no later than 11:00 AM and closing by 11:00 PM, having no stand up bar, no live entertainment and serving of alcoholic beverages only to patrons being served meals on the premises.

52.10.13 Assisted Living Facilities:

Assisted living facilities shall conform to the following Special Standards:

- A. Occupancy for Assisted Living Facilities is open to an individual fifty-five years of age or older, or a household in which one member must be fifty-five years of age or older or to individuals meeting the requirements of “Section 811, Supportive Housing for Persons with Disabilities”, Handbook 4571.2 June 19, 1997 by the U.S. Department of Housing and Urban Development.
- B. The maximum density shall be 6 dwelling units per 40,000 square feet of land; and no off-street parking shall be permitted within 30 feet of any street.
- C. The maximum size lot for an Assisted Living Facility is 15 contiguous acres.
- D. The minimum floor area for units shall be 360 square feet per assisted living unit, except that units to be occupied by persons afflicted with Alzheimer’s or

other forms of dementia may have a minimum floor area of 308 square feet per unit and shall not exceed approximately 40% of all units in the total development. The average floor area for units shall be 425 square feet per assisted living unit.

- E. The maximum height shall be limited to 2 ½ stories or 35 feet. Accessory buildings shall be limited to 1 ½ stories or 25 feet.
- F. All building shall be of good quality design and appearance so as to blend harmoniously with the site and the neighborhood. Such design shall convey an impression in feeling to persons familiar with architecture that these dwellings units are of quality in substance and the Assisted Living Facility is a desirable place to live. All structures shall be of a single consistent architectural style to create a harmonious appearance.
- G. All utilities shall be underground, and all above grade electric or telephone utility boxes and other apparatus shall be suitably screened with plant material or by an architectural screen compatible with the exterior materials of the dwelling units.
- H. Not less than two parking spaces per three assisted living units and any accessory convalescent unit shall be provided for resident, employee and visitor parking. The Commission may also require reasonable additional parking in its discretion. All parking shall comply with the relevant provisions of Section 62.
- I. Visitor parking spaces shall be located within 200 feet from the farthest dwelling unit to be served if the average topographical grade between the parking spaces and the dwelling units is less than five percent. In the case of buildings with one or more community entrances, said 200 feet shall be measured from the nearest entrance.
- J. The Commission at its discretion may require perimeter buffering depending upon the location of industrial structures on adjacent lots, natural buffers and proposed physical improvements or buffers.
- K. Assisted Living Facility maybe constructed utilizing good quality wood siding such a cedar or redwood.
- L. In addition to information required by Section 42 and Section 52 of these Regulations, the following shall be submitted with each application.

1. A written report by a qualified traffic engineer evaluating the impact of the Assisted Living Facility on the transportation system, including the amount of traffic projected for the proposed facility and the adequacy of the surrounding streets and traffic controls to accommodate existing traffic, projected traffic from the proposed facility and a projected traffic from other approved developments in the area.
 2. Information on land areas adjacent to the proposed facility to indicate the relationship between existing and proposed utilization of surrounding properties, including land uses, zoning, densities, height of structures, circulation systems, public facilities and unique natural or historic features.
 3. Proposed types, quantities and general location of residential units, including square footage and number of bedrooms and densities for the facility.
 4. Examples of proposed property types for the residential units, typical lot and/or building layouts and elevations of all buildings (front, back and both sides) showing proposed textures, materials and colors. Identical buildings will not require multiple evaluations.
 5. A map showing all wetland areas, water courses and slopes above twenty-five percent.
 6. A summary table indicating compliance with the development standards. The table will show proposed phasing (if any), the number and type of buildings and units, number of parking spaces required and provided, square footage and percentage of lot area coverage by pavement and buildings, lot area frontage and landscape requirements and amount of open space provided.
 7. Any other information the Commission deems appropriate for a proper in complete review of the application.
- M. In approving an application, the Commission shall meet the following findings:
1. The need exists in the community for Assisted Living Facilities and the need further exists for the number of such facilities proposed.

2. The development and design of the Assisted Living Facilities will not have an adverse effect on surrounding properties, will be in harmony with the immediate neighborhood, and will not have an adverse effect on property values in the area.
- N. A Special Exception granted from an Assisted Living Facility shall be valid for a period of five years from the date of granting such Special Exception and the proposed facility and related improvements must be completed within said time period otherwise the Special Exception will expire, unless extended for one or more years in the discretion of the Commission.

SECTION 53 – FLOOD PLAIN DISTRICT

53.1 General:

The Flood Plain District is a class of district in addition to and overlapping one or more of the other districts. For the purposes of these regulations, the Flood Plain District shall include all areas of special flood hazard, Zones A1-A30, and floodway areas as shown on maps entitled ‘Flood Insurance Rates Map, Town of Middlebury, Connecticut’ and ‘Flood Boundary and Floodway Map, Town of Middlebury, Connecticut’, effective October 16, 1979 as part of the final Flood Insurance Studies, dated April 1979 prepared by the U.S. Department of Housing and Urban Development, Federal Insurance Administration. Said maps and any amendments thereto are hereby declared to be a part of these regulations and shall be on file in the Town Clerk’s Office.

References to and provisions in this Section 53 to “manufactured home(s)”, “manufactured home park” and “manufactured home site” shall not be construed as allowing or permitting any such structure or use in any zone except to the limited extent manufactured homes presently permitted under Section 65. The inclusion of references to and provisions concerning the foregoing structures and uses is merely for the purpose of enacting comprehensive Flood Plain Regulations in accordance with Federal Emergency Management Agency regulations, which take in to account the possibility of future zoning changes and for no other purpose. Accordingly, no other implication shall be drawn therefrom.

53.1.1 Definitions

For the purpose of this Section, certain words shall have the following Meaning:

Base Flood: means the flood having a one percent chance of being equaled or exceeded in any given year.

Base Flood Elevation: means the elevation of the base flood as recorded on the Flood Insurance Rate Map and accompanying stream profile data.

Floodway: means the high risk channel area of a watercourse and adjacent land area that must be reserved to discharge the base flood without increasing water surface elevations more than one foot.

Lowest Floor: means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access or storage, in an area other than a basement area, is not considered a building’s lowest floor.

Manufactured Home: means 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 also includes park trailers, travel trailers, and similar transportable structures placed on a site for greater than 180 consecutive days and intended to be improved property.

Manufactured Home Park or Subdivision: means a parcel, or contiguous parcels, of land divided into two or more manufactured home lots for rent or sale.

Development: means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.

New Construction: means structures for which the start of construction commenced on or after the effective date of this Section.

Start of Construction: includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a structure (including a manufactured home: on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage excavation or placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling, nor does it include the installation of streets and/or walkways; nor does it include the excavation for a basement, footings, piers or foundations or the erection of temporary forms, nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Structure: means a walled and roofed building, a manufactured home, or a gas or liquid storage tank that is principally above ground.

Substantial Improvement: means any combination of repairs, reconstruction alteration or improvements to a structure, the costs of which equal or exceeds 50% of the market value of the structure as determined by the cost approach of value, the quantity survey method, the segregated cost method or the square foot method either before the improvement or repair is started or before the damage occurred if the structure has been

damaged and is being restored. For the purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

Basement: means that portion of a building having its floor subgrade (below ground level) on all sides.

Flood Hazard Boundary Map (FHBM): means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the areas of special flood hazard have been defined as A zones.

Flood Insurance Rate Map (FIRM): means an official map of a community on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the applicable risk premium zone.

Flood Insurance Study: is the official report by the Federal Emergency Management Agency. The report contains flood profiles as well as the Flood Boundary Floodway Map and the water surface elevation of the base flood.

Floor: means the top surface of an enclosed area in a building (including basement) i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction., The term does not include the floor of a garage used solely for parking of vehicles.

Functionally Dependent Facility: means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, ship repair, or seafood processing facilities. The term does not include long-term storage manufacture, sales, or service facilities.

Mean sea level (MSL): means, for purposes of the National Flood Insurance Program, the North American Vertical Datum (NAVD) of 1929 or other datum, to which base flood elevations shown on a community’s Flood Insurance Rate Map are referenced.

National Geodetic Vertical Datum (NGVD): as corrected in 1929 is a vertical control used as a reference for establishing varying elevations in the flood plain.

Water surface elevation: means the height, in relation to the North American Vertical Datum (NAVD) of 1929 (or other datum where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

53.1.2

Purpose

The Flood Plain District recognizes that there are areas of the Town of Middlebury that are subject to potential, periodic, occasional or frequent flooding and which function as part of the natural drainage system of the Town. These regulations serve to establish necessary minimum standards and review procedure over the use of land in the Flood Plain District in order to: reduce flooding hazard to human life and health; reduce flood damages to public and private property, minimize disruptions of commerce and governmental services; protect property values; maintain the natural drainage system's capacity to safely store and transport flood waters; and minimize damaging flood erosion and any increases in downstream flood potential.

53.2

Permit Procedure

In the Flood Plain District, no structure shall be constructed, reconstructed, enlarged, extended, moved or structurally altered, no land use shall be established and no land shall be filled, graded or excavated until the Planning and Zoning Commission has approved a plan for the proposed structure, land use or alteration of land contour. Such approval shall not be granted or permit issued unless the plan complies with all of the requirements of Subsections 53.3, 53.4 and 53.5.

53.3

General Standards

In all areas of special flood hazard, the following provisions shall apply:

53.3.1

New construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

53.3.2

New construction and substantial improvement shall be constructed of materials resistant to flood damage and using methods and practices that minimize flood damage.

53.3.3

Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulation within the components during conditions of flooding.

- 53.3.4 New and replacement water systems shall be designed to minimize infiltration of flood waters. New and replacement sanitary systems shall be designed to minimize infiltration of flood waters and discharge from the systems into flood waters. On-site sanitary disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- 53.3.5 In any portion of a watercourse which is altered or relocated, the flood carrying capacity shall be maintained.
- 53.3.6 Manufactured Homes
All manufactured homes (including “mobile” homes placed on site for 180 consecutive days or longer) shall be installed using methods and practices which minimize flood damage and shall be elevated and anchored to resist flotation, collapse, lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- 53.3.7 Structures and improvements shall be designed to cause the least possible impediment to the flow of floodwater and debris.
- 53.3.8 No outdoor storage of materials shall be permitted which would tend to be floated by floodwater and cause obstructions downstream.
- 53.3.9 All proposed development activities shall be reviewed to assure that all necessary permits have been received as required by Federal or State law. Such permit requirements may include, but not be limited to: Stream Channel Encroachment Line Permit, Water Diversion Permit, Dam Safety Permit, Corps of Engineers 404 Permit.

53.4 Specific Standards

The following provisions shall apply in all areas of special flood hazard A1-30, AE, AH or A zones where base flood elevation data has been provided in accordance with Subsections 53.1 or 53.9.4 of these regulations.

- 53.4.1 New construction and substantial improvements of any residential structure shall have the lowest floor, including basement, elevated at least two (2) feet above the base flood elevation.
- 53.4.2 New Construction and substantial improvement of any non-residential structure shall have the lowest floor, including basement, either elevated or flood proofed to at least two (2) feet above the base flood elevation. All flood-proofed structures shall meet the following standards: Together

with all attendant utilities and sanitary facilities, the areas of the structure below the required elevation shall be water tight with walls substantially impermeable to the passage of water, and shall use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall review and/or develop structural design specifications and plans for the construction, and shall certify that the design and methods of construction are in accordance with acceptable standards of practice for meeting the provisions of this subsection.

53.4.3

Manufactured Homes

All manufactured homes (including “mobile” homes placed on a site for 180 consecutive days or longer) to be placed or substantially improved shall meet the following standards:

- A. On sites which are (1) outside of a manufactured home park or subdivision, (2) in a new manufactured home park or subdivision, (3) in an expansion to an existing manufactured home park or subdivision, or (4) in an existing manufactured home park or subdivision on which a manufactured home has incurred “substantial damage” as the result of a flood:
 - 1. Be elevated on a permanent foundation such that the lowest floor is at least two (2) feet above the base floor elevation;
 - 2. Be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

- B. On sites which are in an existing manufactured home park or subdivision other than those described in Subsection 53.4.3.A
 - 1. Be elevated so that either (i) the lowest floor of the manufactured home is at least two (2) feet above the base flood elevation; or (ii) the chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade; and
 - 2. Be securely anchored to an adequately anchored foundation system to resist flotation, collapse and lateral movement.

53.5 **Floodway Standards**

- 53.5.1 In A Zones where base flood elevations have been determined, but Before a floodway designated, no new construction, substantial improvement, or other development (including fill) shall be permitted which will increase base flood elevations more than one (1) foot at any point along the watercourse when all anticipated development is considered cumulatively with the proposed development.

- 53.5.2 For areas without existing regulatory floodways, should data be requested and/or provided, the Town shall adopt a regulatory floodway based on the principle that the floodway must be able to convey the waters of the base flood without increasing the water surface elevation more than one (1) foot at any point along the watercourse.

- 53.5.3 Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris and potential projectiles and have erosion potential, no encroachment including fill, new construction, substantial improvements, and other developments shall be permitted in a floodway unless a technical evaluation demonstrates that the encroachment will not result in any (0.00 feet) increase in flood levels during the base flood discharge. All other Flood Plain District standards must also be satisfied.

53.6 **Application Requirements**

Application for approval of development in a flood plain shall be submitted to the Planning and Zoning Commission, and it shall include the following:

- 53.6.1 Three black and white prints of a plot plan of the premises, drawn to scale and certified by a licensed land surveyor and civil engineer, showing the actual shape and dimensions of the lot, the size and location of all existing and proposed structures and land uses, the layout of parking and loading facilities where applicable, and access thereto existing and proposed grades, base flood elevation data, and limits of the Flood Plain area.

- 53.6.2 Elevation in relation to mean sea level of the proposed lowest floor (including basement) of all structures (Subsection 53.4.1);

- 53.6.3 Elevation in relation to mean sea level to which any non-residential structure shall be flood-proofed (Subsection 53.4.2);

- 53.6.4 Description of the extent to which any watercourses will be altered or relocated as a result of proposed development;

- 53.6.5 A statement as to whether or not the proposed alterations to an existing structure meet the criteria of the substantial improvement definition (Subsection 53.1.1);
- 53.6.6 A statement as to whether there will be dry access to the structure during the 100-year storm event;
- 53.6.7 Certification as to flood-proofing, as required by Subsection 53.4.2;
- 53.6.8 Certification as to floodway heights, as required by Subsection 53.5.3;
- 53.6.9 Such other information as required by the Planning and Zoning Commission to determine compliance with these regulations.

53.7 Responsibilities of the Planning and Zoning Commission

In the administration of these regulations, the Planning and Zoning Commission shall perform the following duties, among others:

- 53.7.1 Obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source in order to administer the provisions of Subsections 53.4 and 53.5, when base flood elevation data or floodway data have not been provided in accordance with Article 3, Section B.
- 53.7.2 Make the necessary interpretation, where needed, as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions). The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in the article.
- 53.7.3 Record and maintain a record of the actual elevation of the lowest floor, including basement, of all new or substantially improved structures in the Flood Plain District. The Planning and Zoning Commission shall also record the actual elevation to which flood-proofing is effective and flood-proofing certifications for all new or substantially improved flood-proofed structures.
- 53.7.4 Notify adjacent municipalities and the Water Resources Unit of the Connecticut Department of Environmental Protection prior to any alteration or relocations of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.

53.8 Building Permit

No building permit shall be issued which is not conformance with the approved plan and with any other regulations governing the use of the applicant's property.

53.9 Standards for Subdivision Proposals

In all special flood hazard areas the following requirements shall apply:

- 53.9.1 All subdivision proposals shall be consistent with the need to minimize flood damage;
- 53.9.2 All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- 53.9.3 All subdivision proposals shall provide adequate drainage to reduce exposure to flood hazards and;
- 53.9.4 Base Flood elevation data shall be provided for all subdivision proposals and other proposed development (including manufactured home parks and subdivisions) which are five acres or fifty lots, whichever occurs first, and are located in Zone A.

53.10 Variance Procedure

As provided in Section 71 of these regulations, the Zoning Board of Appeals shall hear and decide for variances from the requirements of Section 53 Flood Plain District. In passing upon such applications, the Board of Appeals shall consider the purpose of this Section 53 and all technical evaluations, relevant factors, and standards specified in Section 53 and may attach such conditions to the granting of variances as it deems necessary to further the purposes of this Section.

53.10.1 Conditions Under Which Variances May be Granted

- A. Variances shall only be issued under determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- B. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

SECTION 54 – SPECIAL DEVELOPMENT DISTRICT

54.1 Purpose:

In order to permit and encourage variety and flexibility for commercial and industrial uses in land development that will be in harmony with the objectives of the Comprehensive Plan for the development of the Town of Middlebury, the Commission, upon application, may approve, disapprove or approve with modifications, a plan for the development of land for Commercial and Industrial development, which plan may require changes in the regular standards applying to the permitted uses of land in the zoning district in which it is located, subject to the following standards and procedures.

54.2 Standards:

- 54.2.1 The property shall have an area of at least ten (10) acres.
- 54.2.2 The Commission shall make findings that the plan as approved will be:
 - A. In harmony with the overall objective of the zoning regulations of the Town of Middlebury.
 - B. Superior to a plan possible under the regular standards of this ordinance.
 - C. In harmony with the actual or permitted development of adjacent properties.
- 54.2.3 The total density of development, in terms of floor space and land coverage shall not be greater than permitted in the district in which the property is located.

54.3 Procedure:

- 54.3.1 Application for approval for a special plan shall be made in writing to the Commission and shall be accompanied by a site plan which site plan shall be submitted and approved in accordance with the provisions of Section 51. Each application shall include the following information:
 - A. For each building and land area proposed to be used a description of the proposed uses, operations and equipment, number of employees and other occupants, and techniques to be used in preventing the emission of any noise, vibration, radiation, odor or dust, smoke, gas, fumes, or other atmospheric pollution of any kind.

B. A statement of the director of Health as to the adequacy of any proposed sewerage disposal system.

54.4 Public Hearing:

The Commission shall hold a public hearing on the proposed plan and shall approve, disapprove, or approve said plan with modifications.

Such development plan, if approved by the Commission, shall modify or supplement the regulations of the zoning ordinance as they apply to the property included in the approved plan. A special development plan that required a change in zoning district shall not be approved until the Commission has adopted such change in accordance with the procedure for amendments set forth in Section 74 of the Regulations.

54.5 Conditions:

The Commission may attach any conditions to its approval as it considers necessary in order to assure continued conformance to the approved plan and the zoning regulations, and may also require the submission of a suitable performance bond in accordance with the provisions in Section 51 of this ordinance.

54.6 Filing Requirements:

A copy of the approved plan on good quality heavy linen cloth or other materials that would be suitable for filing in the public land records on sheets twenty-five inches (25) by thirty-six (36) shall be filed, at the applicant's expense, in the offices of the Town Clerk and a copy on permanent tracing material shall be filed with the zoning enforcement officer. Any approved plan not so filed within ninety (90) days after approval by the Commission shall be null and void.

54.7 Notation of Changes:

A suitable notation shall be made in the zoning regulations and on the zoning map identifying any property for which a special development plan has been approved.

54.8 Amendments:

Applications for changes and approved plans shall be made and acted upon in the same procedure as required for the initial applications.

54.9 Special Regulations Applicable Only to SDD No. 1:

The following Special Regulations pertaining to height, area, yard and similar requirements shall be applicable to the land included within the boundaries of SDD No. 1

and shall supersede any inconsistent requirements elsewhere in the Regulations:

- A. Maximum Height 50 feet;
- B. Maximum lot coverage (buildings and structures) 40%;
- C. Maximum ground coverage (buildings, structures, outdoor storage areas, off street parking and loading) 60%;
- D. Maximum floor area ratio 60%;
- E. New street right of way width 50 feet;
- F. New street pavement width 30 feet;
- G. Minimum setback from new street 50 feet;
- H. Minimum setback from existing street 100 feet determined prior to compliance with Section 4.4.5b of the Subdivision Regulations;
- I. Minimum setback from other property line 50 feet;
- J. Parking in front of building not limited;
- K. Minimum parking setback from street (except Benson Road) 20 feet;
- L. Minimum number of parking spaces for all floors of offices 1 per 300 square feet;
- M. Loading spaces 1 per 50,000 square feet;
- N. Minimum gross site area 100 acres.

ARTICLE VI

TOWNWIDE REQUIREMENTS

SECTION 61 – PERFORMANCE STANDARDS

61.1 General:

The use of land, buildings and other structures, wherever located, shall be established in conducted so as to conform to performance standards hereinafter specified. The performance standards established a certain nuisance factors which is committed or exceeded in the use of land, buildings and other structures will be detrimental to the use, enjoyment and value of other land, buildings in structures, will be detrimental to the public health, safety and welfare and will be contrary to the comprehensive plan of zoning. No APPLICATION FOR CERTIFICATE OF ZONING COMPLIANCE shall be approved by the Commission and no CERTIFICATE OF ZONING COMPLIANCE shall be issued by the Commission until the Commission has made a determination that the proposed use of land, buildings in structures will be established and conducted in accordance with the performance standards and with the standards stated in other relevant Town, State and Federal codes, ordinances or regulations, whichever is the more restrictive. The performance standards hereinafter shall be of continuing application.

61.2 Smoke, Gases and Fumes:

No dust, dirt, fly ash, smoke, gas and fumes shall be emitted into the air from any lot so as to endanger the public health and safety, to impair safety on or the value and reasonable use of any other lot, or to constitute a critical source of air pollution.

61.3 Noise:

With the exception of time signals and noise necessarily involved in the construction or demolition of buildings and other structures, no noise shall be transmitted outside the lot where it originates when noise has a decibel level, octave band, intermittence and/or beat frequency which endangers the public health and a safety or impairs a safety on or the value in reasonable use of any other lot.

61.4 Vibration:

With the exception of vibration necessarily in vault in the construction or demolition of buildings, no vibration shall be transmitted outside the lot where it originates.

61.5 Odors:

No offensive odors shall be emitted into the air from any lot so as to impair the value in reasonable use of any other lot.

61.6 Glare:

No light shall be transmitted outside the lot where it originates so as to endanger the public health or safety, including the public safety on any street or highway, or to impair the value and reasonable use of any other lot.

61.7 Refuse and Pollution:

No refuse or other waste materials shall be dumped on any lot except with the approval of the Director of Health of the Town of Middlebury. No refuse or other waste materials and no liquids shall be dumped on any lot or dumped or discharged into any river, stream, estuary, water course, storm drain, pond, lake, swamp or marsh so as to constitute a source of water pollution.

61.8 Building Materials:

No storage of building materials shall be permitted on any lot except on a construction site for which application for Certificate of Zoning Compliance has been granted.

61.9 Danger:

No material which is dangerous due to explosion, extreme fire hazard or radioactivity shall be used, stored, manufactured, processed or assembled except in accordance with the applicable codes, ordinances in regulations of the Town of Middlebury, State of Connecticut and Federal Government.

61.10 Radio Interference:

No use on any lot shall cause interference with radio and television reception on any other lot, and in use shall conform to the regulations of the Federal Communications Commission with regard to electromagnetic radiation and interference.

SECTION 62 – PARKING AND LOADING

62.1 **General:**

Parking spaces and loading spaces shall be provided off the street for any use of land, buildings or other structures in accordance with the standards hereinafter specified. Off-street parking and loading spaces required by this Section shall be permanently maintained and made available for occupancy in connection with and for the full duration of the use of land, buildings and other structures for which such spaces are herein required. All off-street parking and loading spaces here after established, whether required by this Section or not, shall conform to the standards of the paragraph headed “Standards” below.

62.1.1 **Existing Uses:**

Any use already existing shall conform to the standards to the extent that it conforms at the time of adoption of this Section. If any existing use of land, building or other structure is changed to a use require an additional off-street parking and loading spaces to comply with this Section, the additional spaces shall be provided for the new use in accordance with the standards hereinafter specified. Any existing use which it does not conform to the standards of this Section shall not be changed it to a use which would need additional off-street parking and loading spaces to comply with the standards herein unless off-street parking and loading spaces are provided for such new use as required by this Section.

62.2 **Dimensions:**

For the purpose of this Section, one (1) parking space shall constitute an area with such shape, vertical clearance, access and slope as to accommodate one (1) automobile having an overall length of 20 feet and shall contain an area of 180 square feet, (concerns with large parking areas may designate smaller size parking spaces for compact cars if they desire). One (1) LOADIN space shall constitute an area 12 feet in width in 30 feet in length with a vertical clearance of 15 feet with such shape, access and slope as to accommodate one (1) truck having an overall length of 30 feet.

62.3 **Parking Spaces:**

Off-street parking spaces shall be provided in such number and location specified as follows:

62.3.1 **Dwellings (and rented rooms):**

Two (2) spaces for each family or dwelling unit plus one (1) space for each bed in the rented room for tourists or roomers, and located on the same lot with the dwelling.

- 62.3.2 Professional Office (in a dwelling unit):
Four (4) spaces per professional person, and located on the same lot with the dwelling.
- 62.3.3 Auditorium (churches, places of worship, theaters, assembly halls or stadium):
One (1) space for each four (4) seats, and located on the lot not more than 300 feet in a direct line from the building; if the building is located in the Residence District, such parking spaces shall be located on the same lot with the building.
- 62.3.4 Undertaker:
One (1) space for each Four (4) seats, and located on the same lot with the building.
- 62.3.5 Stores and Offices (Retail Stores, business and professional office is, post offices, financial institutions and medical and dental clinics):
One (1) space for each 200 square feet of ground floor area of the building and each 300 square feet of upper floor area, and located on the lot not more than 300 feet in a direct line from the building.
- 62.3.6 Restaurants (and other establishments serving food or beverages):
One (1) space for each 45 square feet of patron floor area, and located on the same lot with the building.
- 62.3.7 Hospitals and Motels (and hotels, convalescent homes and sanitarium):
One (1) space for each bed for patients or guests plus one (1), and located on the same lot with the building.
- 62.3.8 Service Stations (and automobile repair garages):
10 spaces plus five (5) spaces for each garage bay in excess of one (1), and located on the same lot with the building.
- 62.3.9 Commercial and Industrial (including warehouses, wholesale businesses, trucking terminals, research nor laboratories and establishments for the manufacture, processing or assembling of goods):
One (1) space for each 1.5 employees during the largest daily work shift. And located on a lot not more than 400 feet in a direct line below the building,
- 62.3.10 Corporate Offices when located in an office park setting in the LI-200 zone: One (1) space for each three hundred (300) square feet of floor area, ($\frac{3}{4}$) of such space is to be located on the same property not more than five hundred (500) feet into direct line from the building with the balance of the spaces to be located on an adjacent property subject to the provisions of Section 62.4.1 of these Regulations.

- 62.3.11 Supportive Rental Housing for Persons with Physical Disabilities:
Two (2) off-street parking spaces shall be provided for each dwelling unit one of which shall be designed as handicapped parking meeting the requirements of the State Building Code.

Purposes for which there are different numbers of parking spaces required in the preceding Subsection entitled "Parking Spaces", the number of spaces required shall be determined by adding the number of spaces required for each separate use. When two or more classifications provided in said paragraph or applicable to a use of land, buildings or other structures, the classification requiring the larger number of spaces shall apply.

- 62.3.12 Other Uses:
Sufficient off-street parking spaces, as approved by resolution of the Zoning Commission shall be provided in connection with any use not specified in Sections 62.3.1 through 62.3.9 to accommodate the vehicles of all persons occupying the premises so that the purpose and intent of this Section is maintained.

62.4 Joint Use of Parking Space and Deferred Parking Spaces

- 62.4.1 Joint Use of Parking Spaces
The owners of two or more separate premises may establish a joint parking area to provide the total number of required parking spaces.

- 62.4.2 Deferred Parking Spaces
The Commission may permit the construction of up to twenty-five (25) percent of the required number of spaces to be deferred for large parking areas on nonresidential zones when it determines that the proposed use does not warrant the required number of spaces. However, the deferred parking shall be fully designed to the satisfaction of the Commission is part of the approval of the site plan. In the event that the use of the building or premises is changed or the Commission finds that the number of spaces is inadequate for the use, the Commission may direct the owner to construct some or all of the deferred spaces, said construction is to be completed within six (6) months or in such other time as the Commission deems to be appropriate. Upon approval by the Commission of the deferred parking, the applicant shall execute an agreement with the Commission to be recorded on the Land Records of the Town of Middlebury binding the applicant, its heirs, successors and assigns. The agreement shall set forth the terms of the different parking, acknowledge the responsibility of the owner to construct the deferred parking upon the

Commission's notice, and the provision for the owner to reimburse the Town for all costs incurred by the Commission to enforce its order including Attorney's fees and the Town's right to place a lien on the property to recover costs.

62.5 Loading Space:

Each building or structure other than a dwelling having a gross floor area in excess of 4,000 square feet, shall be provided with one (1) off-street loading space on the same lot with the building for each 40,000 square feet of gross floor area or fraction thereof.

62.6 Standards:

All off-street parking and loading spaces shall be designed and constructed in accordance with the following standards:

62.6.1 Design:

Except for parking spaces provided in connection with a dwelling, each parking space shall be provided with adequate area for approach, turning and exit of (an automobile having an overall length of 20 feet) a vehicle without need to use any part of the public street right-of-way. Points of entrance and exit for driveways onto the street shall be located so as to minimize hazards to pedestrian and vehicular traffic in the street. No off-street LOADIN space and no truck loading bay, ramp or deck shall be designed or arranged in a manner that trucks must use any part of a public street right-of-way for maneuvering, or for loading and unloading.

The minimum aisle width required to provide maneuvering space and access to parking stalls shall be as follows:

Full Size Vehicles

<u>Parking Angle (degrees)</u>	<u>Stall Width (feet)</u>	<u>Aisle Width (feet)</u>
45	8.5	13
	9.0	12
	9.5	12
60	8.5	18
	9.0	16
	9.5	15
75	8.5	22
	9.0	21
	9.5	20
90	8.5	24
	9.0	23
	9.5	22

The stall width shall be measured perpendicular to the direction of the parking.

The aisle width dimensions as set forth in the above chart assume one-way circulation for all parking angles. At a parking angle of ninety degrees (90°) the same dimensions apply for two-way circulation.

Where parking stalls are different dimensions share the same aisle, the parking stall required the greater aisle width shall govern.

In Commercial and Industrial Districts, individual parking and loading spaces, aisles, crosswalks, and entrances and exits shall be suitably identified with lines, arrows and signs.

62.6.2

Construction:

All off-street parking and loading spaces shall be suitably improved, graded, stabilized and maintained so as to cause no nuisance or danger from dust or from

storm water flow onto any public street. In Commercial and Industrial Districts all driveways, parking and loading areas shall be constructed of asphaltic concrete, concrete or paving stone. Except for necessary driveway entrance is and except for parking spaces provided in connection with a dwelling, all off-street parking and loading spaces located within 10 feet of any public street right-of-way by a curb, fence or wall or an embankment in such a manner that cars will not overhanging the right-of-way. Where parking and loading spaces abut sidewalks, buffer strips, planting islands or similar construction, a curb or wheel-stop shall be provided to prevent vehicles from overhanging or otherwise damaging said improvements.

62.6.3

Landscaping:

Any parking area accommodating 20 or more cars in connection with the use of land, building or other structures for which approval of a SITE PLAN or SPECIAL EXCEPTION is required under these Regulations shall be provided with shrubs and not less than one (1) tree for each 10 cars in the parking area, in suitably located in landscape islands within or border strips adjacent to the parking area so as to enhance the appearance of the premises. Trees shall be of a species approved by the Zoning Commission, shall be suitably planted and maintained and shall not be less than two (2) inches caliper and 10 feet in height. All landscaped islands shall be landscaped with trees and shrubs to channel internal traffic flow, prevent indiscriminate movement of vehicles, aid pedestrian circulation and improve the appearance of the parking area. In addition, all off-street parking and loading areas of five (5) or more spaces, located between a building or use and the street on which it fronts, shall be separated from the street with a buffer strip. Said strip shall be a minimum of five (5) feet in width and landscape with trees and shrubs to provide for driver and pedestrian safety and to improve the appearance of the parking area.

62.6.4

Town Line Developments:

No premises located within the Town may be used for parking in connection with the use located in another town unless at least a pro rata portion of the buildings in structures comprising such commercial or industrial development are located within the Town. Thus the percentage of total buildings in similar structures of the development located in the Town must equal the percentage of total parking of the development which is located in the Town. The Commission, however, may vary the permissible percentages of buildings and similar structures by granting a Special Exception if it finds that in so doing a superior quality site development plan will result.

No use in another Town may be assessed from any highway or town road in the Town of Middlebury unless the property on which such use is located has no access to a road or highway in the town where it is located, with an access through the Town of Middlebury may only be granted by Special Exception. In granting such a special exception the commission capitalize must find that the increased traffic in the Town of Middlebury and the impact on the neighborhood and connecting roads will be minimal. The Commission may require affirmative covenants, restrictions and other action, which will prevent such access from becoming a through street without the consent of the Town

SECTION 63 - SIGNS

63.1 Permits:

Unless otherwise provided in this Section no sign shall be established, constructed, reconstructed, enlarged, extended, moved or structurally altered until an APPLICATION FOR CERTIFICATE of ZONING COMPLIANCE therefore has been approved by the Commission.

All signs shall conform to the provisions hereinafter specified and to any additional conditions or limitations that may be imposed by the Zoning Commission in connection with the approval of a SITE PLAN or SPECIAL EXCEPTION.

63.2 Purpose:

It is the purpose and intent of this Section to accommodate the establishment of signs necessary for identification, direction and reasonable commercial promotion while avoiding signs of a character, as well as a proliferation and extension of signs, that would be detrimental to the public health and safety, property value and the physical appearance and aesthetic qualities of the community.

63.3 Definition:

The term "sign" shall include every sign, billboard, illustration, insignia, lettering, picture, display, banner, pennant, flag or other device, however made, displayed, painted, supported or attached, intended for use for the purpose of advertisement, identification, publicity or notice, when visible from any street or from any lot other than the lot on which the sign is located and either (1) located out-of-doors or (2) located indoors and intended to be viewed from outside the building. The term "sign", however, shall not include any flag, pennant, or insignia of any governmental unit, or any traffic or directional sign located within the right-of-way of a street when authorized by the Town of Middlebury or State of Connecticut.

63.4 General Standards – All Districts:

Signs in all Districts shall conform to the following standards:

63.4.1 Application:

In addition to the provisions of Section 72, all applications for a Certificate of Zoning Compliance shall be accompanied by a plot plan showing the location of the sign and a building elevation, or a sketch, drawn to scale with dimensions, showing the height, design, materials, colors and illumination of the sign.

- 63.4.2 Discontinuance:
Any sign which is abandoned or the use of which is discontinued shall be removed within 60 days.
- 63.4.3 Illumination:
Any illuminated sign or lighting device shall employ only lights emitting a light of constant intensity and shall be designed, located, erected and maintained to confine or direct all illumination to the surface of the sign with the source of illumination not visible from any street or from any lot other than a lot on which the site is located. Self-illuminated signs shall be such that all direct light sources are completely covered.
- 63.4.4 Maintenance:
All signs together with their supports, braces, guys and anchors, shall be kept in good repair and safe condition. The owner of the premises on which a sign is erected shall be directly responsible for keeping such sign and the premises around it in a clean, neat, sanitary and a safe condition.
- 63.4.5 Non-Conforming Signs:
Currently existing signs of a size or type not permitted in the district in which they are located, or which are situated or eliminated contrary to these regulations, or which do not conform to all provisions of these regulations, will be considered non-conforming structures under this Section and Section 10 if a Certificate of Zoning Compliance has been duly obtained. No non-conforming sign shall be altered or changed unless such sign is made to conform with these regulations. A change shall include a change in name but shall not include normal maintenance activities. Any change of such signs or increase in size shall be deemed to be an enlargement or extension producing an increase in non-conformity. Any sign described above shall not be relocated to any other location unless such relocation results in reducing or eliminating in the degree of non-conformity.
- 63.4.6 Measurement of Area:
The area of a sign shall include all exposed faces of a sign measured as follows:
- A. When such sign is on a plate or framed or outlined, all of the area of such plate, frame or outline shall be included. Only one face of a double facing sign shall be counted in determining conformity to sign area limitations.
 - B. When such sign is comprised only of letters, designs or figures affixed on a

wall, the total area of such sign shall be considered to be the areas of the smallest rectangle or triangle which comes within not less than six (6) inches of all letters, symbols and designs which constitute such a sign.

63.4.7

Location:

- A. No sign shall be located closer than 10 feet from a property line in any district, except names and addresses attached to mailboxes.
- B. No sign shall be located within or shall hang over the right-of-way of any street, sidewalk, driveway, walkway or access-way.
- C. No sign shall be located so close to a street line as to obstruct lines of sight. The required lines of sight are:
 - 1. Local residential streets and unclassified streets - 350 feet;
 - 2. Town collector streets - 475 feet;
 - 3. Town and State arterial streets - 575 feet.
- D. A wall sign supported by a wall shall not be set out more than 20 inches from said wall, and shall not project above the roof line nor beyond the side of such wall.
- E. No sign shall project above the fascia/soffit line of the building nor beyond the side of such wall.
- F. All permitted signs must be located on the same lot as the building or use to which said signs apply.

63.4.8

Height:

If a sign is supported independently of the building or other structure on the premises, the top of said sign or its support shall not be higher than 10 feet from the average ground level in the area of the lot where the sign is located.

63.4.9

Construction of Signs:

All sides shall be constructed of strong material, which will not warp or distort with weather or age, shall be firmly supported so as to withstand wind conditions normally expected throughout the year in the Town.

- 63.4.10 Directory Signs:
Where directory type signs are permitted, the spaces for individual listing shall be located beneath the part of the sign, if any, generally describing the building, shopping center, etc., and such spaces shall be uniform as to size, shape, color and materials used.
- 63.4.11 Mailboxes:
Names and addresses required to be placed on mailboxes by the United States Post Office may be in addition to the signs permitted hereinafter.
- 63.4.12 Design Compatibility:
All signs shall conform to the architecture of the buildings and the character of the environment of the area.
- 63.4.13 Other Codes:
All signs shall be designed and constructed in conformance with all applicable codes and regulations.

63.5 Sign Prohibitions:

Any use not specified in Section 63 as permitted is prohibited. To assist in the interpretation of this Section, the following uses, the listing of which is not intended to be exhaustive, are specifically prohibited.

- 63.5.1 No sign shall interfere in any way with vehicular or pedestrian traffic, traffic signals or signs or visibility of motorists by virtue of the location, color or size of such signs.
- 63.5.2 No sign shall obstruct access to or from any door, exit, window or fire escape, or cause any hazard to the public safety.
- 63.5.3 No artificial light or reflecting device shall be used, located or displayed where such light distracts the attention of users of the street and competes for attention with, or be mistaken for, a traffic signal.
- 63.5.4 No sign shall be animated or flashing, except for the time/temperature device employed as part of an otherwise non-flashing, non-animated display.
- 63.5.5 No signs which flash, move or give the impression of movement in any fashion shall be permitted.

- 63.5.6 The stringing of lights is prohibited, except holiday lighting from November 15 to January 15
- 63.5.7 No sign shall be permitted to be painted or posted directly upon the exposed surface of any wall except for individual raised, mounted letters. All other painted or posted signs shall be on a window or plate or backing made of a durable material properly treated which is affixed to the wall.
- 63.5.8 No sign shall be mounted or posted on any tree or utility pole.
- 63.5.9 Illuminated, neon or similar signs shall be prohibited.
- 63.5.10 Free-standing, portable signs shall be prohibited.
- 63.5.11 Paper or fabric signs shall not be attached to any building or structure.
- 63.5.12 Roof signs shall be prohibited.
- 63.5.13 Audio signs shall be prohibited.

63.6 Signs Permitted in All Districts:

Subject to the standards specified in Subsection 63.4, the following signs are permitted in all Districts:

- 63.6.1 Governmental signs to control traffic or for other regulatory purposes, or to identify streets, or to warn of danger.
- 63.6.2 Signs that warn of danger, prohibit trespass or direct traffic on the lot. Such signs shall not exceed a total of three (3) square feet.
- 63.6.3 Signs of public utility or service companies to warn of danger.
- 63.6.4 Temporary signs for public, political and charitable purposes, provided they are removed within seven (7) days after the publicized event.
- 63.6.5 Temporary signs for advertising the sale or lease of the premises on which such sign is displayed. Such sign shall not exceed a total of four (4) square feet in residential districts and shall not exceed nine (9) square feet in commercial and industrial districts and must be set back from any property line at least ten (10) feet.

- 63.6.6 Temporary sign or signs not over thirty-two (32) square feet in aggregate area advertising the sale or lease of lots and/or buildings within an approved subdivision for a period of not more than one year. The Commission may extend the period of time for not more than one additional year.
- 63.6.7 Temporary contractor's sign on the lot on which a building is under construction or reconstruction. Such sign shall not exceed a total of twenty-four (24) square feet.

63.7 Signs Permitted in Residence Districts:

Subject to the standards specified in Subsection 63.4, the following signs are permitted in all Residence Districts.

- 63.7.1 One sign not to exceed two (2) square feet in area, nor five (5) feet in height, identifying the name and address of the occupant, including customary home occupations and professional offices.
- 63.7.2 A marker not to exceed four (4) square feet identifying an historical building or use.
- 63.7.3 One free-standing or wall sign not to exceed twelve (12) square feet in area, nor six (6) feet in height, identifying the name and address of a farm or related agricultural activity.
- 63.7.4 Signs are permitted for any special exception in any Residence District subject to the same approvals required for the principle use. Such signs shall not exceed 16 square feet in aggregate area. Other signs shall be limited to directional signs necessary for public safety or convenience and shall be designed as an integral part of a Special Exception use.

63.8 Signs Permitted in Non-Residence Districts:

Subject to the standards specified in Subsection 63.4, the following signs are permitted in all Non-Residence Districts:

- 63.8.1 Wall Signs:
The aggregate area for all lettering, graphics and background shall not exceed five (5) percent of the gross area of the wall or façade, of which the lettering or graphics shall be a part. A single line of lettering shall not exceed fourteen (14)

inches in height and a double line of lettering shall not exceed eight (8) inches in height for one line and shall not exceed six (6) inches in height for the other line.

63.8.2

Free-standing Signs:

All free-standing signs shall be subject to Site Plan approval, as provided by Section 51 of these Regulations, and shall comply with the following:

- A. No free-standing sign shall exceed a total surface area of twelve (12) square feet, except for a directory sign which shall not exceed the total surface area of twenty-five (25) square feet. No free-standing sign shall exceed twelve (12) feet in height.
- B. Only one (1) free-standing sign shall be permitted on a lot provided that it has at least one hundred (100) feet of street frontage on one street.
- C. The free-standing sign and directory signs shall be limited to identifying the name and address of the business or businesses occupying the lot. Each business listed on a directory sign shall be limited to a single line of lettering which shall not exceed four (4) inches in height and thirty-six (36) inches in width.
- D. No sign shall be within twenty (20) feet of the boundary of a Residence District.

63.8.3

Other Requirements:

All wall and free-standing signs shall comply with the following:

- A. In mixed use or multi-tenant buildings, the total sign area for said building shall be pro-rated on an equitable basis; such as the amount of gross floor area of each rental unit, the number of rental units, or the amount of façade area.
- B. No one business use or tenant shall have more than two (2) signs on the premises.

63.8.4

Window Signs:

Window signs advertising products or goods sold on or within any premises not larger than one and one half (1 ½) square feet each are permitted, but not more than three (3) per business.

63.8.5

Temporary Signs:

Signs temporarily attached to, or temporarily painted on a window and/or door announcing sales or special features are permitted, provided they do not exceed ten (10) percent of the area of said window and/or door, and provided that the temporary signs are removed within seven (7) days after the publicized event.

SECTION 64 – EXCAVATION AND GRADING

64.1 Purpose:

In accordance with the procedures, standards and conditions hereinafter specified, though Commission may permit, on any lot, the filling, excavation, grading and removal of any earth, loam, topsoil, sand, gravel, clay, or stone, any or all of which shall be collectively referred to in this section as “earthen material”. The purpose of this section is to protect the ecological processes which are dependent upon nature, minimize surface remove of rainfall and melt-water, preserve the ground water supply, preserve a cover crop on the land to prevent erosion, control any excavation or landfill that may create a safety or health hazard to the public or to adjacent property owners or be detrimental to the immediate neighborhood or to the Town of Middlebury and to designate areas for the deposit and/or disposal of landfill so as to create the least amount of damage to the ecology of the community. For the purposes of this section “landfill” shall not be deemed to include vegetation.

64.2 Filling or Removal by Permit Only:

The filling, excavation, grading or removal on any lot of any earthen material, including the dredging or filling of any water course, is hereby expressly prohibited unless the Commission grants a Certificate of Zoning Compliance or Special Exception under the standards and conditions contained in subsection “Standards and Conditions” of these Regulations, in order to prevent damage to adjoining property and to protect the health, safety and convenience of the community. For the purpose of this section, water course shall mean any river, stream, brook, waterway, lake, pond, marsh, swamp, bog, drainage system, or other body of water, natural or artificial, public or private. In the event of refusal of the Commission to issue a Certificate of Zoning Compliance or Special Exception the applicant may file an appeal with the Zoning Board of Appeals for its action under the provisions of these regulations.

64.2.1 Any other provisions of this section to the contrary notwithstanding, no activity including but not limited to filling, excavation, grading or removal shall be conducted within one hundred (100) feet of Long Meadow Brook, Long Swamp Brook, Mashaddock Brook, Goat Brook, Hop Brook, Long Meadow Pond, Lake Elise, Lake Quassapaug, Turtle Pond, Fenn’s Pond, Atwood Pond or Sperry Pond. Where it is necessary to protect flood plains or water recharge areas, the Zoning Commission may require a greater setback. The filling, excavation, grading or removal for driveway, road and/or utility crossings that have been approved by the Commission are exempt from this provision.

- 64.2.2 Notwithstanding any other provisions of this Section to the contrary, no septic system or leech field shall be constructed or installed within 100 feet of the shores of Lake Quassapaug; provided, however, if the soils in the area are not well drained sandy soils, but are, for example, clay, rock, marsh or situated on steep slopes, then the Commission may require a further setback from said lake or brook of up to 500 feet. In making such determination, the Commission shall consult with the Town Sanitary Officer and may consult with a knowledgeable professional concerning the appropriate distance based on actual slough and slopes.
- 64.2.3 An application for a Certificate of Zoning Compliance or Special Exception to undertake such filling, excavation, grading or removal shall be filed with the Zoning Enforcement Officer.
- 64.2.4 Such application shall contain full and complete information as to the exact project which is proposed, as set forth in subsection "Application Requirements" below.

64.3 Exclusions:

Unless prohibited under the provisions of Subsection 64.2.1 under "Filling or Removal" above, the following activities shall be excluded from the application of this section:

- 64.3.1 Necessary filling, excavation, grading or removal in direct connection with construction or alteration on a lot for which a Certificate of Zoning Compliance has been issued, and which involves the movement of no more than one thousand (1,000) cubic yards of earthen material.
- 64.3.2 Necessary filling, excavation, grading or removal in direct connection which construction of the road for which plans have been approved by the Commission and Board of Selectmen and a performance guarantee in the form and amount of a Surety acceptable to the Board of Selectmen as specified in the Road and Drainage requirements.
- 64.3.3 Necessary shall an excavation, and grading or removal resulting from a single family residential construction operation and does not exceed one thousand (1,000) cubic yards that is being excavated on the premises for which a zoning permit has been issued for the installation of foundations, driveways, sanitary sewer, approved subsurface sanitary disposal systems, water lines, public utilities, sidewalks, fences and walls.

- 64.3.4 Necessary filling, excavation, grading or removal in connection with the resurfacing of an existing roadway or parking lot.
- 64.3.5 The removal by or for the owner from one part of the property to another of topsoil and subsoil when such removal is for the purpose of landscaping, farming, or otherwise improving the property to a maximum of not more than one hundred (100) and cubic yards of material.
- 64.3.6 Tests to determine soil beneath characteristics such as a borings, test pits, and it percolation tests.

64.4 Application Requirements Certificate of Zoning Compliance:

Application for a Certificate of Zoning Compliance under this section shall be submitted in writing and applicant form to the Commission. Such application will be required for any filling, excavation, grading or removal of more than 100 cubic yards but less than 1,000 cubic yards during any calendar year. The application shall include:

- 64.4.1 Details of final grading and planting of the site to prevent erosion on the site both during the operation and at its conclusion.
- 64.4.2 The location and design of structural and non-structural sediment control measures, such as diversion, waterways, grade stabilization structures, debris basins, check dams, water breaks, silt fences and of the like; and the location of temporary and permanent erosion control measures.
- 64.4.3 A detailed statement of the proposed work to be performed on the premises, including an estimate of the number of cubic yards of material to be filled, excavated, graded or removed.
- 64.4.4 The proposed date of the commencement and completion of work.
- 64.4.5 A signed statement by the applicant to agree to comply with and fulfill all of the requirements and provisions of these regulations pertaining to their application for a Certificate of Zoning Compliance under Section 64.
- 64.4.6 The names and signatures of the owner(s) of the premises involved.
- 64.4.7 Applicant will pay a fee twenty-five (25) cents and per cubic yard of material to be removed from the site and ten (10) cents per cubic yard to remain on site.
- 64.4.8 Any other additional information as deemed necessary by the Commission.

64.5 Application Requirements Special Exception:

Application for a Special Exception under this section shall be submitted in writing in duplicate to the Commission. Such application will be required for any filling, excavation, grading or removal of more than one thousand (1000) cubic yards during any calendar year. The application shall be accompanied by maps and plans prepared by and bearing the seal of a land surveyor and/or professional engineer licensed by the State Board of Registration for Professional Engineers and Land Surveyors of the State of Connecticut. The Application shall conform to all requirements of Section 52 and shall include:

- 64.5.1 The location and exterior of limits of the area to be filled, excavated or graded.
- 64.5.2 Property lines and streets adjoining a lot, location of buildings and structures on adjoining parcels and the names of owners of property adjoining the lot.
- 64.5.3 Existing and proposed contour lines on a lot to be filled, excavated or graded, drawn to a scale of not more than forty (40) feet to the inch and with a contour interval not exceeding five (5) feet; and within fifty (50) feet of the excavation.
- 64.5.4 Existing and proposed drainage, lot and existing rivers, streams, water courses, ponds, and swamps and wetlands on and within one hundred (100) feet of a lot. A narrative shall be submitted prepared by a licensed professional civil engineer licensed in the State of CT identifying any risk to water resources, best management practices to use to prevent any such risk, and supporting documentation including calculations to show compliance with these regulations.
- 64.5.5 The location on the parcel of any wooded area, rock outcrops and existing and proposed buildings and structures.
- 64.5.6 An estimate of the maximum number of cubic yards of material to be filled, excavated, graded or removed.
- 64.5.7 Adjacent streets and proposed a vehicular access to the lot and proposed work roadway.
- 64.5.8 An estimate of the number, types and hours of operation of trucks and other machinery to be used on the site, and the locations and types of any buildings, including temporary buildings, to be erected.
- 64.5.9 No Special Exception shall be issued without a letter of approval of the proposed plan from the Director of Public Works/First Selectman or his designee.

- 64.5.10 Details of final grading and planting of the site to prevent erosion on the site of during the operation and at its conclusion.
- 64.5.11 Soil and sediment erosion control plans as per Section 68 of these regulations.
- 64.5.12 Safety precautions to be taken.
- 64.5.13 The sequence of operations, including time limits for major development phases, temporary and permanent sediment control measures to be employed, specifications for temporary and permanent vegetative and structural stabilization and general information relating to the implementation and maintenance of the sediment control measures, including the name of the individual responsible for implementing the plan.
- 64.5.14 Details of the proposed blasting and storing of explosives as approved by the Board of Selectmen.
- 64.5.15 A hydraulic study prepared by a certified professional hydrologist for any excavation, filling, grading or removal within one hundred (100) feet of any brook or pond.

64.6 Standards and Conditions:

The filling, excavation, grading or removal authorized by the Special Exception or Certificate of Zoning Compliance under this section shall conform to the following standards and conditions:

- 64.6.1 The filling, excavation, grading and removal shall be carried out in accordance with the maps and plans as approved by the Zoning Enforcement Officer and within the exterior limit shown thereon.
- 64.6.2 No processing machinery shall be erected or maintained on the lot within three hundred (300) feet of any property or street line, and any such machinery shall be removed from a lot upon termination of the permit. No materials shall be stockpiled and no equipment or structures covered by the permit shall be operated or located outside of the permit area. Except in an industrial district, no stone pressure or other machinery not required for actual removal of the material shall be used.
- 64.6.3 At no time shall more than one undivided area exceeding two (2) acres in size be opened within the lot, it being the intent of these Regulations that the remainder

of the lot shall either be undisturbed land or shall have been restored pursuant to Subsection 64.7. "Restoration", below;

A. Exception:

When the filling, excavation, grading or removal is performed in direct connection with the improvement, for building, of lots of an approved and recorded subdivision or re- subdivision plan, the Commission may exempt the applicant from the Subsection 64.6.3 above.

- 64.6.4 The filling, excavation, grading or removal shall not result in sharp declivities, pits or depressions, soil erosion, improper drainage or other conditions which would impair the reasonable reuse and development of the lot or which would impair or damage the use of adjacent or neighboring lots or would cause health or sanitary hazards.
- 64.6.5 The work shall be limited to reasonable hours and days of the week that may be specified by the Commission.
- 64.6.6 Proper measures shall be taken to minimize nuisance from noise and dust using best management practices as approved by the Board of Selectmen or its designee.
- 64.6.7 At all stages of the work, proper drainage shall be so arranged as to minimize traffic hazards on streets and to avoid nuisance to residents of the neighborhood.
- 64.6.8 Such a barricades or fences shall be erected as are necessary for the protection of pedestrians and vehicles.
- 64.6.9 No filling, excavation, grading or removal which is below the elevation of any abutting street or property line shall occur within fifty (50) feet of such line unless permitted by the Commission after a public hearing pursuant to Section 64.8 "Procedure: Hearings by the Planning and Zoning Commission for Permits" below has been held on the application and the Commission has determined that such activity would not involve or create a substantial risk of damage to the abutting property.
- 64.6.10 It shall be the responsibility of the permit holder to ensure that vehicles removing earthen and material from the lot are so loaded and/or secure that there will be no spillage of such material within the Town of Middlebury.

- 64.6.11 At all stages of the work where any excavation or fill will have a depth of ten (10) feet or more and create a slope of more than one (1) foot vertical rise to two (2) feet horizontal distance, there shall be a substantial fence enclosing the fill or excavation, at least six (6) feet in height with suitable gates. Such fence shall be located fifty (50) feet or more from the edge of the excavation or fill.
- 64.6.12 At all stages of the operation, proper drainage shall be provided to prevent the collection of water and the excavator must erect proper barriers or fences for the protection of pedestrians, vehicles, children and others.
- 64.6.13 Truck access to the excavation shall be arranged to minimize nuisance to surrounding properties and access on the premises shall be provided with a dustless surface.
- 64.6.14 The premises shall be excavated and graded in conformance with the permit and approved maps and plans. Any deviation from the permit and approved maps and plans shall be cause to revoke said permit and claimed the bond set forth in Section 64.14 "Posting of Bond" below.

64.7 Restoration:

Upon completion of the work authorized, area of excavated or otherwise disturbed ground shall be prepared or restored as follows:

- 64.7.1 Such area shall be evenly graded to slopes not exceeding one (1) foot of a vertical rise to two (2) feet of horizontal distance except for the ledge rock cut which shall be finished at an angle not to exceed two (2) feet of vertical to one (1) foot horizontal so as to preclude the falling of loosened material or to such lesser slope necessary for soil stability, safety and reasonable reuse and development of the lot; in addition, the area shall be evenly graded with sufficient slopes, dikes, berms, and waterways to assure adequate drainage of the area, so that stagnant pools of water will be avoided and so that adjacent area will not be damaged.
- 64.7.2 All debris and all loose boulders not incorporated into the improvement of the lot shall be buried or removed from the lot; on lots to be serviced by separate septic system, no debris or loose boulders shall be. Closer than 25' (twenty-five) from any property boundary line. If a stone wall is to be covered with fill and it is in the area of the proposed septic leaching field, the stone wall is to be removed.
- 64.7.3 A top layer of any arable topsoil, which shall be free of any large stones, shall be spread to a depth of not less than 6 (six) inches over the entire area and the area

shall then be seeded with a perennial grass and maintained until the ground shall be completely stabilized with a dense cover of grass and there exists no danger from erosion, but this provision shall not apply to the area of ponds, nor too exposed areas of ledge rock existing prior to excavation.

64.7.4 Any permittee or agent thereof who shall cause damage to any road(s) in the Town of Middlebury shall immediately be liable to the Town for repairing the damage, which shall be under the supervision of the Board of Selectmen of the Town of Middlebury.

64.8 Procedure: Hearings by the Planning and Zoning Commission for Permits:

The Commission shall, within sixty-five (65) days of receipt of a completed application for a Special Exception as per Section 52 of these regulations, for any operation involving the excavation, filling, grading or removal of one thousand (1,000) cubic yards or more of earthen material, hold a public hearing on such application. Notice of the time and place of such hearing shall be published in a newspaper having a substantial circulation in the Town of Middlebury at least twice, at intervals of not less than two (2) days, the first not more than fifteen (15) days nor less than ten (10) days, and the last not less than two (2) days before the date of such hearing. In addition, notice of the time and place of such hearing shall be sent by registered or certified mail not less than ten (10) days before the hearing to the applicant and to all owners of property within one hundred (100) feet of the lot on which said operation is proposed, at their last known address as shown on the records of the Town Tax Collector. At such hearing any party may appear in person and may be represented by an agent or by attorney. The hearing shall be completed within thirty-five (35) days. The Commission shall decide upon said application within sixty-five (65) days after the hearing. The applicant may grant extensions of these time periods not to exceed sixty-five (65) days total. Whenever the Commission grants or denies a Special Exception, it shall state upon the records the reason for the decision. Notice of the decision of the Commission shall be published in a newspaper having a substantial circulation in the Town of Middlebury and sent by registered or certified mail, addressed to the person who applied for the Special Exception, by its Secretary or Clerk, under his or her signature, in any written, printed, typewritten or stamped form, within fifteen (15) days after such decision has been rendered. Such Special Exception shall become effective at such time as is fit by the Commission, provided a copy thereof shall be filed in the Office of the Town Clerk.

64.8.1 Except as specified in Subsection 64.6.9 of “Standards and Conditions”, a Special Exception is not required for operations involving the excavation filling, grading or removal of less than one thousand (1,000) cubic yards of material.

64.8.2 Failure to submit additional information requested by the Commission shall be grounds for disapproval of the application.

64.8.3 All communications between the Commission and the applicant shall be in writing and a copy of such shall be kept on file in the Town Hall.

64.9 Regulations Regarding Permit:

Any Special Exception issued hereunder shall expire one year from the date of issuance unless extended by the Commission.

64.9.1 Extensions:

The Commission may extend the one (1) year time period for not more than six (6) months provided the applicant can show to the Commission that the work already completed conforms with the plan of operation as approved, and provided that the other applicable requirements of this section have been carried out.

64.9.2 A public hearing is not required for extension of their time period specified in Section 64.9.1 above.

64.9.3 Any deviation from the plan or from these Regulations shall be cause for the Commission to revoke the Special Exception.

64.10 Inspection:

The Commission, or its authorized agents, shall at all times have access to the premises for the purpose of inspection and determination of compliance with this section; the Commission may require the applicant to submit to periodic reports, prepared by and bearing the seal of a land surveyor or civil engineer, showing the status and progress of the work.

64.11 Inspection Fee:

At the time of issuance of a Special Exception or a Certificate of Zoning Compliance granted under this section, the applicant shall pay to the Commission or its appointed agent and inspection fee equal to twenty five (25) cents for each cubic yard of earthen material, or fraction thereof, to be removed from the site or ten (10) cents for each cubic yard or part thereof for material to remain on site.

64.12 Insurance:

No Certificate of Zoning Compliance or Special Exception shall be issued until the applicant shall have filed with the Commission a certificate evidencing that the applicant has obtained a policy of liability insurance, in which the Town of Middlebury shall be named insured, with the following minimum requirements:

Public liability	-	Personal injury - \$500,000.00 each person \$1,000,000.00 each accident
Property damage	-	\$250,000.00 each occurrence
Auto liability	-	Personal injury - \$500,000.00 each person \$1,000,000.00 each accident
Property damage	-	\$250,000.00 each accident

64.13 The Town of Middlebury Must Be Named as Co-insured (as its interests may apply on each policy accepted):

The above to cover all operations to be conducted pursuant to the Special Exception in the event of cancellation of such insurance, the Special Exception shall terminate.

64.14 Posting of Bond:

Before a Certificate of Zoning Compliance or Special Exception is granted under this section, the applicant shall file with the Commission a cash or surety bond, or savings account, in form acceptable to the Board of Selectmen and in such amount to ensure the faithful performance and completion of the work in accordance with the provisions of this section.

64.15 Release of Bond:

Upon completion of the work authorized by a Certificate of Zoning Compliance or Special Exception and the restoration of the premises pursuant to subsection 64.7 "Restoration" above, the applicant may apply to the Commission for release of the cash or surety bond, or savings account filed, and if the Commission is satisfied that the work and restoration has been completed as required by the Certificate of Zoning Compliance or Special Exception and these Regulations, the cash or surety bond, or savings account shall be released to the permit holder, but otherwise the cash or surety bond, or savings account shall remain in full force and effect. No bond shall be released without a letter of approval from the First Selectman or his designee.

64.16 Existing Operations:

Any operation involving the filling, excavation, grading or removal of earthen material which is in existence on the effective date of these regulations. Or any amendment or amendments thereof shall be in compliance therewith within one hundred and twenty (120) days of said date.

64.17 Town Operations:

The Town of Middlebury, in the filling, excavation, grading or removal of any lot or road of any earthen material when the work is conducted solely by or on behalf of the Town of Middlebury for the municipal purposes of the Town, shall not be required to make application for a Certificate of Zoning Compliance or Special Exception nor pay any inspection fee or post a bond, provided the work, however, shall meet all the standards and conditions of these Regulations. The Board of Selectmen shall require that the specifications for Town operations or other projects under contract with the Town include provisions for the proper disposal of any earthen material displaced due to these activities.

SECTION 65 - TRAILERS

65.1 General:

The use, occupancy, parking and storage of trailers, constituting camping and recreational equipment, utility trailers, commercial trailers and mobile homes on any lot shall conform to the provisions hereinafter specified.

65.2 Definitions:

Certain words in this Section are defined as follows:

65.2.1 “Trailers constituting camping and a recreational equipment” are defined and described as follows:

- A. A “travel trailer” is a vehicular, portable structure built on a chassis, designed to be used as a temporary dwelling for travel, camping, recreational and vacation uses, and when equipped for the road shall have a body width not exceeding eight (8) feet and which shall be eligible to be licensed/registered and insured for highway use.
- B. A “pick-up coach” or “pick-up” camper is a structure designed primarily to be mounted on a pick-up truck chassis and with sufficient equipment to render it suitable for use as a temporary dwelling for travel, camping, recreational and vacation uses only, and which shall be eligible to be licensed/registered and insured for highway use.
- C. A “motorized camper” is a portable dwelling designed and constructed as an integral part of a self-propelled vehicle to be used as a temporary dwelling for travel, camping, recreational and vacation uses, and which shall be eligible to be licensed/registered and insured for highway use.
- D. A “tent trailer” is a canvas, folding structure, mounted on wheels to be used as a temporary dwelling for travel, camping, recreational and vacation uses and which is eligible to be licensed/registered and insured for highway use.

65.2.2 A “utility trailer” is a small box, boat, horse or flat trailer designed to be towed by a vehicle using a ball and socket connection.

- 65.2.3 A “commercial trailer” is of a larger and heavier type trailer using a ring and pin, fifth wheel, or similar connection, and shall include mobile office trailer.
- 65.2.4 A “mobile home” is a movable or portable dwelling built on a chassis, and which is, has been, or maybe, mounted or moved on wheels, connected to utilities, and designed without a permanent foundation for year-round occupancy and exceeding 19.5 feet in length.

65.3 Use, Parking and Storage:

Any owner of a trailer constituting camping and a recreational equipment or a utility trailer as defined in these regulations, which trailer is 19.5 feet or less in length, may park or store such trailer on private residential property subject to the following conditions:

- 65.3.1 At no time shall such parked or stored trailer be occupied or used for a living, sleeping or housekeeping purposes. There shall be no connections to any utility service, including electrical, sheet, water and sewage disposal service.
- 65.3.2 If such trailer is parked or stored outside of a garage, it shall be part or stored to the rear of the principle building or other major building in a neat and orderly manner, and generally not visible from any street; eight shall conform to the setback from side and rear property lines as required for buildings and other structures.
- 65.3.3 In Residence Districts parking or storage of any such trailer on any lot shall be limited to one (1) such trailer per dwelling unit on the lot, except that one (1) additional utility trailer may be parked or stored for each 10,000 square feet of lot area. Said trailers shall be registered in the name of and be the legal property of the occupants of the principle dwelling on the lot, except that temporary parking of such trailers owned by others visiting said occupant shall be permitted for a period not to exceed thirty (30) days.
- 65.3.4 Notwithstanding the provisions of these regulations, any such trailers may be parked anywhere on the lot for servicing, cleaning, loading or unloading purposes for a period not to exceed two (2) days.

65.4 Mobile Homes:

No mobile homes shall be used for any purpose on any lot, or stand on occupied except with the approval of the Zoning Commission, and such approval shall be limited to a period of six (6)

months. Such approval may be granted only in cases of extenuating circumstances, such as request to live in the mobile home while the residence is being repaired or rebuilt after fire or other casualty. Where said a mobile home is to be occupied, its sanitary facilities must have written approval of the Director of Health of the Town of Middlebury at the time of approval by the Zoning Commission, and it may be occupied by only one (1) family, at least one (1) member of which shall be either the owner of the lot or related by blood, marriage or legal adoption, to the owner of the lot. Additional restrictions may be made a part of the conditions of approval by the Zoning Commission.

65.5 Commercial Trailers:

Commercial trailers shall conform to the following provisions:

65.6.1 Subject to the securing of a CERTIFICATE OF ZONING COMPLIANCE, commercial trailers used as storage or offices may be parked on any lot in connection with a bona fide construction project on the lot. Such CERTIFICATE shall have a duration of no more than six (6) months unless extended at the discretion of the Zoning Enforcement Officer to coincide with an additional period when the construction project is in process.

65.6.2 Commercial trailers are otherwise permitted on a lot only in conjunction with permitted commercial and industrial establishments, such as trucking terminals, building contractors, businesses, and storage yards, warehousing and wholesale businesses, manufacturing, processing and assembling of goods, construction projects and marine transportation, that no such trailer is used as a storage building and that the storage of such trailers shall conform to all of the setback requirements for buildings and other structures.

SECTION 66 – ALCOHOLIC BEVERAGES

66.1

The purpose of this section is to provide guidance for the location of package stores, restaurants, or cafes whose business involves the sale of alcoholic beverages for consumption by adults.

66.2

This section shall not apply to structures utilized exclusively for the sale of alcoholic liquors, beer, ale, or wine at wholesale, or grocery stores selling canned or bottled beer or ale or drugstores.

66.3 Special Exception Use:

Within the Commercial CA-40, Gateway Industrial Design, Light Industrial 200, and Light Industrial 80 Zoning Districts, the following shall be allowed under a Special Exception Use in accordance with the requirements of § 52, et seq of these regulations, provided that the applicant for such permit shall be able to show that the sale of liquors under such permit will not result in noise or activity on the premises so as to injure the health or comfort of others, or to disturb the tranquility of the surrounding neighborhood:

1. The sale of alcoholic beverages from a service bar only in a Family Restaurant (As defined as a restaurant serving indoor, sit-down meals, maintaining hours opening no later than 11:00 A.M. and closing by 11:00 P.M., containing no stand-up bar, no live entertainment, and serving alcoholic beverages only to patrons being served meal on the premises.)
2. The sale of beer and wine within a Commercial Health Club Facility as the same is defined within Article IV, § 42.4.4 of these Regulations, provided that the applicant for such permit shall be able to show that the sale of liquors under such permit will not result in noise or activity on the premises so as to injure the health or comfort of others, or to disturb the tranquility of the surrounding neighborhood, and further providing that said sale of said alcoholic beverages may only occur while the snack bar on the premises is open and serving prepared food solely to the members and their guests;
3. The sale of alcoholic beverages in a restaurant is defined as a space in a permanent and suitable building kept, used, maintained, advertised and held out to the public to be a place where hot meals are regularly served for consumption by patrons within the building. Alcoholic beverages may

be served as an accompaniment to those meals provided that a Restaurant Permit for such service is obtained from the State of Connecticut.

4. The sale of alcoholic beverages in a café as defined as a space in a permanent and suitable building kept, used, maintained, advertised and held out to the public to be a place where alcoholic beverages and food is served for sale at retail for consumption on the premises, but which does not necessarily serve hot meals, provided that a Café Permit for such service is obtained from the State of Connecticut.
5. The retail sales of alcoholic beverages to be consumed off premises such as package stores, requiring alcoholic beverages to be consumed off premises.

SECTION 67 – GARAGES AND SERVICE STATIONS

67.1

No structure shall be used, erected or expanded as a garage for more than five (5) motor vehicles, a gasoline filling station, or a motor vehicle service station if the center of any entrance of the portion of said structure which is used for any of the purposes set forth in this Section is situated within a 500 foot radius of any other parcel of land which is used for a public or private school, a public park, place of worship, charitable institution, a hospital or library.

SECTION 68 – SOIL EROSION AND SEDIMENT CONTROL

68.1 **Definitions:**

- 68.1.1 Certification means a signed, written approval by the Commission or its designated agent, that the soil erosion and sediment control plan complies with the applicable requirements of this regulation.
- 68.1.2 Development means any construction or grading activities to improved or unimproved real estate.
- 68.1.3 Erosion means the detachment and movement of soil or rock fragments by water, wind, ice and gravity.
- 68.1.5 Grading means any excavating, filling (including hydraulic fill) or stockpiling of earth materials or any combination thereof, including the land in its excavated or filled condition.
- 68.1.6 Inspection means the periodic review of sediment and erosion control measures shown on the certified plan.
- 68.1.7 Sediment means solid material, either mineral or organic, that is in suspension, is transported, or has been moved from its site of origin by erosion.
- 68.1.8 Soil means any unconsolidated mineral and organic material of any origin.
- 68.1.9 Soil Erosion and Sediment Control Plan means a scheme that minimizes soil erosion and sedimentation resulting from development and includes, but is not limited to, a map and narrative.

68.2 **Activities Requiring a Certified Erosion and Sediment Control Plan:**

Any proposal for development that will cumulatively create a disturbed area more than one-half acre in area on land being developed must have a Certified Erosion and Sediment Control Plan.

68.3 **Exemptions:**

The grading activities associated with the construction of a single family dwelling that is not part of subdivision will not require a Certified Erosion and Sediment Control Plan.

68.4 Erosion and Sediment Control Plan Submission:

68.4.1 To be eligible for certification, a soil erosion and sediment control plan shall contain proper provisions to adequately control accelerated erosion and sedimentation and reduce the danger from storm water runoff on the proposed site based on the best available technology. Such principles, methods and practices necessary for certification are found in the Connecticut Guidelines for Soil Erosion and Sediment Control, dated January 1985 as amended. Alternative principles, methods and practices may be used with prior approval of the Commission.

68.4.2 Said plan shall contain, but not be limited to:

A. A site plan map at a scale prescribed by the Commission revealing:

1. Existing and proposed topography.
2. Disturbed areas, identifying the extent of all clearing and grading activities.
3. Proposed area alterations, including proposed structures, utilities, roads and property lines.
4. Location of and detailed information concerning erosion and sediment control measures and facilities, which shall include:
 - a. Soil types;
 - b. Wetlands;
 - c. Watercourses;
 - d. Water bodies;
 - e. Design details and/or specifications;
 - f. Schedule of application/installation;
 - g. Application, installation and maintenance procedures;
 - h. Any storm water management facilities.

5. Subsections 68.4.2 B.2 and 68.4.2 B.3 below.

B. A narrative describing the:

1. Development project.
2. Application, construction details and maintenance program during and after installation of:

- a. Soil erosion and sediment control measures;
 - b. Any storm water management facilities.
3. Time schedule of:
- a. Development indicating the anticipated start and completion of the project;
 - b. The stages of creating and stabilizing disturbed areas grading operations;
 - c. Grading operations;
 - d. The elements of Subsection 69.4.2 B.2 above;
 - e. Other major construction activities.
4. Design criteria including soil characteristics of the site relevant to erosion and hydrology.
5. Background data, methodology and calculations used to design structural measures or facilities.
- C. Other information deemed necessary and appropriate by the Commission.

68.5 Minimum Acceptable Standards:

- 68.5.1 Overall planning for soil erosion and sediment control shall be performed using the principles as outlined in Chapters 3 and 4 of the Connecticut Guidelines for Erosion and Sediment Control, dated January, 1985, as amended. Planning shall result in a development that: minimizes erosion and sedimentation during construction; is stabilized and protected from erosion when completed; and does not cause off-site erosion and/or sedimentation. Planning shall consider off-site effects as well as on-site effects.
- 68.5.2 The minimum standards for individual measures are those in the Connecticut Guidelines for Erosion and Sediment Control dated January 1985, as amended. The Commission may grant exceptions when requested by the applicant if technically sound reasons are presented.
- 68.5.3 The appropriate method as shown in Chapter 9 of the Connecticut Guidelines for Erosion and Sediment Control, as amended, shall be used in determining peak flow rates and volumes of runoff unless as alternative method is approved by the Commission.

- 68.5.4 Planned erosion and sediment control measures shall be installed as scheduled according to the plan.
- 68.5.5 All control measure shall be maintained in effective condition to ensure the compliance of the certified plan.
- 68.6 Issuance or Denial of Certification:**
- 68.6.1 The Commission shall either certify that the soil erosion and sediment control plan, as filed, complies with the requirements and objectives of this regulation; or certify with limitations or modifications; or deny certification when the development proposal does not comply with these regulations or may cause hazards or damages adverse to the public safety and welfare.
- 68.6.2 The time limit for certification or denial of Soil Erosion and Sediment Control Plan shall be consistent with those stipulated in Chapters 124, 124a and 126 of the General Statutes. The Soil Erosion and Sediment Control Plan will be reviewed simultaneously with the development proposal.
- 68.6.3 The Commission or the certifying authority may forward a copy of the development proposal to the New Haven Soil and Water Conservation District for review and comment, in which event said Conservation District has thirty days upon receipt to reply with recommendations.
- 68.6.4 The Commission may forward a copy of the development proposal to the Conservation and/or Inland Wetlands Commission or other review agency/consultant for review and comment.
- 68.7 Conditions Relating to Soil Erosion and Sediment Control:**
- 68.7.1 The estimated costs of measures required to control soil erosion and sedimentation during and after development shall be covered in a performance bond acceptable to the Commission.
- 68.7.2 Site development shall not begin unless the soil erosion and sediment control plan is certified and those control measures scheduled prior to site development are installed and functional.
- 68.7.3 The Commission may require the applicant submitting the erosion and sediment control plan to certify in writing upon installation of control measures or facilities, that such controls were installed according to the plan.

68.8 **Inspection:**

Municipal inspections during development shall ensure compliance with the certified plan and that control measures are properly performed, installed and maintained.

68.9 **Enforcement:**

Enforcement of this regulation shall be carried out as specified under General Statute Section 8-12

ARTICLE VII

ADMINISTRATION & ENFORCEMENT

SECTION 71 – BOARD OF APPEALS

71.1

The Board of Appeals shall have all of the powers and duties prescribed by these Regulations and the General Statutes of the State of Connecticut and may adopt rules and procedures necessary to exercise its authority.

The powers and duties of the Board of Appeals include the following:

- 71.1.1 To hear and decide appeals where it is alleged that there is an error in any order, requirement or decision made by the Zoning Enforcement Officer;
- 71.1.2 To hear and decide all matters upon which it is required to pass by the specific terms of the Regulations or of the General Statutes of the State of Connecticut; and
- 71.1.3 To determine and vary the application of the Regulations in harmony with their general purpose and intent and with due consideration for conserving the public health, safety, convenience, welfare and property values solely with respect to a parcel of land where, owing to conditions especially affecting such parcel but not affecting generally the district in which it is situated, a literal enforcement of these Regulations would result in exceptional difficulty or unusual hardship, so that substantial justice will be done and the public safety and welfare secured.

SECTION 72 - ADMINISTRATION

72.1 Zoning Enforcement Officer:

The Commission shall appoint a Zoning Enforcement Officer who shall have the responsibility and authority to enforce the provision of these Regulations. The Commission may appoint Deputy Zoning Enforcement Officers to assist and act for him.

72.2 Application:

ALL APPLICATIONS FOR CERTIFICATE OF ZONING COMPLIANCE shall be submitted to the Zoning Enforcement Officer and shall be accompanied by three (3) copies of a plan drawing or drawings, drawn to scale, and showing the following:

- 72.2.1 Area of the lot, and the dimensions and angels or bearing of all lot lines;
- 72.2.2 The height, dimensions, use, floor area, ground coverage and location of all buildings and other structures, whether existing or proposed;
- 72.2.3 The location area and dimensions of off-street parking and loading spaces, any construction required in connection therewith and the means of access to such spaces;
- 72.2.4 The location of any existing or proposed wells and private sewage disposal system;
- 72.2.5 The location area and dimensions of any signs, outside storage areas, site development and landscaping that are subject to the provisions of these Regulations; and
- 72.2.6 Such additional information as may be necessary to determine compliance with the provisions of these Regulations.

In addition, the APPLICATION shall be accompanied by other plans, drawings, data and statements necessary to determine compliance with the provisions of these Regulations. For proposed construction involving only interior alterations, or exterior alterations with no enlargement or extension of the building or structure, the Zoning Enforcement Officer may waive the required submission of a plan drawing. APPLICATIONS which pertain to a nonconforming building or other structure or a nonconforming lot shall be prepared and certified by a land surveyor, licensed to practice in the State of Connecticut.

72.3 Supportive Applications:

When required by the provisions of ARTICLE V and Section 64, the APPLICATION FOR CERTIFICATE OF ZONING COMPLIANCE shall be accompanied by specified additional applications and related site plans, architectural plans and other plans and drawings. Such plans and drawings, if incorporating all of the information required for a plan drawing under the “Applications” paragraph above, may be submitted for such plan drawing.

72.4 Fees:

Each APPLICATION FOR CERTIFICATE OF ZONING COMPLIANCE shall be accompanied by fees as follows; paid to the Town of Middlebury.

72.4.1 APPLICATION, when no Building Permit under the Building Code is required for the work, \$25.00.

72.4.2 SPECIAL EXCEPTION:

A. Under Section 52 or 53, \$100.00.

B. Under Section 64, \$200.00.

72.4.3 Additional CERTIFICATES: \$1.00

72.4.4 Fee for PUBLIC HEARINGS: For each Public Hearing the person requesting it will pay to the Town of Middlebury a filing fee of fifty dollars (\$50.00) to defray the cost of publication for the notice required for the hearing.

72.5 Staking:

NO APPLICATION FOR CERTIFICATE OF ZONING COMPLIANCE shall be approved by the Zoning Enforcement Officer for any new construction until the applicant has accurately placed stakes or markers on the lot indicating the location of proposed construction. The Zoning Enforcement Officer may require the applicant to place stakes or markers on the lot indicating the location of lot lines. The Zoning Enforcement Officer may require the placement of stakes or markers to be made and certified by a land surveyor licensed to practice in the State of Connecticut.

72.6 Approval and Issuance:

The Zoning Enforcement Officer shall approve an APPLICATION FOR CERTIFICATE

OF ZONING COMPLIANCE and shall issue a Certificate of Zoning Compliance when he/she determines that all of the requirements of these Regulations have been met. No APPLICATION shall be considered approved and no CERTIFICATE shall be considered issued unless signed by the Zoning Enforcement Officer or his/her Deputy. If deemed necessary to determine compliance with these Regulations and before issuance of a CERTIFICATE OF ZONING COMPLIANCE, the Zoning Enforcement Officer may require the applicant to furnish measurements of any construction features subject to the requirements of these Regulations, including setback distances, which measurements shall be prepared and certified by a land surveyor licensed to practice in the State of Connecticut. Within 10 days after notification by the applicant that the premises are ready for occupancy, or within 10 days after receipt of the certified measurements if required, the Zoning Enforcement Officer shall issue or deny a CERTIFICATE. One (1) copy of the plan drawing or drawings shall be returned by the Zoning Enforcement Officer to the applicant. The following additional requirements shall apply to the approval of APPLICATIONS and issuance of CERTIFICATES:

72.6.1 Sanitation:

Where a proposed use or a proposed building or other structure involves the installation, extension, relocation or reconstruction of a private sewage disposal or water supply system, no APPLICATION FOR CERTIFICATE OF ZONING COMPLIANCE shall be approved until plans for such system have been approved by the Director of Health or his authorized agent; no CERTIFICATE OF ZONING COMPLIANCE shall be issued until such system has been completed and approved by the Director of Health or his/her authorized agent or until the use of building or structure has been provided with connections to a public sanitary sewer and/or public water supply system.

72.6.2 Inland Wetland and Water Courses:

No application for a CERTIFICATE OF ZONING COMPLIANCE shall be approved nor shall a CERTIFICATE OF ZONING COMPLIANCE be issued where a proposed use or the construction or alteration of a proposed building or other structure would constitute a regulated activity within a regulated area within the meaning and intent of the Inland Wetland and Water Courses Regulations of the Town of Middlebury until a permit for such activity has been obtained from the Conservation Commission.

72.6.3 Conditions:

Any maps, plans, documents, statements, and stipulations submitted to and approved by the Commission, in connection with any action of such Commission, and any conditions of approval attached by the Commission shall be conditions for approval of an APPLICATION FOR CERTIFICATE OF ZONING COMPLIANCE by the Zoning Enforcement Officer and issuance by him/her of a CERTIFICATE. No application for a zoning permit shall be approved until the drainage plan

and proposed grading have been reviewed and approved by the Town Engineer as they pertain to sections 7.1.6, 7.1.7 and 7.1.8 of the Middlebury Road and Drainage Regulations.

72.6.4

Temporary Certificate:

Upon certification by the applicant that the public health and safety will not be impaired and that there will be compliance with all other laws pertaining to health and safety the Zoning Enforcement Officer may issue a TEMPORARY CERTIFICATE OF ZONING COMPLIANCE having a duration of not more than six (6) months and renewable only for one additional six (6) month period, for the temporary use of land, buildings and other structures in the process of improvement and completion in accordance with an approved APPLICATION.

72.6.5

Other Permits:

Approval of an APPLICATION or issuance of a CERTIFICATE shall not be construed to constitute compliance with any other regulation, ordinance or law, not to relieve the applicant from responsibility to obtain any permit thereunder. The Zoning Enforcement Officer may at his/her discretion withhold approval of an APPLICATION or issuance of CERTIFICATE until any such permit has been approved and obtained by the applicant.

72.7

Inspections:

The Zoning Enforcement Officer is authorized to inspect or cause to be inspected any land, building or other structure to determine compliance with these Regulations. NO CERTIFICATE OF ZONING COMPLIANCE shall be issued until the Zoning Enforcement Officer has inspected the land, building or other structure involved to determine that the use and/or the buildings or other structures conform to these Regulations.

72.8

Orders:

The Zoning Enforcement Officer is authorized to issue a STOP WORK ORDER if in his/her judgment the use of land, building and other structures or the construction, reconstruction, enlargement, extension, moving or structural alteration of a building or other structure are not being carried out in compliance with these Regulations; he/she shall withdraw such ORDER when he/she determines that there is compliance with these Regulations. The Zoning Enforcement Officer is authorized to order in writing the remedying of any condition found to be in violation of these Regulations.

72.9 **Records:**

The Zoning Enforcement Officer shall keep records of all fees, all APPLICATIONS and CERTIFICATES, all identifiable complaints of any violation of these Regulations, all inspections made under these Regulations and all notices of violation served by him/her and the action taken thereon.

72.10 **Procedure:**

The Commission may from time to time by resolution adopt administrative rules and procedures for the enforcement of these Regulations.

SECTION 73 – PENALTIES AND REMEDIES

73.1 Penalties:

Any person, firm or corporation who shall violate any provisions of these Regulations shall be subject to penalties in accordance with the General Statutes of the State of Connecticut pertaining to zoning.

73.2 Remedies:

The proper authorities of the Town of Middlebury, or any person, firm or corporation, may institute any appropriate action or proceedings to enforce the provisions of these Regulations or to prevent, restrain, enjoin, correct or abate any violation of these Regulations, as may be authorized by law.

SECTION 74 – AMENDMENTS

74.1

These Regulations, including the Zoning Map which is a part hereof, may be amended by the Commission on its own initiative or when initiated by a written petition. Any amendment may be adopted only after due notice and public hearing as prescribed by the General Statutes of the State of Connecticut. Any petition for amendment shall be prepared and submitted in accordance with any rules for submission of petitions adopted by resolution of the Zoning Commission.

SECTION 75 – VALIDITY

75.1

If any provision of the Regulations is adjudged by a court of competent jurisdiction to be invalid, the effect of such decision shall be limited to the provision expressly stated in the decision to be invalid, and all other provisions of the Regulations shall continue to be valid and fully effective.

75.2

If any provision of these Regulations is adjudged by a court of competent jurisdiction to be invalid as such provision applies to a particular building, other structure or lot, the effect of such decision shall be limited to the particular building, other structure or lot, and the general application of such provision to other buildings, structures or lots shall not be affected.

SECTION 76 – EFFECTIVE DATE AND REPEAL

76.1

These Regulations, and any amendment or change hereto, shall be in full force and effect from the date established by the Commission in accordance with the General Statutes of the State of Connecticut.

76.2

The Zoning Regulations of the Town of Middlebury, Connecticut, previously adopted, and all amendments thereto, are repealed coincident with the effective date of these Regulations. The repeal of the above Regulations, and all amendments thereto, shall not affect or impair any act done, offense committed or right accruing, accrued or acquired or any liability, penalty, forfeiture or punishment incurred prior to the time such repeal took effect, but the same may be enjoyed, asserted, enforced, prosecuted or inflicted as fully and to the same extent as if such repeal had not been affected.