

- F. Encourage the location of towers and antennas in non-residential areas and away from other sensitive areas such as areas with schools, hospitals or child care facilities, through performance standards and incentives.

Section 1203: General Requirements

- A. An applicant for a telecommunications tower or facility permit must be a telecommunications provider or must provide a copy of its executed contract to provide land or facilities to an existing telecommunications provider to the administrative officer at the time that an application is submitted. A permit shall not be granted for a tower to be built on speculation.
- B. Pursuant to 24 VSA § 4407, the board is authorized to hire qualified persons to conduct an independent technical review of applications and to require the applicant to pay for reasonable costs thereof.
- C. In addition to other findings required, the board shall find that its decision is intended to be consistent with federal law, particularly the Telecommunications Act of 1996. This Article does not: prohibit or have the effect of prohibiting the provision of personal wireless services; does not unreasonably discriminate among providers of functionally equivalent services; and does not regulate personal wireless services on the basis of the environmental effects of radio frequency emissions to the extent that the regulated services and facilities comply with the FCC regulations concerning such emissions.
- D. Notwithstanding the above, all other Articles of the Zoning Bylaws which are applicable to the structure of a telecommunications facility, including fencing, support structures, roads, etc. are in full force and effect. In the event that there is a conflict between the regulations as set forth in Article XII of these regulations and as applicable to specific Zoning Districts as set for elsewhere in these Bylaws, the stricter of the two or more regulations applies in all cases.

Section 1204: Application Requirements

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

- A. The name and address of the applicant, the record landowners and any agents of the landowners or applicants as well as an applicant's registered agent and registered office. If the applicant is not a natural person, the name and address of the business and the state in which it is incorporated and has its principal office shall be provided.
- B. The name, address and telephone number of the person to be contacted and authorized to act in the event of an emergency regarding the structure or safety of the facility.
- C. The names and addresses of the record owners of all abutting property.

D. A report from qualified and licensed professional structural or radio frequency engineers that:

1. Describes the facility height, design and elevation.
2. Documents the height above grade for all proposed mounting positions for antennas to be co-located on a telecommunications tower or facility and the minimum separation distances between antennas.
3. Describes the tower's proposed capacity, including the number, height and type of antennas that the applicant expects the tower to accommodate.
4. Documents steps the applicant will take to avoid interference with any established public safety telecommunications.
5. In the case of new tower proposals, demonstrates that existing telecommunications sites and other existing structures within 30 miles of the proposed site cannot reasonably be modified to provide adequate coverage and adequate capacity to the Town of Pittsford.
6. Describes potential changes to those existing facilities or sites in their current state that would enable them to provide adequate coverage.
7. Describes the output frequency, number of channels and power output per channel for each proposed antenna.
8. Includes written five-year plan for use of the proposed telecommunications facility, including reasons for seeking capacity in excess of immediate needs if applicable, as well as plans for additional development and coverage within the Town.
9. Demonstrates the tower's compliance with the municipality's structural standards and setbacks for towers and support structures.
10. Provides proof that at the proposed site, the applicant will be in compliance with all FCC regulations, standards and requirements and commits to continue to maintain compliance with all FCC regulations, standards and requirements regarding both radio frequency interference (RFI) and radio frequency radiation (RFR). The Zoning Board of Adjustment (ZBA) may hire independent engineers to perform evaluations of compliance with the FCC regulations, standards and requirements on an annual basis at unannounced times.
11. Includes other information required by the Board that is necessary to evaluate the request.
12. Includes an engineer's stamp and registration number.

- E. For all telecommunication towers or facilities, the applicant shall provide a letter of intent committing the tower owner and his or her successors to permit shared use of the tower if the additional user agrees to meet reasonable terms and conditions for shared use, including compliance with all applicable FCC regulations, standards and requirements and the provisions of this bylaw.
- F. An applicant for a permit for a facility to be installed on an existing structure shall provide a copy of its executed contract with the owner of the existing structure to the administrative officer at the time an application is submitted.
- G. To the extent required by the National Environmental Policy Act (NEPA) and as administered by the FCC, a complete Environmental Assessment (EA) draft or final report describing the probable impacts of the proposed facility.
- H. A copy of the application or draft application for an Act 250 permit, if applicable.
- I. The permit application shall be signed under the pains and penalties of perjury.

Section 1205: Site Plan Requirements

In addition to site plan requirements found elsewhere in the Town of Pittsford Zoning Bylaws telecommunication facilities shall include the following supplemental information:

- A. Location Map: a copy of a portion of the most recent USGS Quadrangle map showing the area within at least a two mile radius of the proposed tower site.
- B. Vicinity Map showing the entire vicinity within a 2,500 foot radius of the tower site, including the telecommunications facility or tower, topography, public and private roads and driveways, buildings and structures, water bodies, wetlands, landscape features, historic sites and habitats for endangered species. It shall indicate the property lines of the proposed tower site parcel and all easements or rights of way needed for access from a public way to the tower.
- C. Proposed Site Plans of entire development indicating all improvements including landscaping, utility lines, guy wires, screening and roads.
- D. Elevations showing all facades and indicating all exterior materials and color of towers, buildings and associated facilities.
- E. In the case of a proposed site that is forested, the approximate average height of the existing vegetation within 200 feet of the tower base.
- F. Construction sequence and time schedule for completion of each phase of the entire project.
- G. Plans shall be drawn at a minimum at the scale of one (1) inch equals 50 feet.

Section 1206: Co-Location Requirements

- A. An application for a new telecommunications tower shall not be approved unless the Board of Adjustment finds that the telecommunications facilities planned for the proposed tower cannot be accommodated on an existing or approved tower or structure due to one of the following reasons:
1. The proposed antennas and equipment would exceed the structural or spatial capacity of the existing or approved tower or facility, as documented by a qualified engineer licensed to practice in the State of Vermont. Additionally, the existing or approved tower cannot be reinforced, modified or replaced to accommodate planned or equivalent equipment, at a reasonable cost, to provide coverage and capacity comparable to that of the proposed facility.
 2. The proposed antennas and equipment would cause interference materially impacting the usefulness of other existing or permitted equipment at the existing or approved tower or facility as documented by a qualified engineer licensed to practice in the State of Vermont and such interference cannot be prevented at a reasonable cost.
 3. The proposed antennas and equipment, either alone or together with existing facilities, equipment or antennas, would create RFI in violation of federal standards or requirements.
 4. The proposed antennas and equipment either alone or together with existing facilities, equipment or antennas would create RFR in violation of federal standards or requirements.
 5. Existing or approved towers and structures cannot accommodate the planned equipment at a height necessary to function reasonably or are too far from the area of needed coverage to function reasonably as documented by a qualified engineer licensed to practice in the State of Vermont.
 6. Aesthetic reasons make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.
 7. There is no existing or approved tower in the area in which coverage is sought.
 8. Other unforeseen specific reasons make it unreasonable to locate the planned telecommunications equipment upon an existing or approved tower or building.
- B. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights where overall permitted height allows. Towers shall be designed structurally, electrically and in all respects to accommodate both the applicant's antennas and additional antennas where overall permitted height allows.

Section 1207: Tower and Antenna Design Requirements

Towers, antennas and any necessary support structures shall be designed to blend into the surrounding environment through the use of color camouflaging and architectural treatment, except where the Federal Aviation Authority (FAA), state or federal authorities have dictated a color.

In order to protect public safety and to preserve the scenic character and appearance of the area, the height limit for towers, antennas and tower-related fixtures shall be not more than 20 feet above the average height of the tree line measured within 100 feet of the highest vertical element of the telecommunications facility. Notwithstanding the above, additional height may be approved upon a finding by the Board of Adjustment that the additional height is necessary in order to provide adequate coverage in the Town of Pittsford or to accomplish co-location of facilities and that the additional height will not cause an undue visual impact on the scenic character or appearance of the area.

All buildings and structures accessory to a tower (except for electric power poles where specifically exempted by the Board) shall meet the minimum setback requirements of the underlying zoning district or setback requirements specified in this bylaw. If the minimum setbacks of the underlying zoning district are less than the height of the tower, including antennas or other vertical appurtenances, the minimum distance from the tower to any property line shall be no less than the height of the tower, including antennas and other vertical appurtenances.

Ground mounted equipment or antennas as well as buildings and structures accessory to a tower, shall be screened from view by suitable vegetation, except where a design of non-vegetative screening better complements the architectural character of the surrounding neighborhood. A planted vegetative screen shall be a minimum of ten feet in depth with a minimum height of six feet and shall have the potential to grow to a height of at least 15 feet at maturity. Existing on-site vegetation outside the immediate site for the wireless facility shall be preserved or improved. Disturbance to existing topography shall be minimized unless the disturbance is demonstrated to result in less visual impact on the facility from surrounding properties and other vantage points.

Section 1208: Amendments to Existing Telecommunications Facility Permit

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

- A. Change in the number of buildings or facilities permitted on the site;
- B. Material change in technology used by the telecommunications facility; or

- C. Addition or change of any equipment resulting in greater visibility or structural wind loading, or additional height of the tower, including profile of additional antennas, not specified in the original application.

Section 1209: Tower Lighting/ Sign

- A. Towers shall not be illuminated by artificial means and shall not display lights unless such lighting is specifically required by the FAA or other federal or state authority for a particular tower because of its height. Any lighting required solely as a result of height may be subject to review by the town of Pittsford. Heights may be reduced to eliminate the need for lighting or another location selected.
- B. No commercial signs or lettering shall be placed on a tower.
- C. Noise at the site perimeter from the operation of any machinery or equipment shall be minimized.

Section 1210: Antennas Mounted on Structures, Roofs, Walls, and Existing Towers Governed

The placement of telecommunications antennas on existing buildings, structures, roofs, or walls may be approved by the administrative officer, provided the antennas meet the requirements of this bylaw, upon submission of:

- A. A final site and building plan; and
- B. A report prepared by a qualified engineer, licensed to practice in the State of Vermont indicating the structure's suitability for the telecommunications facility, and that the proposed method of affixing the antenna to the structure complies with standard engineering practices. Complete details of all fixtures and couplings and the exact point of attachment shall be indicated.

Section 1211: Temporary Wireless Communication Facilities

Any telecommunications facility designed for temporary use is subject to the following:

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

Section 1212: Interference With Public Safety Telecommunications

No new telecommunications facility shall be placed or constructed in such a way as to interfere with public safety telecommunications. All applications for new telecommunication facilities shall be accompanied by an intermodulation study that predicts no likely interference problems and certification that the study has been provided to the appropriate public safety agencies. Before testing or operating new service or changes in existing service, telecommunications providers shall notify the municipality at least ten calendar days in advance of such changes and allow the municipality to monitor interference levels during that testing process.

Section 1213: Continuing Obligations of Permittee

Upon receiving a permit, the permitted shall annually demonstrate that he or she is in compliance with all FCC standards and requirements regarding RFR, the basis for his or her representations and the most recent time he or she took actual readings of the RFR at the site. The permitted shall provide a list of the RFR readings, their distances from the tower/transmitter, dates of the readings and the name of the person or company who took the readings.

Section 1214: Abandoned, Unused, Obsolete, Damaged or Dangerous Towers or Portions of Towers

Abandoned, damaged or unused towers or portions of towers and their facilities shall be removed as follows:

- A. The owner of a tower shall annually, on January 15, file a declaration with the Town of Pittsford administrative officer certifying the continuing safe operation of every facility installed subject to these regulations. Failure to file a declaration shall mean that the tower is no longer in use and considered abandoned. An owner who has failed to file an annual declaration with the administrative officer may file a declaration of use or intended use and may request the ability to continue use of the tower.
- B. Abandoned or unused towers and associated facilities shall be removed within 180 days of cessation of operations at the site unless a time extension is approved by the Board of Adjustment. In the event the tower is not removed within 180 days of the cessation of operations at a site, the municipality may remove the tower and all associated facilities and the costs of removal shall be assessed against the property and/or tower owner.
- C. Unused portions of towers shall be removed within 180 days of the time that such portion is no longer used for antennas. The replacement of portions of a tower previously removed requires the issuance of a new telecommunication facility permit.

Section 1215: Maintenance of Telecommunications Facilities Insurance

- A. The telecommunications facility owner shall maintain adequate insurance on all telecommunication facilities. All facility sites shall be properly fenced and identified by

signage that indicates presence of RFR and any other appropriate warnings required by permit conditions.

- B. The telecommunications facility owner shall provide and maintain a bond as set by the Board of Adjustment adequate to provide sufficient funds to facilitate the removal of any and all structures and provide for the restoration of the site to match the surrounding area within 200 feet, at the termination of the permit, or upon discontinuing the use of the structure in a manner consistent with the zoning permit.
- C. Enforcement and Penalties: The holder of the Zoning Permit and the underlying land owner, if different, and or any lessees, sub lessees, etc are to be held severally and jointly responsible for the maintenance and removal of any facilities granted a permit under these regulations.

Section 1216: Fees

Fees for filing an application to build or alter a telecommunications facility shall be as set by the Select Board and applicable at the time of the application. Fees may include the reasonable costs of independent technical assessment(s) of the application.

ARTICLE XIII: ADMINISTRATION AND ENFORCEMENT

Section 1301: Municipal Appointments

A. Administrative Officer

An Administrative Officer shall be nominated by the Planning Commission and appointed for a term of three (3) years by the Select Board to administer the Zoning Regulations. The Administrative Officer shall be subject to the personnel rules of the municipality adopted under Title 24. The Select Board may remove an Administrative Officer for cause at any time after consultation with the Planning Commission.

An acting Administrative Officer may be nominated by the Planning Commission and appointed by the Select Board, who shall have the same duties and responsibilities as the Administrative Officer when that individual is absent.

The Administrative Officer shall literally administer this Regulation and shall not have the power to permit any land development that is not in conformance with this regulation. In so doing the Administrative Officer shall inspect developments, maintain records and perform all other necessary tasks to carry out the provisions of these Regulations.

B. Planning Commission

A Planning Commission shall be appointed by the Select Board in accordance with the Act. At least a majority of members shall be residents of the municipality. Any member of the Commission may be removed at any time by a unanimous vote of the Select Board.

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

- prepare proposed amendments to these regulations, and consider proposed amendments submitted by others, include amendments submitted by petition;
- prepare and approve written reports on any proposed amendment to these regulations as required by the Act;
- hold one or more warned public hearings on proposed amendments to these regulations, prior to submission of a proposed amendment and written report to the Select Board;
- applications for site plan approval;
- applications for subdivision approval; and,
- applications for **Planned Unit Development**.

C. **Board of Adjustment**

The Board of Adjustment shall consist of not less than three (3) or more than nine (9) members appointed by the Select Board for specified terms in accordance with the Act.

The Select Board also may appoint alternates, for specified terms, to serve on the Board in situations when one or more members of the Board are disqualified or are otherwise unable to serve.

Any member of the Board of Adjustment may be removed for cause by the Select Board upon written charges and after public hearing.

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

- appeals from any decision, act or failure to act by the Administrative Officer;
- any requests for the change, extension, enlargement, or restoration of a use nonconformity;
- any request for the expansion or restoration of a dimensional nonconformity;
- any request for the development on or alteration of a lot with a dimensional non-conformity;
- any request related to a structural use or nonconformity in a regulated Flood Hazard Area;
- any variance requests
- applications for conditional use approval.

Section 1302: Zoning Permits & Exemptions

A. Applicability

No land development as defined herein, which is subject to these regulations, shall be commenced in the Town of Pittsford until a zoning permit has been issued by the Administrative Officer. If project is commenced prior to issuance of a zoning permit, fees shall be doubled the customary amount.

B. Exemptions

(Note: The following exemptions do not apply to the Special Flood Hazard Areas as addressed in the Pittsford Flood Hazard Area Regulations -Attachment A).The following construction activities and /or land uses shall be exempt from review under these Bylaws and no administrative permit for said construction activities or land uses shall be required:

1. Normal maintenance, repair, upgrading, or remodeling of a building or structure that neither increases the building's or structure's footprint nor involves a change in use. The construction of an accessory structure containing not more than 150 square feet on a residential lot so long as said accessory structure is in compliance with all applicable setbacks.
2. Agricultural uses are exempt from regulation under this Bylaw, and no municipal permit for a farm structure is required. However, anyone intending to erect a farm structure must provide prior written notice to the Zoning Administrator, and must comply with the setbacks contained within this zoning ordinance, or with any lesser setbacks approved by the secretary of agriculture, food and markets in accordance with the provisions of Section 4413(d) of the Act. The notification must contain a sketch of the proposed structure, identify the setback distances from adjoining property owners and from any right-of-way, and include the written approval of setback distances, if any, obtained from the secretary of agriculture, food and markets. All farm structures within the Flood Hazard Overlay District must comply with the National Flood Insurance Program. Nothing herein shall limit the municipality's right to report violations of accepted agricultural or silvicultural practices to the appropriate state authorities for enforcement.
3. Accepted management practices (AMPs) for silviculture (forestry) as those practices are defined by the Commissioner of Forests, Parks and Recreation.
4. Power generation and transmission facilities, which are regulated under 30 V.S.A. § 248 by the Vermont Public Service Board. Such facilities, however, should conform to policies and objectives specified for such development in the Town Plan.
5. Hunting, fishing, and trapping as specified under 24 V.S.A §2295 on private or public land. This does not include facilities supporting such activities, such as firing ranges or rod and gun clubs, which for the purposes of these regulations are defined as outdoor recreation facilities.

6. Normal maintenance and repair of an existing structure which do not result in exterior alterations, or expansion, or a change of use.
7. Interior alterations or repairs to a structure which do not result in exterior alterations, or expansion, or a change in use.
7. Exterior alterations to structures which are not located within designated design review districts and which do not result in any change to the footprint or height of the structure or a change in use.
8. Residential entry stairs (excluding decks and porches), handicap access ramps, walkways, and fences or walls less than four (4) feet in height which do not extend into or obstruct public rights-of-way, or interfere with corner visibilities or sight distances for vehicular traffic.
9. Outdoor recreational trails (e.g., walking, hiking, cross-country skiing and snow mobile trails) which do not require the installation of structures or parking areas.
10. Garage sales, yard sales, auctions, or similar activities that do not exceed three (3) consecutive days, nor more than nine (9) total days in any calendar year.
11. Other incidental structures and uses that comply with all other sections herein, such as: children's playhouse, dog house, a flag pole, grave stones and markers, lawn & garden shed less than 100 square feet, play gym less than 150 square feet, pool of less than 3,000 gallons, school bus shelter less than 100 square feet, temporary tents.

C. Application

1. Application Requirements. An application for a zoning permit shall be filed with the Administrative Officer on form(s) provided by the municipality. Required application fees, as set by the Select Board, also shall be submitted with each application. In addition, the following information will be required as applicable:
 - (a) Permitted Uses. Applications for a permitted use shall include a sketch plan, no smaller than 8.5" x 11", drawn to scale, that depicts the following:
 - (1) the dimensions of the lot, including existing property boundaries;
 - (2) the location, footprint and height of existing and proposed structures or additions;
 - (3) the location of existing and proposed accesses (curb cuts), driveways and parking areas;
 - (4) the location of existing and proposed easements and rights-of-way;
 - (5) existing and required setbacks from property boundaries, road rights-of-way, surface waters and wetlands;
 - (6) the location of existing and proposed water and wastewater systems; and

(7) other such information as required by the Administrative Officer to determine conformance with these regulations.

(b) Uses Subject to Development Review. For development requiring one or more approvals from the Appropriate Municipal Panel prior to the issuance of a zoning permit, application information and fees as required for such approvals shall be submitted concurrently with the application for a zoning permit and referred by the Administrative Officer to the Chair of the appropriate Municipal Panel.

D. Concurrent Review

If more than one type of review is required for a project, the reviews, to the extent feasible, shall be conducted concurrently according to the process defining the sequence of review and issuance of decisions described in the rules of procedure of the Town of Pittsford.

E. Issuance

A zoning permit shall be issued by the Administrative Officer only in accordance with the Act and the following provisions:

1. Within thirty (30) days of receipt of a complete application, including all application materials, fees, the Administrative Officer shall act to either issue or deny a zoning permit in writing, or to refer the application to the Appropriate Municipal Panel and/or state for consideration. If the Administrative Officer fails to act within the 30-day period, a permit shall be deemed issued on the 31st day.
2. No zoning permit shall be issued by the Administrative Officer for any use or structure which requires the approval of the Appropriate Municipal Panel or Select Board until such approval has been obtained. For permit applications that must be referred to a state agency for review, no zoning permit shall be issued until a response has been received from the state, or the expiration of 30 days following the submission of the application to the state.
3. If public notice has been issued by the Select Board for their first public hearing on a proposed amendment to these regulations, for a period of 150 days following that notice the Administrative Officer shall review any new application filed for compliance with the proposed amendment and applicable existing bylaws. If the new bylaw or amendment has not been adopted by the conclusion of the 150 day period, or if the proposed bylaw or amendment is rejected, the permit shall be reviewed under all applicable provisions of this bylaw.
4. A zoning permit shall include a statement of the time within which appeals may be taken under Section XIV; and shall require, upon issuance of the permit, posting by the applicant of a notice of permit, on a form prescribed by the municipality, within view of the nearest public right-of-way until the time for appeal has expired.

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

F. Effective Date

No zoning permit shall take effect until the time for appeal under Section 1401 has passed, or in the event that a notice of appeal is properly filed, until final adjudication of the appeal.

G. Completion

All activities as authorized by the issuance of the permit shall be commenced within one (1) year of the effective date of the permit and shall be completed within two (2) years of the effective date or the permit shall become null and void. The applicant must reapply and obtain another zoning permit to complete the activities as initiated under the original permit. The Zoning Administrator may allow extensions of up to two (2) years.

- H. The issuance of a zoning permit does not relieve the applicant of any responsibility for obtaining other required local, state or federal permits or approvals as necessary.

ARTICLE XIV: APPEALS

Section 1401: Appeals of Actions of the Administrative Officer

Any interested person as defined below may appeal a decision or act of the Administrative Officer within 15 days of the date of the decision or act by filing a notice of appeal with the Secretary of the Board of Adjustment and by filing a copy of the notice with the Administrative Officer.

- A. The Board shall hold a public hearing on a notice of appeal within 60 days of its filing. The Board shall give public notice of the hearing, and mail a copy of the hearing notice to the appellant not less than 15 days prior to the hearing date.
- B. The Board may reject an appeal or request for reconsideration without hearing, and render a decision which shall include findings of fact within 10 days of the filing of a notice of appeal, if the Board determines that the issues raised by the appellant have been decided in an earlier appeal or are based on substantially or materially the same facts by or on behalf of the appellant.
- C. All appeal hearings shall be open to the public and the rules of evidence applicable at these hearings shall be the same as the rules of evidence applicable in contested cases in hearings before administrative agencies as set forth in state statutes [3 V.S.A. §810]. Any interested person or body may appear and be heard in person or be represented by an agent or attorney at the hearing. The hearing may be adjourned by the Board from time to time, provided that the date and place adjourned hearing shall be announced at the hearing.

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

Section 1402: Interested Persons

An interested person includes the following:

- A. the Town of Pittsford or an adjoining municipality;
- B. a person owning or occupying property in the immediate neighborhood of a property which is the subject of a decision or act taken under these regulations, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes or terms of the plan or regulations of the municipality;
- C. any ten (10) voters or property owners within the municipality who, by signed petition to the Appropriate Municipal Panel, allege that any relief requested by a person under this section, if granted, will not be in compliance with the policies, purposes or terms of the plan or regulations of the municipality; and
- D. any department or administrative subdivision of the state owning property or any interest therein within the municipality or adjoining municipality, and the Vermont Agency of Commerce and Community Development.

Section 1403: Notice of Appeal

A notice of appeal filed under this section shall be in writing and include the following information.

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

Section 1404: Appeals to Environmental Court

An interested person who has participated in a regulatory proceeding of the Appropriate Municipal Panel(s) may appeal a decision rendered by the Panel(s), within 30 days of such decision, to the Vermont Environmental Court. Appeals to Environmental Court shall also meet the following requirements:

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

Any hearing held under this Section may be adjourned by the Board from time to time, provided however, that the date and place of the adjourned hearing shall be announced at that time.

ARTICLE XV: VARIANCES

Section 1501: Variance Criteria

The ZBA may grant a variance and render a decision in favor of the appellant only if *all* of the following facts are found, and the findings are specified in its written decision:

- A. There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not the circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located;
- B. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations and that the authorization of a variance is necessary to enable the reasonable use of the property;
- C. The unnecessary hardship has not been created by the appellant;
- D. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or

development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare; and

- E. The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the Town Plan.

Section 1502: Variance for Renewable Energy Structures.

Where a variance is requested for a structure that is primarily a renewable energy resource structure, the Board of Adjustment may grant such variance only if *all* of the following facts are found in the affirmative and specified in its written decision:

- A. It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with these regulations;
- B. The hardship was not created by the appellant;
- C. The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and
- D. The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the Town Plan.

Section 1503: Additional Conditions

In granting a variance, the Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the Town Plan currently in effect.

ARTICLE XVI: VIOLATIONS & ENFORCEMENT

Section 1601: Violations

The commencement or continuation of any land development that does not meet the requirements of these regulations shall constitute a violation. All violations shall be pursued in accordance with the Act, Sections 4451, 4452 and 4454. Each day that a violation continues shall constitute a separate offense. The Administrative Officer shall institute, in the name of the Town of Pittsford, any appropriate action, injunction or other proceeding to enforce the provisions of these regulations. All fines imposed and collected shall be paid to the Town.

Section 1602: Notice of Violation

No action may be brought under this section unless the alleged offender has had at least seven (7)

days' warning notice by certified mail that a violation exists. The notice of violation also shall be recorded in the land records of the municipality. The notice shall state that a violation exists; that the alleged offender has an opportunity to cure the violation within the seven days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days. Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of the regulations after the seven-day notice period and within the next succeeding 12 months.

Section 1603: Limitations on Enforcement

An action, injunction or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required or duly recorded municipal land use permit may be instituted against the alleged offender if the action, injunction or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred, and not thereafter. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted. No enforcement proceeding may be instituted to enforce an alleged violation of a municipal land use permit unless the permit or a notice of the permit has been recorded in the land records of the Town.

ARTICLE XVII: PUBLIC HEARINGS

Section 1701: Public Notice

- A. A warned public hearing shall be required for **conditional use review, appeals of decisions of the administrative officer and variances**. Any public notice for a warned public hearing shall be given not less than 15 days prior to the date of the public hearing by all of the following:
1. Publication of the date, place and purpose of the hearing in a newspaper of general circulation in the municipality;
 2. Posting of the same information in three (3) or more public places within the municipality, including the posting of a notice within view from the public right-of-way nearest to the property for which the application is being made; and posting on the Town web site, and,
 3. Written notification to the applicant and to owners of all properties abutting the property subject to development, without regard to public rights-of-way, which includes a description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal.
- B. Public notice of all other types of development review hearings, including site plan review and nonconformities shall be given not less than 15 days prior to the date of the public hearing, and shall at minimum include the following:

1. Posting of the date, place and purpose of the hearing in three (3) or more public places within the municipality, and
 2. Written notification to the applicant and to owners of all properties abutting the property subject to development, without regard to public rights-of-way, which includes a description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding, is a prerequisite to the right to take any subsequent appeal.
- C. The applicant shall be required to bear the cost of public warning and the cost of notifying adjoining landowners as required above, as determined from the current municipal grand list.
- D. No defect in the form or substance of any required public notice under this section shall invalidate the action of the Appropriate Municipal Panel where reasonable efforts have been made to provide adequate posting and notice. However, the action shall be invalid when the defective posting or notice was materially misleading in content. If an action is ruled to be invalid by the ZBA or the Environmental Court, the action shall be remanded to the Board to provide new posting and notice, hold a new hearing, and take a new action.

Section 1702: Hearings

All meetings and hearings of the Appropriate Municipal Panel, except for deliberative sessions, shall be open to the public.

For the conduct of any hearing, and the taking of any action, a quorum shall be not less than the majority of members of the Appropriate Municipal Panel.

The Board of Adjustment, in conjunction with any hearing under this bylaw, may:

- A. Examine or caused to be examined any property, maps, books, or records bearing upon the matters concerned in that proceeding;
- B. Require the attendance of any person having knowledge in the premises;
- C. Take testimony and require proof material for its information; and
- D. Administer oaths or take acknowledgement in respect of those matters.

In any public hearing there shall be an opportunity for each person wishing to achieve status as an interested person to demonstrate that the criteria set forth under Section 1402 are met. The Board of Adjustment shall keep a record of the name, address, and participation of each of these persons.

The Appropriate Municipal Panel(s) may recess a hearing on any application or appeal pending the submission of additional information, provided that the next hearing date and place is announced at the hearing.

Section 1703: Decisions

Any action or decision of an Appropriate Municipal Panel shall be taken by the concurrence of a majority of the members of the Panel. The Appropriate Municipal Panel shall issue a decision within 45 days after the adjournment of the hearing. Failure to issue a decision within the 45-day period shall be deemed approval and shall be effective the 46th day. In addition:

- A. All decisions shall be issued in writing and shall separately state findings of fact and conclusions of law. Findings of fact shall explicitly and concisely restate the underlying facts that support the decision, based exclusively on evidence of the record. Conclusions shall be based on the findings of fact. The decision shall also include a statement of the time within which appeals may be taken. The minutes of a meeting may suffice, provided that the factual basis and conclusions relating to the review standards are provided in accordance with these requirements.

- B. In rendering a decision in favor of the applicant, the Appropriate Municipal Panel may attach additional reasonable conditions and safeguards as it deems necessary to implement the purposes of the Act, these regulations, and the Town Plan currently in effect. This may include, as a condition of approval:
 - 1. the submission of a three-year performance bond, escrow account, or other form or surety acceptable to the Pittsford Select Board, which may be extended for an additional three-year period with the consent of the owner, to assure the completion of a project, adequate stabilization, or protection of public facilities that may be affected by a project; and/or
 - 2. a requirement that no zoning permit be issued for an approved development until required improvements have been satisfactorily installed in accordance with the conditions of approval.

- C. All decisions of an Appropriate Municipal Panel shall be sent by certified mail, within the required 45-day period, to the applicant or the appellant on matters of appeal. Copies of the decision also shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Zoning Administrator and Clerk as part of the public record of the municipality.

ARTICLE XVIII: RECORDING

Within 30 days of the issuance of a municipal land use permit or notice of violation, the Administrative Officer shall deliver either the original, a legible copy, or a notice of the permit or violation to the Town Clerk for recording in the land records of the municipality generally as

provided in 24 V.S.A. §1154(c), and file a copy in the Municipal Office in a location where all municipal land use permits shall be kept.

The applicant shall be charged for the cost of the recording fees.

ARTICLE XIX: OTHER PROVISIONS

Section 1901: Interpretation of Regulation

The provisions of these regulations shall be held to be minimum requirements adopted for the promotion of the public health, safety, comfort, convenience and general welfare. Except as provided to the contrary in the Act or these regulations, it is not intended by these regulations to repeal, annul or in any way impair any regulations or permits previously adopted or issued, provided, however, that where these regulations impose a greater restriction upon the use of a structure or land than are required by any other statute, ordinance, rule, regulations, permit, easement or agreement, the provisions of these regulations shall control.

Section 1902: Fees

Fees may be established by the Select Board in amounts necessary to cover all costs of the Administrative Officer, the Board of Adjustment and the Planning Commission for such items as processing applications, including costs of material, administrative time, reasonable overhead such as postage, telephone, and the hiring of appropriate professionals to review various aspects of an application, etc.

Section 1903: Amendments

Any provision of this Regulation, as well as the boundaries of the various zoning districts established herein, may be amended or repealed subject to the provisions of Sections 4442 of 24 V.S.A. 117.

Section 1904: Severability

If any provision of this regulation is held invalid, the invalidity does not affect other provisions or applications of this regulation, which can be given effect without the invalid provision or application.

Section 1905: Effective Date

This Regulation shall take effect upon approval in accordance with the procedures contained in Section 4442 of 24 V.S.A. 117.

Section 1906: Precedence of Regulation