

ARTICLE 7. ADMINISTRATION & ENFORCEMENT

Section 7.1 Permits & Approvals

(A) **Permit Requirements.** In accordance with the Act [§ 4446], no development or subdivision of land may begin in the Town until all applicable Municipal land use permits and approvals have been issued, unless the development is specifically exempted from these regulations under Section 7.3. Such permits and approvals include:

- (1) **Zoning Permits** under Section 7.2 for all development.
- (2) **Site Plan Approval** under Section 5.5 for all uses subject to site plan review.
- (3) **Conditional Use Approval** under Section 5.4 for uses subject to conditional use review, including uses within any overlay district.
- (4) **Subdivision Approval** under Section 6.2 for the subdivision or re-subdivision of land.
- (5) **Planned Residential or Planned Unit Development (PRD or PUD)** under Section 5.7 in association with subdivision approval.
- (6) **Boundary Line Adjustment** – By all affected Land Owners

(B) The ZA will coordinate the development review process on behalf of the Town, refer applications to the appropriate board or Town officer, and provide information and assistance to applicants for municipal land use permits as appropriate [§ 4448(c)].

Section 7.2 Zoning Permit Requirements

(A) **Application Requirements.** A zoning permit application must be submitted to the ZA on forms provided by the Town, along with any application fees as established by the SB. The following is also required:

- (1) All applications shall include a statement describing the existing and intended use of the land and structures and/or any proposed structural changes, and be accompanied by two copies of a sketch plan, no smaller than 8” x 11”, drawn to scale, that accurately depicts:
 - a. the dimensions of the lot, including existing and proposed property boundaries;
 - b. the location, footprint, and height of existing and proposed structures and additions;
 - c. the location and dimensions of existing and proposed accesses, driveways and parking areas;
 - d. the location of existing and proposed easements, rights-of-way and utilities;
 - e. setbacks from property boundaries, road rights-of-way, surface waters, and wetlands;
 - f. the location of existing and proposed water and wastewater systems; and
 - g. such other information as may be needed to determine compliance with these regulations.
- (2) Applications for permits that require review and approval by the ZBA, PC and/or SB shall also include information required for all applicable reviews. The ZA shall refer the application to the appropriate board following submission,
- (3) Any permit application that has to be referred to a state agency, under Article 2 and/or Section 5.6, must include a brief report describing the proposed use, location, and an evaluation of the effects of such use on municipal and regional plans currently in effect. The report shall be forwarded by the

ZA to the appropriate state agency or department within twenty-one (21) days of its receipt.

(4) A Boundary Line Adjustment application requires filing a map drawn to scale with the application.

(B) Issuance of Zoning Permits. A zoning permit shall be issued by the ZA only in accordance with the Act [§§4448, 4449] and the following:

- (1) No zoning permit shall be issued by the ZA for any use or structure that requires approval of the ZBA, PC and/or SB until such approval has been obtained;
- (2) No zoning permit shall be issued by the ZA for the development of a lot for which major subdivision approval is required until subdivision approval has been obtained;
- (3) For uses requiring state agency referral no zoning permit shall be issued until the expiration of 30 days following the submission of a report and/or application to the appropriate state agency or department;
- (4) If public notice has been issued by the SB for their first public hearing on a proposed amendment to these regulations, the ZA shall issue a zoning permit for development that is subject to the proposed amendment only in accordance with the requirements of the Act [§ 4449(d)];
- (5) The ZA shall act to either issue or deny a zoning permit in writing, or to refer the application to the PC or ZBA for consideration. In accordance with the Act [§ 4448], if the ZA fails to act within the 30-day period, a permit shall be deemed issued on the 31st day;
- (6) Each zoning permit issued shall include a statement of the time within which appeals may be taken under Section 7.5 below; and shall require posting 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; and
- (7) Within three (3) days of issuance, the ZA shall deliver a copy of the permit to the Listers, and post a copy at the Town Office for a period of 15 days from the date of issuance.

(C) Effective Dates. No zoning permit shall take effect until the time for appeal under Section 7.5 has passed, or in the event that a notice of appeal is properly filed, until final adjudication of the appeal. Permits and associated conditions will run with the land and be binding upon the landowner's future heirs and assigns. A permit will, however, expire and become null and void within one (1) year from the date of issuance if the permitted development has not been substantially commenced. Prior to the expiration of the permit, the ZA may issue an extension for one (1) additional year in the event the permittee can document an unavoidable delay in the substantial completion of the project.

(D) Display of Zoning Permit. In accordance with the Act [§4449], the notice of a zoning permit must be displayed within view from the public right-of-way nearest to the property until the time for appeal under Section 7.5 has passed.

Section 7.3 Exemptions

(A) In accordance with the Act [§4446], no zoning permit shall be required for the following:

- (1) Any building for which construction lawfully began prior to the effective date of these regulations, provided that such construction is substantially completed within two (2) years of the effective date;

- (2) Normal maintenance, repair, remodeling or interior alteration of an existing structure that does not result in a change in use or any change to the footprint, height dimensions or expansion in the total area of the structure;
- (3) Residential entry stairs (excluding deck or porch areas), handicap ramps, walkways, and fences or walls no greater than six feet in height which do not extend into or obstruct public rights-of-way, or interfere with corner visibility or sight distances for vehicular traffic;
- (4) Up to two (2) accessory structures, such as a shed, tree house, doghouse, child's play house, or similar structure with a floor area of not more than 80 square feet (each) and a height of not more than 10 feet which is located at least 10 feet from all property lines, provided the structure(s) is not located within the Flood Hazard Overlay District. A zoning permit is required for all other accessory structures;
- (5) Prefabricated, temporary carports and storage covers, assembled out of metal structural supports and fabric, provided such covers are not affixed to a permanent foundation and meet all setback standards for the district in which they are located;
- (6) The ordinary use of a small room of a dwelling for personal office use and/or paperwork for business activity carried on elsewhere (see Section 4.6 for additional standards related to other types of home businesses);
- (7) Noncommercial outdoor recreation that does not involve the development or use of structures or substantial site improvement (e.g., construction of parking area at a trail head);
- (8) Minor grading and excavation associated with road and driveway maintenance (including culvert replacement and re-surfacing) and yard improvements associated with accessory uses to existing principal uses (contouring yards, establishing garden and landscape areas), provided the grading and excavation is not located within the Flood Hazard Overlay District;
- (9) Temporary signs and banners, garage sales, yard sales and auctions not exceeding 3 consecutive days, nor more than 12 days per calendar year, which do not cause unsafe traffic conditions or parking problems; and
- (10) Fuel storage as an accessory structure to an allowed use, provided such storage meets the requirements of Section 3.11, and provided the structure(s) are not located within the Flood Hazard Overlay District.

(B) In accordance with the Act [§ 4413(d)], Accepted Management Practices and Accepted Agricultural Practices, including farm structures are exempted from the permit requirements under Section 7.2. However, written notification, including a sketch plan of the structure showing setback distances from road rights-of-way, property lines, and surface waters shall be made to the ZA prior to any construction as required under the Accepted Agricultural Practices.

(C) Public utility power generating plants and transmission facilities regulated by the Vermont Public Service Board (under 30 V.S.A. §248) are exempted from these regulations in accordance with the Act [§ 4413(b)].

Section 7.4 Certificates of Occupancy

(A) In accordance with the Act [§ 4449((a)(2))], no building or building addition for which a zoning permit has been issued shall be occupied or used, in whole or in part, until a certificate of occupancy has

been issued by the ZA, certifying that such building or addition conforms to the approved plans, specifications, and requirements of the permit and these regulations.

- (1) An application for a certificate of occupancy shall be provided with the zoning permit issued by the ZA. Prior to the use or occupancy of the building or addition the applicant shall submit the certificate of occupancy application to the ZA upon completion of required improvements.
- (2) The applicant shall demonstrate, to the satisfaction of the ZA, that the proposed building or addition has been completed in conformance with the zoning permit and any associated approvals, including all applicable permit conditions. The ZA may inspect the premises to ensure that all work has been completed in conformance with the zoning permit and associated approvals prior to issuing a certificate.
- (3) A certificate of occupancy may be issued for a substantially completed structure if the ZA determines that it meets all applicable permit conditions.
- (4) A certificate of occupancy shall be issued or denied by the ZA within 14 days of receipt of the application. If the ZA fails to either grant or deny the certificate of occupancy within 14 days of the submission of an application, the certificate shall be deemed issued on the 15th day. The decision of the ZA may be appealed to the PC under Section 7.5(A) below.

Section 7.5 Appeals

(A) In accordance with the Act [§ 4465], the applicant or any other interested person may appeal a decision or act of the ZA by filing a notice of appeal with the ZBA or the Town Clerk if no Secretary has been elected, within 15 days of the date of such decision or act. A copy of the notice of appeal also shall be filed with the ZA.

(B) Decisions of the ZBA & PC. The applicant, appellant or other interested person who has participated in a regulatory proceeding of the ZBA or PC may appeal the decision rendered by the ZBA or PC within 30 days of such decision, to the Vermont Environmental Court, in accordance with the Act [§4471].

Section 7.6 Variances & Setback Waivers

(A) **Setback Waivers.** Notwithstanding the minimum setback standards for front yards (setback from highway right-of-way) and side and rear yards (setback from parcel boundaries) for various zoning districts set forth in Article 2, the ZBA may allow the modification of building setbacks as a conditional use reviewed in accordance with Section 5.4 and subject to the following provisions:

- (1) The parcel associated with the waiver request was legally in existence prior to November 2, 2004, and
- (2) The ZBA may allow for a reduction of the front, side and rear setback, providing the reduction will not adversely impact the use and enjoyment of adjacent parcels, and the reduced setback complies with conditional use standards set forth in Article 5.

(B) **Variances.** The ZBA shall hear and decide upon requests for variances pursuant to the Act [§4469(a)] and appeal procedures under Section 7.5. The Board may grant a variance and render a decision in favor of the appellant only if all of the following facts are found and the findings are specified in its written decision:

- (1) There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not the

circumstances or conditions generally created by the provisions of these regulations in the neighborhood or district in which the property is located;

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

(C) Variances involving Renewable Energy Structures. On an appeal for a variance from the provisions of these regulations that is requested for a structure that is primarily a renewable energy resource structure, the ZBA may grant that variance and render a decision in favor of the appellant only if *all* the following facts, as listed in the Act [§ 4469(b)], are found, and the findings are specified in its decision:

- (1) It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with these regulations;
- (2) The hardship was not created by the appellant;
- (3) 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
- (4) 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.

(D) Variances within the Flood Hazard Area Overlay District. Variances within the Flood Hazard Area Overlay District shall be granted by the ZBA only:

- (1) in accordance with the Act [§4424] and the criteria for granting variances found in 44 CFR Section 60.6 of the National Flood Insurance Program regulations;
- (2) upon a determination that during the base flood discharge the variance will not result in increased flood levels; and
- (3) upon a determination that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(E) In granting a variance or setback waiver under this section, the ZBA may attach conditions that it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the Town Plan.

Section 7.7 Violations & Enforcement

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

(B) **Notice of Violation.** No action may be brought under this section unless the alleged offender has had at least seven (7) days notice by certified mail that a violation exists, as required under the Act [§ 4451]. The notice of violation also shall be recorded in the Town land records under Section 7.8(D). The warning notice shall state a violation exists, the alleged offender has an opportunity to cure the violation within the seven days, and 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 after the seven-day notice period and within the next succeeding 12 months.

(C) **Limitations on Enforcement.** An action, injunction or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required or duly recorded municipal land use permit may be instituted against the alleged offender if the action, injunction or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred, and not thereafter, in accordance with the Act [§4454]. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted. No enforcement proceeding may be instituted to enforce an alleged violation of a Town land use permit unless the permit or a notice of the permit has been recorded in the Town land records under Section 7.8(D).

Section 7.8 Town Administrative Requirements

(A) **Appointments.** The following appointments or elections shall be made in association with the administration and enforcement of these regulations:

- (1) **Zoning Administrator (ZA).** The SB shall appoint a ZA, from nominations submitted by the PC, for a term of three (3) years in accordance with the Act [§4448]. In the absence of the ZA, an Acting ZA may be appointed by the SB, from nominations submitted by the PC, who shall have the same duties and responsibilities of the ZA in the ZA's absence. The ZA shall literally administer and strictly enforce the provisions of these regulations, and in doing so shall inspect development, maintain records, and perform other related tasks as is necessary and appropriate.
- (2) **Zoning Board of Adjustment (ZBA).** ZBA members and alternates shall be appointed by the SB for specified terms in accordance with the Act [§4460]. The ZBA shall adopt rules of procedure to guide its official conduct as required under the Act and Vermont's Open Meeting Law. The ZBA shall have all powers and duties as set forth in the Act to administer the provisions of these regulations, the power to hear and act upon:
 - applications for conditional use approval (Section 5.4); and
 - appeals of any decision, act or failure to act by the ZA (Section 7.5(A));
 - variance requests (Section 7.6).
- (3) **Planning Commission (PC).** The PC shall be elected to specified terms by Town voters in accordance with the Act [§§ 4321, 4323]. The PC shall adopt rules of procedure to guide its official conduct in accordance with the Act [§ 4323] and Vermont's Open Meeting Law [1 V.S.A. 310-314]; and shall have powers and duties as set forth in the Act [§ 4325], including the power to hear and decide:

- (a) requests and petitions for regulation amendments,
- (b) requests for site plan approval (Section 5.5),
- (c) requests for major subdivision approval (Section 6.5),
- (d) applications for planned residential and planned unit developments (Section 5.7),
- (e) ZA Nominations
- (f) Requests for access and frontage approval (Section 3.2)

(4) **Select Board.** The SB shall be elected to specified terms by the voters of the Town in accordance with the Act [§§4321, 4323]. The SB shall adopt rules of procedure to guide its official conduct as required under the Act and Vermont's Open Meeting Law. The SB shall have all powers and duties as set forth in the Act to administer the provisions of these regulations, the power to hear and act upon:

- requests for driveway access approval (Section 3.2);

(B) **Fee Schedule.** The SB shall establish a schedule of fees to be charged in administering these regulations, with the intent of covering the Town's administrative costs. Such fees may be revised as deemed necessary by the SB.

(C) Public Hearing Notice Requirements.

- (1) In accordance with the Act [§4464(a)], a warned public hearing shall be required for conditional use review (Section 5.4), appeals and variances (Sections 7.5, 7.6) and final subdivision review (Section 6.2). 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:
 - a. publication of the date, place and purpose of the hearing in a newspaper of general circulation in the town;
 - b. posting of the same information in three (3) or more public places within the municipality, including posting of a notice within view from the public right-of-way nearest to the property for which the application is being made;
 - c. written notification to the applicant and to owners of all properties adjoining 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; and
 - d. for hearings on subdivision plats located within 500 feet of a municipal boundary, written notification to the clerk of any adjoining municipality.
- (2) Public notice of all other types of development review hearings, including site plan review (Section 5.5) shall be given not less than seven (7) days prior to the date of the public hearing and shall at minimum include:
 - a. posting of the date, place and purpose of the hearing in three (3) or more public places within the municipality, and
 - b. written notification to the applicant and to owners of all properties adjoining 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 pre-requisite to the right to take any subsequent appeal.
- (3) The applicant or appellant shall be required to bear the cost of public warning and the cost and responsibility of notifying adjoining landowners, as required under Subsections (C)(1) and (C)(2) above. The applicant shall be required to demonstrate proof of delivery to adjoining landowners, as determined from the most recent municipal grand list, either by certified mail, return receipt requested, or by written notice hand-delivered or mailed to the last known address supported by a sworn certificate of service.

- (4) No defect in the form or substance of any required public notice under this section shall invalidate the action of the ZBA or PC 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 Environmental Court, the action shall be remanded to the ZBA or PC to provide new posting and notice, hold a new hearing, and take a new action.
- (5) Public hearings concerning proposed amendments to these regulations shall be noticed and warned in accordance with the Act [§§ 4441, 4444].

(D) Permit & Violation Recording Requirements.

- (1) Within 30 days of the issuance of a Town land use permit or notice of violation, the ZA shall deliver either the original, a legible copy, or a notice of the Town land use permit or notice of violation to the Town Clerk for recording in the Town land records generally as provided for in 24 V.S.A. § 1154(a) and (c), and file a copy in the Town Office in a location where all municipal land use permits shall be kept, as required under the Act [§ 4449(c)]. The applicant shall be charged for the cost of the recording fees.
- (2) For development within the Flood Hazard Area Overlay District, the ZA shall also maintain a record of:
 - a. permits issued for development in areas of special flood hazard;
 - b. elevation certificates that show the elevation, in relation to mean sea level, of the lowest floor, including basement, of all new or substantially improved buildings;
 - c. the elevation, in relation to mean sea level, to which buildings have been flood-proofed;
 - d. all flood-proofing certifications required under this regulation; and
 - e. all variance actions, including the justification for their issuance.