
ARTICLE 7. ADMINISTRATION & ENFORCEMENT

Section 7.1 Permit & Application Requirements

(A) **Zoning Permit Requirements.** No land development may commence, and no structure may be erected, substantially improved, moved, or changed in use, unless a zoning permit has been issued by the Zoning Administrator as provided for in the Act [§4449], or the development is specifically exempted from the provisions of these bylaws under Section 7.2. Other municipal permits or approvals, such as curb-cut or sewer connection approval, also may be required under separate ordinances.

(B) **Application Requirements.** Applications for zoning permits shall be submitted to the Zoning Administrator on forms provided by the Town, along with any application fees as established by the Selectboard. In addition, the following will be required as applicable:

- (1) **Permitted Uses.** Applications for permitted uses shall include a statement of the existing and intended use of land and structures, and be accompanied by a sketch plan, drawn to scale, that includes the following:
 - 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 of existing and proposed easements, rights-of-way and utilities;
 - d. setbacks from property boundaries, rights-of-way, surface waters, and wetlands;
 - e. a surveyor's plot plan, if available; and
 - f. additional information as requested to determine conformance with the provisions of these bylaws.
 - (2) **Conditional Uses.** Uses that require conditional use review must include a development plan prepared and submitted in accordance with Section 5.2.
 - (3) **Flood Hazard Area Review.** Uses within the flood hazard overlay district that require flood hazard review must include a flood hazard development plan prepared and submitted in accordance with Section 5.3.
- (C) **Issuance of Zoning Permits.** The Zoning Administrator shall issue zoning permits in accordance with the following:
- (1) No zoning permit shall be issued by the Zoning Administrator for any use or structure which requires approval of the Board of Adjustment and/or Planning Commission, until such approval has been obtained.
 - (2) Within 30 days of receipt of a complete application, including all application materials, fees and approvals, the Zoning Administrator shall either issue, deny or refer a permit in writing pursuant to the Act [§§4449, 4465]. An application for a zoning permit will not be considered complete until all necessary approvals (e.g., Board of Adjustment, Planning Commission) required by these bylaws have been obtained. Denials shall include a statement describing the reasons for denial and the time in which appeals may be made under Section 7.3. If the Zoning Administrator fails to act within the 30 day period, a permit shall be deemed issued on the 31st day.

- (3) Within 3 days of issuance, the Zoning Administrator 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 issuance.
- (4) A notice of permit, on a form prescribed by the municipality, must be posted by the applicant within view from the public right-of-way most nearly adjacent to the subject property until the time for appeal has passed.

(D) **Effective Dates.** No zoning permit shall take effect until the time for appeal under Section 7.3 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 2 years from the date of issuance if the permitted development has not commenced. Prior to the expiration of the permit, the Zoning Administrator may issue an extension for one additional year.

(E) **Certificate of Compliance.** After the effective date of these regulations, the Planning Commission and/or Board of Adjustment may require, as a condition of subdivision or conditional use approval, that a certificate of compliance be obtained to ensure that all work has been completed in conformance with the zoning permit and associated approvals, including all applicable permit conditions.

- (1) The application for a certificate of compliance shall be submitted to the Zoning Administrator with as-built plans drawn to scale which show the location of all monuments, utilities, structures, roadways, easements, parking areas, signs, landscaping and other improvements as constructed.
- (2) Within 14 days of receipt of the application for a certificate of compliance, the Zoning Administrator will inspect the project to ensure that all work has been completed in conformance with the conditions of approval. If the Zoning Administrator fails to either grant or deny the certificate of compliance within 14 days of the submission of an application, the certificate shall be deemed issued on the 15th day.

Section 7.2 Exemptions

(A) 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 completed within two years of the effective date.
- (2) Normal maintenance, repair, remodeling or interior alteration of an existing structure that does not result in any change to the footprint or height dimensions, or any expansion in the total area, of the structure, or a change in use.
- (3) Residential entry stairs (excluding deck or porch areas), handicap ramps, walkways, and fences or walls less than 8 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) Accessory structures, such as a shed, tree house, doghouse, child's play house, or similar structure with a floor area of not more than 100 square feet (each) and a height of not more than ten (10) feet which is located at least 10 feet from all property lines. 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, do not exceed 240 square feet of covered space 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, in accordance with Section 4.8.
- (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 principle uses (contouring yards, establishing garden and landscape areas).
- (9) 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.
- (10) Fuel storage as an accessory structure to an allowed use, provided such storage meets the requirements of Section 3.15.
- (11) Accepted management practices (AMPs) for silviculture as defined by the Commissioner of Forests, Parks, and Recreation, pursuant to the Act [§4413(d)].

Interested Person. In accordance with the Act [§4465 (b)], the definition of an interested person includes the following:

- a person owning title to property, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by a bylaw, who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.
- The Town of Hardwick or any municipality that adjoins it.
- a person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under this chapter, 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 conformed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality.
- any ten persons who may be any combination of voters or real property owners within a municipality listed above who, by signed petition to the appropriate municipal panel of a municipality, the plan or a bylaw of which is at issue in any appeal brought under this title, allege that any relief requested by a person under this title, if granted, will not be in accord with the policies, purposes or terms of the plan or bylaw of that municipality. This petition to the appropriate municipal panel must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal.
- any department and administrative subdivision of this state owning property or any interest in property within a municipality listed above, and the agency of commerce and community development of this state.

(B) In accordance with the Act [§4413(d)], accepted agricultural and best management practices (AAPs, BMPs), including farm structures, as defined by the Commissioner of Agriculture, Food and Markets, also are also exempted from the permit requirements under Section 7.1. 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 Zoning Administrator prior to any construction as required under the AAPs.

Section 7.3 Appeals

(A) **Decisions of the Zoning Administrator.** In accordance with the Act [§§4465, 4472], the applicant or any interested person may appeal a decision or act of the Zoning Administrator by filing a notice of

appeal with the Secretary of the Board of Adjustment, or the Town Clerk if no Secretary has been elected, within 15 days of the date of such decision or act.

- (1) As required by the Act [§4468], the Board of Adjustment shall hold a public hearing on a notice of appeal within 60 days of the filing of the appeal. The Board shall give public notice of the hearing as required under Section 7.6, and mail a copy of the hearing notice to the appellant at least 15 days prior to the hearing date.
- (2) The Board of Adjustment shall render a decision on appeal, to include written findings of fact, within 45 days after hearing completion as required by the Act [§4464]. The Board may reject an appeal without hearing, and render a decision 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. Copies of the decision shall be mailed to the appellant and hearing participants, and filed with the Zoning Administrator and Town Clerk in accordance with the Act.

(B) **Decisions of the Board of Adjustment or Planning Commission.** The applicant or any interested person who has participated in the proceeding may appeal a decision of the Board of Adjustment or Planning Commission within 30 days of such decision to the Vermont Environmental Court, in accordance with the Act [§§4471, 4472]. Notice of appeal shall be sent to every interested person appearing and having been heard at the hearing before the Board or Commission.

(C) **Notice of Appeal.** Pursuant to the Act [§4466], a notice of appeal shall be in writing and include:

- (1) the name and address of the appellant;
- (2) a brief description of the property with respect to which the appeal is taken;
- (3) a reference to applicable bylaw provisions;
- (4) the relief requested by the appellant, including any request for a variance from one or more provisions of these bylaws;
- (5) the alleged grounds why such relief is believed proper under the circumstances; and
- (6) any request for a stay of enforcement which may be granted or denied by the Vermont Environmental Court in accordance with the Act [§4449(a)(3)].

Section 7.4 Variances

(A) The Board of Adjustment shall hear and decide upon requests for variances pursuant to the Act [§4469] and appeal procedures under Section 7.3. **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) that there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located;
- (2) that because of such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is necessary to enable the reasonable use of the property;

- (3) that the unnecessary hardship has not been created by the appellant;
- (4) that 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
- (5) of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and
- (6) that the variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

(B) On an appeal for a variance from the provisions of these bylaws that is requested for a structure that is primarily a renewable energy resource structure, the Board may grant such variance only if it finds that all of the facts listed in the Act [§4469] are found in the affirmative and specified in its decision.

(C) Variances within the **Flood Hazard Area Overlay District** shall be granted by the Board of Adjustment only:

- (1) in accordance with the Act [§4469, §4424] and in accordance with 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.

(D) In granting a variance, the Board of Adjustment may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these bylaws and the municipal plan currently in effect. In no case shall the Board of Adjustment grant a variance for a use which is not permitted or conditionally permitted within the zoning district, or which results in an increase in allowable density.

Section 7.5 Violations & Enforcement

(A) **Violations.** The commencement or continuation of any land development or use which is not in conformance with the provisions of these bylaws shall constitute a violation. The Zoning Administrator shall take appropriate action in the name of the Town to enforce the provisions of these bylaws in accordance with the Act [§§4451, 4452]. All fines imposed and collected for violations of these bylaws shall be paid over to the Town.

(B) **Notice of Violation.** As set forth in the Act [§4451], no action may be brought under this Section unless the alleged offender has had at least seven days notice by certified mail that a violation exists. The warning notice shall state that a violation exists, the nature of that violation, 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 the 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 bylaw after the seven-day notice period and within the next succeeding 12 months.

(C) **Limitations on Enforcement.** The Town shall observe any limitations on enforcement proceedings relating to municipal permits and approvals. Enforcement proceedings must be instituted within 15 years

from the date the violation first occurred. The burden of proving the date that the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.

Section 7.6 Municipal Administrative Requirements

(A) **Appointments.** The following appointments shall be made in association with the administration and enforcement of these bylaws as provided for in the Act:

(1) **Zoning Administrator.** The Planning Commission, with the approval of the Selectboard, shall appoint a Zoning Administrator for a term of 3 years in accordance with the Act [§4448]. In the absence of the Zoning Administrator, an Acting Zoning Administrator may be appointed by the Planning Commission in consultation with the Selectboard. The Zoning Administrator shall administer these bylaws literally, and shall not have the power to permit any development that is not in conformance with it.

(2) **Board of Adjustment.** The Board of Adjustment existing on the date of adoption of these bylaws shall continue as the Board of Adjustment and the terms of its respective members shall be the same as they were on the effective date. Members of the Board, which may consist of the members of the Planning Commission, shall be appointed by the Selectboard [§4460]. One or more alternates also may be appointed by the Selectboard to serve for members in the event of an absence or conflict of interest. The Board shall adopt rules of procedure to guide its official conduct in accordance with the requirements of the Act [§4461] and Vermont's Open Meeting Law [1 V.S.A., §310-314]; and shall have powers and duties as set forth in the Act to administer the provisions of these bylaws, including but not limited to the power to hear and decide:

- applications for conditional use approval under Section 5.2;
- appeals from any decision, act or failure to act by the Zoning Administrator under Section 7.3; and
- variance requests under Section 7.4.

(3) **Planning Commission.** The Planning Commission existing on the date of adoption of these bylaws shall continue as the Planning Commission and the terms of its respective members shall be the same as they were on the date of adoption. The Commission shall be appointed by the Selectboard unless otherwise elected by the voters of the Town in accordance with the Act [§§4321, 4323]. The Commission shall adopt rules of procedure to guide its official conduct in accordance with the requirements of 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 but not limited to the power to hear and decide:

- requests and petitions for bylaw amendments;
- requests for access approval under Section 3.3;
- requests for subdivision approval under Section 6.1 and
- applications for planned residential and planned unit developments under Section 5.4.

(B) **Fee Schedule.** The Selectboard shall establish a schedule of fees to be charged in administering these regulations, with the intent of covering the town's administrative costs.

(C) **Hearing Notice Requirements.** As required by the Act [§4464], any public notice required for public hearing under these bylaws shall be given by the publication of the date, place and purpose of such a hearing in a newspaper of general circulation in the Town, and the posting of such notice in three or

more public places within the Town including posting by the applicant of a notice of hearing within view from the public right-of-way most nearly adjacent to the property for which an application is made, not less than 15 days prior to the hearing date. Failure by the applicant to comply with this requirement may result in the denial of the application. Written notification of the hearing shall be sent by mail to the applicant and to all adjoining property owners. The applicant will be required to provide a list of adjoining property owners to the Administrator for notification purposes.

(D) **Permit Recording Requirements.** As required by the Act [§4443(c)], within 30 days after a municipal land use permit, including but not limited to a zoning permit and associated approvals, has become final, or within 30 days of the issuance of a notice of violation, the Zoning Administrator shall deliver the notice of violation, or memorandum or notice of recording, to the Town Clerk for recording as provided in 24 V.S.A. subsections 1154(a) or (b). The applicant may be charged the cost of recording fees.

Municipal Land Use Permit: a zoning, subdivision, site plan or building permit or approval, any of which relate to land development as defined in statute, which has received final approval from the applicable board, commission or officer of the municipality [24 V.S.A. §4303(11)].

(E) **Flood Hazard Overlay District Recording Requirements.** For development within the Flood Hazard Overlay District, the Zoning Administrator shall also maintain a record of:

- (1) all permits issued for development in areas of special flood hazard;
- (2) the elevation, in relation to mean sea level, of the lowest floor, including basement, or all new or substantially improved buildings;
- (3) the elevation, in relation to mean sea level, to which buildings have been floodproofed;
- (4) all elevation and floodproofing certifications required under this regulation; and
- (5) all variance actions, including the justification for their issuance.