
ARTICLE VI. ADMINISTRATION & ENFORCEMENT

Section 6.01 Zoning Permits

- A. **Applicability.** Unless specifically exempted from these regulations under Section 6.2, no land development as defined herein may commence without a zoning permit issued by the Administrative Officer. Nothing in this bylaw shall be construed as limiting or interfering with an individual's right to repair, improve or alter a structure, provided that such improvement or alteration does not increase the exterior dimensions of the structure. Structural alterations associated with a change of use shall require a zoning permit.
- B. **Application Requirements.** An application for a zoning permit shall be made by the property owner, contract vendee with the written consent of the property owner, or their legal agent on a form provided by the town and certified as correct by the applicant. The application form shall be submitted to the Administrative Officer, along with required application fees. In addition, the following are required as applicable:
1. **Permitted Uses.** An application for a permitted use shall include a statement of the existing and proposed use of land and structures, and be accompanied by a sketch plan, which shows information in sufficient detail to determine whether the proposal is in conformance with these regulations.
 2. **Conditional Use, Planned Residential & Planned Unit Development or Flood Hazard Area Review.** An application for development that requires approval under conditional use, planned residential or planned unit development, or flood hazard area review prior to the issuance of a zoning permit shall include, in addition to the application information under Subsection B1, a site development plan prepared in accordance with Section 5.02.
 3. **Access Approval.** An application for development that requires access (curb cut) approval from the Waitsfield Selectboard shall include an application for access to a town highway.
 4. **Development Subject to State Agency Referral.** Applications for development within the Flood Hazard Overlay District shall be referred to the Floodplain Management Section of the Vermont Department of Environmental Conservation for review. No zoning permit shall be issued until a response has been received from the Department, or the expiration of 30 days following the submission of the application.
- C. **Issuance of Permits.** In accordance with the Act [§§ 4448, 4449], the Administrative Officer shall act, within 30 days of the date of receipt of application materials and fees, to either issue a zoning permit, refer the applicant to the appropriate body having jurisdiction, or deny a zoning permit application. If the administrative officer fails to act with regard to an application for a permit within 30 days, the permit shall be deemed issued on the 31st day. A zoning permit shall be issued by the administrative officer only in accordance with the Act and these regulations:
1. No zoning permit shall be issued by the Administrative Officer until required approvals from the Planning Commission, Development Review Board and/or Selectboard, and associated fees, have been received. The application for a zoning permit shall not be deemed complete by the Administrative Office until all Development Review Board

and/or Development Review Board approvals required by these regulations have been obtained.

2. For development subject to state agency referral requirements as identified in subsection (B)(4), no zoning permit shall be issued until the expiration of 30 days following the submission of the application to the Department of Environmental Conservation, in accordance with the Act [§4424(D)].
 3. For development which requires the alteration or relocation of a watercourse within the Flood Hazard Area Overlay District, the Vermont Department of Environmental Conservation and adjacent municipalities shall be notified at least 15 days prior to the issuance of a zoning permit, and copies of such notification shall be sent to the Administrator of the Federal Insurance Administration.
 4. Development for which a prior permit or approval has been issued shall comply with all such permits or approvals. Documentation of compliance may be required prior to the issuance of a zoning permit. A zoning permit shall not be issued for development that is in violation of a previously issued permit or approval.
 5. If public notice has been issued by the Selectboard for their first public hearing on a proposed amendment to these regulations, the Zoning Administrator 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)].
 6. The Administrative Officer shall either issue or deny a permit in writing. In issuing a permit the Administrative Officer shall certify that the applicant has met the provisions of this bylaw. If the Administrative Officer determines that the proposal as set forth in the application is not in conformance with the provisions of these regulations, he or she shall deny the zoning permit and state specific grounds for denial. Pursuant to the Act, each permit or denial issued shall include a statement of the time in which appeals may be made under Section 6.4.
 7. Within 3 days of issuance, the Administrative Officer shall deliver a copy of the permit to the Listers, and post a copy of the permit in at least one public place until the expiration of 15 days from the date of issuance. Permits also shall be recorded in accordance with Section 6.07.
- D. **Effective Date.** No zoning permit shall take effect until the time for appeal under Section 6.04 has passed, or in the event that a notice of appeal is properly filed, until final adjudication of said appeal.
- E. **Permit Display.** A zoning permit shall require posting of a notice of permit, on a form prescribed by the town, within view of the nearest public right-of-way until the time for appeal has expired.
- F. **Permit Expiration.** All development authorized by the zoning permit shall be substantially commenced (50% completed) within 2 years of the date of issuance, and substantially completed (90% completed or otherwise determined to be suitable for occupancy or use) within 4 years of the date of issuance, unless otherwise specified as a condition of approval. An extension of the zoning permit may be granted by the Administrative Officer upon application and a determination that no violations exist. In the event the project has not been substantially completed prior to the expiration of the permit (and related extension), the zoning permit and all associated approvals shall become null and void, and re-application for a new zoning permit shall be required.

Section 6.02 Exemptions

- A. No zoning permit shall be required for the following:
1. Modifications of building interiors if no change of use is proposed; repairs and minor alterations (including chimneys, re-roofing or re-siding) to existing structures not resulting in any change to the exterior dimensions or height of the structure.
 2. Maintenance of existing roads, driveways and infrastructure within their existing and/or approved configuration. This includes associated ditching, resurfacing, and/or relocation within existing or approved right-of-way or easement areas, and the placement or relocation of public utilities and infrastructure within such areas.
 3. Site work incidental to permitted development including clearing, 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). Site work exempted under this provision shall not involve the transport or displacement of more than 100 cubic yards of fill or other materials (e.g., gravel, topsoil), and shall not involve filling or grading of land within the Flood Hazard Overlay District.
 4. Up to 4 structures accessory to a dwelling, such as a dog house, child's play house, shed or similar structure, for each of which the floor area does not exceed 100 square feet and the height does not exceed 10 feet, or in the case of tree-houses the floor area shall not exceed 100 square feet, provided that such accessory structures comply with all setback requirements for the district in which they are located.
 5. The construction, repair and maintenance of residential stone walls and fences, provided that they do not extend into or obstruct public rights-of-way, or interfere with corner visibility or sight distances for vehicular traffic.
 6. Garage sales, yard sales, auctions, or related activities not exceeding 3 consecutive days, nor more than 6 days in any calendar year, provided that such sales comply with the *Waitsfield Garage Sale Ordinance*.
 7. Accepted Agricultural Practices (AAPs) and Best Management Practices (BMPs), including farm structures, as defined by the Commissioner of Agriculture, Food and Markets in accordance with the Act [§4413(d)]; however, pursuant to associated state rules as most recently amended:
 - a. Prior to the construction of farm structures, the farmer must notify the administrative officer in writing of the proposed construction activity. The notification must contain a sketch of the proposed structure, including setbacks from adjoining property lines, road rights-of-way, and surface waters.
 - b. The proposed structure shall comply with all setback requirements for the district in which they are located unless, upon written petition, the Commissioner of Agriculture, Food and Markets has approved other setbacks for the specific farm structure being constructed or expanded. Such approval shall be attached to the notification filed with the Administrative Officer.
 - c. Violations of the AAPs or BMPs may be reported to the Commissioner of Agriculture, Food and Markets for enforcement action.

8. Forest management activities performed in accordance with *Acceptable Management practices for Maintaining Water Quality on Logging Jobs in Vermont*.
9. Public facilities, including power generation and transmission facilities, which are regulated by the Vermont Public Service Board. Such facilities, however, should conform to policies and objectives specified for such development in the *Waitsfield Town Plan*.
10. Clearing and associated site improvements for recreation trails, provided such trails are not surfaced with impervious materials and are not used as part of a commercial facility.

Section 6.03 Certificate of Occupancy

- A. In accordance with the Act [§4449], a certificate of occupancy issued by the Administrative Officer shall be required prior to the use or occupancy of any permitted structure or part thereof constructed after the effective date of this bylaw.
- B. An application for a certificate of occupancy shall be provided with the zoning permit issued by the Administrative Officer, or upon request. The applicant shall submit the application and associated fee upon the completion of permitted improvements, but prior to the occupancy or use of the structure.
- C. Within 14 business days of the date of receipt of a complete application and associated fees for a certificate of occupancy, the Administrative Officer will inspect the premises to ensure that all work has been completed in conformance with the zoning permit and associated approvals, including all applicable permit conditions. If the Administrative Officer fails to either grant or deny the certificate of occupancy within 14 days of the submission of a complete application, the certificate shall be deemed issued on the 15th day.
- D. The Administrative Officer may issue a temporary Certificate of Occupancy for a structure that is substantially complete (suitable for occupancy or its intended use), for a period not to exceed 6 months from the date of issuance. The temporary certificate shall specify the remaining improvements to be completed in accordance with permit requirements prior to the issuance of a permanent certificate of occupancy.

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

- A person or municipality owning property or interest in property affected by imposed regulations (e.g., the applicant);
- The Town of Waitsfield or an adjoining municipality;
- 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 town
- Any 10 persons owning real property within the municipality who, by signed petition to the Development Review Board, allege that any relief requested by a person under this section, if granted, will not be in compliance with the plan or regulations of the municipality; and
- Any department or administrative subdivision of the state owning property or any interest therein within the town or adjoining municipality, and the Vermont Agency of Commerce and Community Development.

Section 6.04 Appeals

- A. **Decisions of the Administrative Officer.** In accordance with the Act [§4465], the applicant or any other interested person may appeal a decision or act of the Administrative Officer by filing a notice of appeal with the Secretary of the Development Review Board, or the Town Clerk if no Secretary has been elected, within 15 days of the date of such decision or act.
1. Pursuant to the Act [§4468], the Development Review Board shall hold a public hearing on a notice of appeal within 60 days of the date of its filing. The Board shall give public notice of the hearing under Section 6.7(D), and mail a copy of the hearing notice to the appellant at least 15 days prior to the hearing date.
 2. A decision on appeal, to include written findings of fact, shall be rendered within 45 days after hearing completion, pursuant to the Act [§4468]. The Development Review Board may reject an appeal without hearing, and render a decision, which shall include written 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. Copies of the decision shall be mailed to the appellant and hearing participants, and filed with the Administrative Officer and Town Clerk.
- B. **Notice of Appeal of Administrative Officer Decisions.** Pursuant to the Act [§4466], a notice of appeal of an action of the Administrative Officer shall be in writing and include:
- the name and address of the appellant;
 - a brief description of the property with respect to which the appeal is taken;
 - a reference to applicable bylaw provisions;
 - the relief requested by the appellant, including any request for a variance from one or more provisions of these regulations;
 - the alleged grounds why such relief is believed proper under the circumstances; and
 - any request for a stay of enforcement which may be granted or denied by the board of adjustment in accordance with the Act [§4466].
- C. **Decisions of the Development Review Board.** Any interested person who has participated in a regulatory proceeding under these bylaws may appeal a decision of the Development Review Board within 30 days of the date of such decision to the Vermont Environmental Court, in accordance with the Act [§4471]. For the purposes of these regulations, participation in a regulatory proceeding shall include offering, through oral or written testimony, evidence or a statement of concern related to the subject of the hearing.
- D. **Notice of Appeal of the Development Review Board Decisions.** The notice of appeal of a decision of the Development Review Board shall be filed by certified mailing, with fees, to the Vermont Environmental Court and by mailing a copy to the Administrative Officer 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.

Section 6.05 Variances and Setback Waivers

- A. The Development Review Board shall hear and decide upon requests for variances pursuant to the Act [§4469] and appeal procedures under Section 6.04. 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 regulations 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 of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare; and
 5. 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. In addition to the requirements under Subsection (A), variances for development within the Flood Hazard Overlay District shall be granted by the Development Review Board only:
1. in accordance with the Act and the criteria for granting variances found in 44 CFR, Section 60.6 of the National Flood Insurance Program regulations;
 2. upon determination that during the base flood discharge, the variance will not result in increased flood levels;
 3. upon 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.
- C. 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 Board may grant such variance only if it finds that all of the facts listed in the Act [§4469(b)] are found in the affirmative and specified in its decision.
- D. In granting a variance, the Development Review Board may attach such conditions as it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect.

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- E. **Setback Waivers.** Notwithstanding the minimum setback standards for front yards (setback from road centerline) and side and rear yards (setback from parcel boundaries) for various zoning districts set forth in Article II, the Development Review Board may grant a waiver of building setbacks as a conditional use reviewed in accordance with Section 5.3 and subject to the following:
1. The parcel associated with the waiver request was legally in existence prior to January 1st 2009;
 2. The Board 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 all conditional use standards set forth in Section 5.3; and
 3. The waiver of the setback standard is for an addition or expansion of an existing structure, is consistent with the predominant building setbacks within the surrounding area of the parcel, and does not result in a reduction of the setback standard for the district in which the parcel is located by greater than 30% (e.g., a 50 foot setback may be reduced in accordance with this provision by up to 15 feet).

Section 6.06 Violations & Enforcement

- A. **Violations.** The commencement or continuation of any land development which is not in conformance with the provisions of this bylaw shall constitute a violation. Except as provided in Section 3.11, all violations will be pursued in accordance with the Act [§§ 4451, 4452]. Each day that a violation continues shall constitute a separate offense. Any person violating any provision of this bylaw shall be subject to the fines and remedies set forth in the Act. All fines imposed and collected for violations shall be paid over to the municipality.
- B. **Notice of Violation.** Pursuant to the Act [§4451], no action may be brought under this section unless the alleged offender has had at least 7 days notice by certified mail that a violation exists. The warning notice shall state that a violation exists, describe the violation, and explain that the alleged offender has an opportunity to cure the violation within the 7-day period and will not be entitled to an additional warning notice for a violation occurring after the 7-day period. Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of the bylaw after the 7-day notice period and within the next succeeding 12 months.
- C. **Enforcement.** In accordance with the Act [§§ 4451, 4452], the Administrative Officer shall institute in the name of the municipality any appropriate action, injunction or other proceeding to enforce the provisions of these regulations. The town shall observe limitations on enforcement relating to municipal permits and approvals, as set forth in the Act [§4454].

Section 6.07 Municipal Administrative Requirements

- A. **Appointments.** The following appointments shall be made in association with the administration and enforcement of this bylaw as provided for in the Act:
1. **Administrative Officer.** In accordance with the Act [§4448], an administrative officer shall be appointed for a term of 3 years by the Selectboard, from nominations submitted by the Planning Commission. The Selectboard may also appoint, an Acting Administrative Officer who shall have the same duties and responsibilities as the Administrative Officer in his or her absence. An Administrative Officer may be removed for cause at any time by the Selectboard after consultation with the Planning Commission. The Administrative Officer:

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- shall administer these regulations literally, and shall not have the power to permit any land development which is not in conformance with this bylaw;
 - shall provide forms and maintain records as required,
 - may recommend to applicants for municipal permits that they contact the state regional permit specialist in order to assure timely action on any related state permits.

2. **Development Review Board.** In accordance with the Act [§4460(b)], a Development Review Board consisting of not less than three (3) or more than nine (9) members shall be appointed by the Selectboard for 3 year terms. No member of the Planning Commission shall serve on the Development Review Board. Vacancies shall be filled by the Selectboard for unexpired terms and upon the expiration of such terms. The Selectboard also may appoint alternates to the Development Review Board for specified terms, to be assigned by the Selectboard to serve in the event that one or more members of the Board are disqualified or absent. Members of the Development Review Board may be removed for cause by the Selectboard 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 in accordance with the requirements of the Act [§4462] and Vermont's Open Meeting Law [1 V.S.A., §§310-314]. The Development Review 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 decide:

- a. applications for conditional use approval under Section 5.03;
- b. appeals from any decision, act or failure to act by the Administrative Officer under Section 6.04; and
- c. variance requests under Section 6.05.
- d. requests for access approval under Section 3.02; and
- e. applications for planned residential and planned unit developments under Section 5.04, in association with the review of subdivisions of land under the *Waitsfield Subdivision Regulations*.
- f. applications for subdivision review pursuant to the *Waitsfield Subdivision Regulations*.

3. **Planning Commission.** In accordance with the Act [§§ 4322, 4323], a planning commission consisting of not less than 3 nor more than 9 voting members shall be appointed by the Selectboard for 4 year terms; however no more than 3 commissioners shall be reappointed or replaced during any calendar year. Vacancies shall be filled by the Selectboard for the unexpired terms and upon the expiration of such terms. Any member may be removed at any time by unanimous vote of the select board. The Planning Commission shall elect a chairman and clerk, and adopt rules of procedure and rules of ethics with respect to conflicts of interest 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]. The Planning 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, where appropriate, decide requests and petitions for bylaw amendments under Section 1.05;

B. **Fee Schedule.** The Selectboard shall establish a schedule of fees to be charged in administering these regulations, with the intent of covering administrative costs. In accordance with the Act [§4461(c)], the fee schedule may include provisions which require applicants to pay for reasonable costs of an independent technical review of their applications. The schedule of fees

shall be posted in the Waitsfield Town Office, and may be altered or amended only by the Selectboard.

C. **Application Forms.** The planning commission is hereby authorized to prepare and revise application forms from time to time, in consultation with the administrative officer. In no case shall the introduction of a new or revised form have the effect of, or be construed as, amending these regulations. Application forms will be made available at the Waitsfield Town Office during regular business hours.

D. **Hearing Notice Requirements.**

1. In accordance with the Act [§4464(a)], a warned public hearing shall be required for conditional use review (Section 5.3), appeals and variances (Sections 6.4 & 6.5) and Planned Unit Development and Planned Residential Development review (Section 5.4). 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; and
 - 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.
2. The applicant shall be responsible for providing proof of notification of adjoining property owners, as determined from the municipal grand list, with the application. Proof of notification shall include a list of current landowners and proof of mailing provided by the U.S. Postal Service or a signed notice of service certifying that the applicant or the applicant's agent has notified the adjoining landowners.
3. No defect in the form or substance of any required public notice under this section shall invalidate the action of the Development Review Board or Planning Commission 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 Board or Commission to provide new posting and notice, hold a new hearing, and take a new action.
4. Public hearings concerning proposed amendments to these regulations shall be noticed and warned in accordance with the Act [§§ 4441, 4444].

E. **Recording Requirements.** The Administrative Officer shall keep on file and available to the public during regular business hours, a full and accurate record of all applications received, permits issued, plats approved, and notices of violation issued during his or her term of office.

1. Pursuant to the Act [§4449(c)], within 30 days after 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

municipal land records as provided in 24 V.S.A. §1154(a). The applicant may be charged the cost of the recording fees as required by law.

2. For development within the Flood Hazard Area Overlay District, the Administrative Officer shall also maintain a record of:

- a. all permits issued;
- b. 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 floodproofed;
- d. all floodproofing certifications required under these regulations; and
- e. all variance actions, including justification for their issuance.