

1 ADMINISTRATION

100 Roles and Responsibilities

§ 1001 ZONING ADMINISTRATOR

Notes. As per statute and charter. No substantive changes.

§ 1002 DEVELOPMENT REVIEW BOARD

Notes. As per statute. No substantive changes. Do not recommend enumerating number of board members, terms of office, quorum requirements, etc. in the regulations. It is not required by statute. Those elements are/should be addressed elsewhere (rules of procedure, etc.). Repeating them in the regulations requires a zoning amendment to make what otherwise would be an administrative change.

§ 1003 PLANNING COMMISSION

Notes. Same as §102 above.

110 Fees and Filing Requirements

§ 1101 PERMIT FEES

Notes. No substantive changes.

§ 1102 TECHNICAL OR LEGAL REVIEW COSTS

Notes. This is a standard zoning provision.

§ 1103 PERFORMANCE BONDS OR SURETIES

Notes. This is a standard zoning provision.

§ 1104 AS-BUILT DRAWINGS

Notes. This is a standard zoning provision.

§ 1105 OTHER PERMITS, APPROVALS AND CERTIFICATIONS

Notes. This is a standard zoning provision. Having this provision eliminates the need to separately reference filing other permits and approvals in multiple places in the regulations.

120 Zoning Permits

§ 1201 SUBMITTING A ZONING PERMIT APPLICATION

Notes. Process is as mandated by state statute. This section fully details the application process and does not rely on references to statute. The intent is for a user to be able to read through these sections and clearly understand how the regulations are administered, what is required to apply for a permit, what the timelines are, etc.

§ 1202 ACTING ON A COMPLETE ZONING PERMIT APPLICATION

Notes. Process is as mandated by state statute.

Elements not mandated by statute: F2 (temporary permits), F3 (notification prior to use/occupancy), F5 (water/wastewater permit), F6 (stormwater permit), F7 (access permit). Provision for temporary permits is new. Notification is recommended to allow tracking of whether work is done prior to permit expiration. The filing of other permits is useful for maintaining accurate records and closes loop of whether required permits were obtained.

§ 1203 OBTAINING A ZONING PERMIT

Notes. The effective date is statutory. The remainder of this section is town policy.

§ 1204 AMENDING PERMITS OR APPROVALS PRIOR TO PROJECT COMPLETION

Notes. This section is town policy.

§ 1205 INSPECTING DEVELOPMENT DURING CONSTRUCTION

Notes. Standard zoning provision.

§ 1206 OBTAINING A CERTIFICATE OF COMPLIANCE

Notes. The draft language proposes requiring certificates of compliance for new dwellings and development subject to a DRB approval (without a CC process there is no follow-up to ensure that the conditions of approval have been met).

§ 1207 REQUESTING A CONFORMANCE OR “BIANCHI” LETTER

Notes. It has been clarified that municipalities are not obligated by the 1997 Vermont Supreme Court “Bianchi” decision to issue letters or other documentation certifying that there are no zoning violations on a property. Most municipalities no longer issue them or only do so with the caveat that there has actually been no investigation of whether there are violations and that enforcement action could be taken if violations were discovered in the future. The draft language clearly states that the town does not issue conformance or Bianchi letters.

§ 1208 REVOKING PERMITS OR APPROVALS

Notes. Consistent with Vermont law.

§ 1209 APPEALING ADMINISTRATIVE ACTIONS OR DECISIONS

Notes. As per statute.

130 Development Approvals

§ 1301 APPLICATION PROCESS

Notes. Process is mandated by state statute. This and the following sections fully detail the application process and does not rely on references to statute. The intent is for a user to be able to read through these sections and clearly understand how the regulations are administered, what is required to apply for a development approval, what the timelines are, etc.

Draft provides for an administrative pre-application conference. Recommend that only complete applications go before the DRB –the board is the equivalent of a panel of judges who should not be engaged in prior discussion about the “case” with the applicant or other parties. It is part of the job description of the Zoning Administrator to advise potential applicants about the regulations and to ensure that applications are complete and provide the information necessary to determine compliance with the regulations. A decision by the Zoning Administrator that an application is incomplete may be appealed to the DRB.

§ 1302 APPLICATION REQUIREMENTS

Notes. Statute mandates that the regulations include application requirements. The requirements in the regulations can be more general with reference to application checklists, etc. or they can be complete and detailed.

§ 1303 TECHNICAL REVIEW

Notes. Standard zoning provision.

§ 1304 SITE PLAN REVIEW

Notes. Introduces the concept of minor (administrative) and major site plan review. Instead of specifying criteria for minor projects, draft language specifies the criteria for major projects leaving everything else as minor. The classification of major and minor is entirely a matter of town policy.

The classification of major and minor site plans is a critical policy element of the regulations. Site design requirements and other provisions in the regulations will relate back to this distinction between major and minor. It is a mechanism for requiring more rigorous standards for major projects. You have a lot of latitude to define major vs. minor – there are no state-mandated requirements to be followed. The criteria could vary by district or use group (residential, industrial, etc.) if so desired. Also remember that single- and two-family properties are not subject to site plan review. The provisions of this section only apply to multi-family residential and non-residential uses.

§ 1305 CONDITIONAL USE REVIEW

Notes. Language largely mandated by statute. Draft introduces concept of “major change to an existing conditional use.” Rather than requiring all modifications and further development associated with a conditional use to also go through conditional use approval, the draft sets criteria for what level of change would trigger conditional use approval. This aspect is entirely a matter of town policy.

§ 1306 PLANNED UNIT DEVELOPMENT REVIEW

Notes. Mandated by statute.

§ 1307 REVIEW OF LOT LINE ADJUSTMENTS AND LOT MERGERS

Notes. Allows for administrative approval of lot line adjustments and lot mergers.

A change in statute (27 V.S.A. § 341) that took effect January 1, 2020 now requires a survey for property line changes in Vermont, and also requires surveyors to file parcel boundary surveys electronically with the state to facilitate the statewide parcel mapping program. So, filing a plat is now necessary for all parcel boundary changes. These minor changes to boundaries that do not result in any new lots would be approved administratively by the ZA.

§ 1308 REVIEW OF FOOTPRINT LOTS

Notes. Allows for approval of footprint lots for property in condominium ownership. Footprint lots are sometimes required for the property owners to obtain bank financing.

§ 1309 RATIFICATION OF IMPROPERLY FILED PLATS

Notes. Allows for administrative ratification of plats filed without the required signature or after the filing deadline.

§ 1310 SUBDIVISION REVIEW

Notes. Draft language proposes that sketch plan review be done administratively. Draft language provides criteria for classifying major and minor subdivisions. Again, these are entirely a matter of town policy. Remainder of process is as outlined in statute. Minor subdivisions proceed to final plan review by the DRB. Major subdivisions require two hearings (preliminary and final) before the DRB.

§ 1311 COMBINED REVIEW

Notes. As per statute.

§ 1312 AMENDING APPROVED SITE PLANS

Notes. Provides a path to the DRB for amendments to approved plans that cannot be approved administratively.

Figure 1-01. Development Review Criteria

Notes. Intended to facilitate the development review process and clearly distinguish the criteria to be used for each review process. For site plan approval, the ZA or DRB would need to make affirmative findings for criteria 1-9. For conditional use approval, the DRB would need to make affirmative findings for criteria 9-15. For subdivision or PUD approval, the DRB would need to make affirmative findings for criteria 1, 3, 5-8, and 10-18.

140 Appeals

§ 1401 WHO MAY APPEAL

Notes. As per statute.

§ 1402 APPEALS OF ZONING ADMINISTRATOR DECISIONS

Notes. As per statute. Recommend having appellants file their notice of appeal with the town clerk. Proposed language also clarifies that the DRB does not have to consider appeals from individuals/groups who do not have interested person status. The DRB does not have to consider appeals that are incomplete (non-responsive to each element of the application).

§ 1403 APPEALS OF DEVELOPMENT REVIEW BOARD DECISIONS

Notes. As per statute.

Discussion Points. The benefit of being “on the record” vs. “de novo” is that when a DRB decision is appealed to Environmental Court, the judge reviews the record of the local proceeding rather than the parties testifying anew. In a “de novo” case, the municipality needs to participate more actively to argue the case that the DRB decision is valid. There is also some evidence from other municipalities around the state that suggests being “on the record” reduces the number of appeals filed because appellants do not have the ability to offer new evidence. On the other hand, some municipalities feel that being “on the record” has led to DRB hearings becoming more formal or legal and discouraged participation from community members in the development review process.

§ 1404 WAIVERS

Notes. Caps the waiver of dimensional standards to a 30% modification. With an open-ended waiver provision, applicants can ask for anything and the DRB may find it difficult to deny requests. A cap creates a ceiling on requests and a backstop for the DRB.

§ 1405 VARIANCES

Notes. As per statute.

Figure 1-02. Waiver and Variance Review Criteria

Notes. Variance criteria are set in statute and cannot be modified. Waiver criteria are entirely set by town policy. As per the table, recommend using some of the variance criteria for waivers but dropping the two that are most difficult for applicants to meet – applicant has not created the unnecessary hardship and the unique physical circumstances or conditions on the property. Table includes two alternative criteria for waivers – beneficial or necessary for continued reasonable use and applicant proposing adequate mitigation.

150 Notice, Hearings and Decisions

§ 1501 NOTICE OF HEARING

Notes. As per statute. Again, the intent is to fully describe the administrative process within the regulations for clarity and ease of use.

§ 1502 SITE VISITS

Notes. As per statute. Again, the intent is to fully describe the administrative process within the regulations for clarity and ease of use.

§ 1503 CONDUCTING A HEARING AND TAKING EVIDENCE

Notes. As per statute and Vermont case law.

§ 1504 RECESSING OR CONTINUING A HEARING

Notes. As per statute and Vermont case law.

§ 1505 DECISIONS

Notes. As per statute and Vermont case law. Draft recommends that all development approvals have the same expiration period of one year if a zoning permit is not obtained.

160 Violations and Penalties

§ 1601 APPLICABILITY

Notes. As per statute.

§ 1602 COMPLAINTS, INVESTIGATION AND ACTION

Notes. As per statute and Vermont case law.

§ 1603 LIABILITIES AND PENALTIES

Notes. As per statute and Vermont case law.

§ 1604 MUNICIPAL CIVIL COMPLAINT TICKET

Notes. This is an option available for enforcement of the regulations. Currently the town is not using this tool. Including this section will allow this enforcement mechanism to be used in the future. There are some additional administrative steps the municipality needs to take with the state for the Zoning Administrator to be authorized to write tickets for zoning violations. The police are already authorized to write tickets and could do so for zoning violations with this language in place.

§ 1605 NOTICE OF VIOLATION

Notes. As per statute.