

## **C. Administration**

### **I. Administrative Officer & Appropriate Municipal Panel**

#### **A. Administrative Officer (AO)**

An Administrative Officer (AO) shall be appointed to administer this bylaw pursuant to 24 V.S.A. § 4448. The AO shall administer this bylaw literally and in doing so shall inspect development, maintain records, enforce this bylaw, and perform all other necessary tasks to carry out the provisions of this bylaw and the statutory requirements of 24 V.S.A. Chapter 117. The AO shall not have the power to permit any land development that is not in conformance with this bylaw.

#### **B. Appropriate Municipal Panel (AMP)**

1. The Appropriate Municipal Panel (AMP) for this bylaw shall be the **Zoning Board of Adjustment (ZBA)/Development Review Board (DRB)** which shall be appointed by the **Selectboard/Village Trustees/City Council** in accordance with 24 V.S.A. § 4460.
2. The **ZBA/DRB** shall have the duties and responsibilities as described in 24 V.S.A. Chapter 117 and as otherwise required by the municipal bylaws.

### **II. Application Administration Requirements**

#### **A. Application Submission Requirements**

All Applications for development shall include:

1. **Site Plan.** A site plan that depicts the proposed development, all water bodies, all **(Hazard Overlay District/Hazard Area)** boundaries, the shortest horizontal distance from the proposed development to the top of bank of any river, any existing and proposed drainage, any proposed fill, pre- and post-development grades, and the elevation of the proposed lowest floor as referenced to the same vertical datum as the elevation on the current Flood Insurance Rate Maps;
2. **Project Review Sheet.** A Vermont Agency of Natural Resources Project Review Sheet.
3. **Supplemental Application Requirements.** Some applications may require additional information based on the location and type of the development. The following information shall be developed and provided with an application, as required below:
  - a. **Base Flood Elevation (BFE).** BFE information is required for:
    - i. Replacement, substantially improved, or substantially damaged structures located within any Flood Hazard Overlay District, including Zone A, where no BFEs have been provided;
    - ii. Projects requiring elevation or dry-floodproofing above BFE;
    - iii. Additions to existing historic structures; and

- iv. Any accessory structure proposed to be built in accordance with **Section E.IV.D.4** and having building utility systems that will need to be protected from flood waters through elevation above the BFE.
- b. **Floodway Data.** The following information is required for development located in the floodway. All floodway data shall be certified by a registered professional engineer. All submitted proposals shall include electronic input/output files and mapping showing cross-section locations.
  - i. Hydraulic calculations demonstrating no rise in BFE or velocity for proposed new or expanded encroachments within the Floodway District.
  - ii. In accordance with 44 C.F.R. § 60.3(c)(10), where BFE data has been provided by FEMA, but no floodway areas have been designated, the applicant shall provide a floodway delineation that demonstrates that the proposed development, when combined with all existing and anticipated future development, will not increase the water surface elevation of the base flood by more than one foot at any point within the community.
- c. **Compensatory Flood Storage.** The following information is required for applications that require compensatory flood storage pursuant to **Section E.IV.C**:
  - i. Designs shall provide equivalent storage volumes during peak flows up to and including the base flood discharge. This No Adverse Impact (NAI) volumetric analysis and supporting data shall be certified by a registered professional engineer.
  - ii. If it appears that the design may create an undue adverse impact to adjacent landowners or structures, a hydraulic analysis may be required to verify that a proposed development will not increase flood elevations or velocities of floodwaters. Hydraulic analyses and supporting data shall be provided by the applicant and certified by a registered professional engineer.
- d. **River Corridor Assessment.** The following information is required for applications proposing development within the river corridor:
  - 1. Information clearly demonstrating how the proposed development meets the infill or shadowing requirements in **Section D.IV.A or B**; or
  - 2. A narrative and supporting technical information from a qualified consultant that demonstrates how the proposal meets the River Corridor Performance Standard in **Section D.IV.C**; or
  - 3. Evidence of an approved major or minor map update issued by ANR in accordance with the process outlined in the DEC Flood Hazard Area & River Corridor Protection Procedure, finding the proposed development is not located within the river corridor. Please note that ANR may require the applicant to provide technical data from a qualified consultant to justify a map update.
- e. **Waivers.** Upon written request from the applicant, the **ZBA/DRB** may waive specific application requirements when the data or information is not needed to comply with Sections D. and E. of this bylaw. A determination to waive the compensatory

storage requirement shall include written concurrence from the ANR regional floodplain manager, that project will have only a minimal effect on floodwater storage.

B. Referrals

1. Upon receipt of a complete application for new construction or a substantial improvement, the AO shall submit a copy of the application and supporting information to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, in accordance with 24 V.S.A. § 4424. A permit may be issued only following receipt of comments from the Agency, or the expiration of 30 days from the date the application was mailed to the Agency, whichever is sooner. The AO and ZBA/DRB shall consider all comments from ANR.
2. Any application for a proposed conditional use or a request for a variance from these regulations shall be referred to the ZBA/DRB in accordance with 24 V.S.A. § 4460.
3. If the applicant is seeking a permit for the alteration or relocation of a watercourse, copies of the application shall also be submitted to the adjacent communities, the River Management Engineer at the Vermont Agency of Natural Resources, and the Army Corps of Engineers. Copies of such notice shall be provided to the State National Flood Insurance Program (NFIP) Coordinator at the Vermont Agency of Natural Resources, Department of Environmental Conservation. A permit may be issued only following receipt of comments from the Vermont Agency of Natural Resources, or the expiration of 30 days from the date the application was mailed to the Vermont Agency of Natural Resources, whichever is sooner.

C. Public Notice

1. Prior to the issuance of a permit, proposals needing conditional use review, nonconforming structures and uses review, or approval for a variance, must have a warned public hearing. A copy of the application shall be submitted to ANR at least 30 days prior to the date of the public hearing. Public notice of the hearing shall be provided at least 15 days before the date of the hearing by all the following:
  - a. Publication of the date, place, and purpose of the hearing in the newspaper of general circulation in the municipality affected.
  - b. Posting of the same information in three or more public places within the municipality, including posting within view from the public right-of-way nearest to the property for which an application is made; and,
  - c. Written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to any public right-of-way, and in any situation in which a variance is sought regarding setbacks from a State highway, written notification to the Secretary of Transportation. The notification shall include a description of the proposed project and shall be accompanied by 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.
  - d. For hearings on subdivision plats located within 500 feet of a municipal boundary, written notification to the clerk of the adjoining municipality.

2. Public notice of all other types of development review hearings, including site plan review, shall be given not less than seven days prior to the date of the public hearing, and shall include at minimum all the following:
  - a. Posting of the date, place, and purpose of the hearing in three or more public places within the municipality in conformance with the time and location requirements of 1 V.S.A. § 312(c)(2); 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, and in any situation in which a variance is sought regarding setbacks from a State highway, written notification to the Secretary of Transportation. The notification shall include 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.
3. The applicant shall bear the cost of the public warning and notification of adjoining landowners.
4. No defect in the form or substance of any required public notice under this section shall invalidate the action of the AMP 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 Division of the Superior Court or by the AMP itself, the action shall be remanded to the applicable municipal panel to provide new posting and notice, hold a new hearing, and take a new action.

D. Decisions

1. The AO/ZBA/DRB shall consider comments from the ANR when making a decision on an application.
2. Decisions on applications that go to the ZBA/DRB for review shall be made in accordance with 24 V.S.A. § 4464.

E. Permits

A permit shall be issued by the AO/ZA only in accordance with 24 V.S.A. Chapter 117 and the following provisions:

1. Within 30 days of receipt of a complete application, including all application materials and fees, the AO shall act to either issue or deny a permit in writing, or to refer the application to the ZBA/DRB or to ANR for consideration, as required by Section C.II.B [Referrals]. In accordance with 24 V.S.A. § 4448 [Appointment and Powers of Administrative Officer], if the AO fails to act with regard to a complete application for a permit within the 30-day period, a permit shall be deemed issued on the 31st day, unless the permit is for new construction or substantial improvement, in which case a permit shall not be issued until the AO has complied with the requirements of Section C.II.B. [Referrals].
2. No permit shall be issued by the AO for any use or structure which requires the approval of the ZBA/DRB until such approval has been obtained. For permit applications that must be

referred to a state agency for review, no 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, whichever is sooner.

3. A permit shall include a statement that any and all appeals shall be made within 15 days of permit issuance and shall require posting of a notice of permit on a form prescribed by the municipality within view from the public right-of-way most nearly adjacent to the subject property until the appeals period has passed. A permit shall also include a statement, approved by the Secretary of Natural Resources, that State permits may be required, and that the permittee should contact State agencies to determine what permits must be obtained before any construction may commence.
4. The AO, within three days of the date of issuance of a permit, shall deliver a copy of the permit to the listers of the municipality, and shall post a copy of the permit in the Town Offices for a period of 15 days from the date of issuance.
5. Effective Date. No permit shall take effect until the time for appeal (15 days) has passed, or in the event that a notice appeal is properly filed, no such permit shall take effect until adjudication of that appeal by the AMP is complete and the time for taking an appeal to the Environmental Division of the Superior Court has passed without an appeal being taken. If an appeal is taken to the Environmental Division, the permit shall not take effect until the Environmental Division rules in accordance with 10 V.S.A. § 8504 on whether to issue a stay, or until the expiration of 15 days, whichever comes first.
6. Notice of Permit. The notice of a permit must be displayed within view from the public right-of-way nearest to the property until the time for appeal has passed.
7. Within 30 days after a permit has been issued or within 30 days of the issuance of any notice of violation, the appropriate municipal official shall:
  - a. deliver the original or a legible copy of the permit or notice of violation or a notice of permit generally in the form set forth in 24 V.S.A. § 1154(c) to the town clerk for recording as provided in 24 V.S.A. § 1154(a); and
  - b. file a copy of that permit in the offices of the municipality in a location where all municipal land use permits shall be kept.
8. Expiration
  - a. A zoning permit shall remain valid for two (2) years from the date it is issued. If, before that time expires, the applicant files a renewal application and has made substantial progress of the land development described in the permit, the AO shall issue not more than two consecutive 12-month permit renewals without fee. If a zoning permit expires without substantial land development the permit shall become null and void.
  - b. If a permit expires, any land development on the lot covered under that permit must cease. All subsequent land development must be approved after the submission of a new application for a permit, and all laws and ordinances then in effect will be applicable.
  - c. Permits shall run with the land regardless of owner.

F. VariANCES

VariANCES may be granted in writing by the ZBA/DRB only in accordance with all the criteria in 24 V.S.A. § 4469 after a public hearing noticed in accordance Section II.C [Public Notice], consistent with 24 V.S.A. § 4464. If the proposed development is located within any Flood Hazard Overlay District, the proposal shall comply with 44 C.F.R. § 60.6.

1. Any variance issued in the Flood Hazard Area shall not increase flood heights and shall inform the applicant in writing over the signature of a community official that the issuance of a variance to construct a structure below the BFE increases risk to life and property and will result in increased flood insurance premiums up to amounts as high as \$25 for \$100 of coverage. Such notification shall be maintained with a record of all variance actions.

G. Appeals of a Permit Decision

1. Appeals from any decision or act of the AO in connection with this bylaw shall be made as provided for in 24 V.S.A. § 4465. Additional provisions applicable to appeal of a substantial improvement or substantial damage determination made by the AO can be found in sub-paragraph C.III.B.4 [Substantial Improvement and Substantial Damage Determinations, Post Flood Procedures], below .
2. Whenever the ZBA/DRB does not grant a conditional use permit or a variance request on any basis other than the failure of the applicant to submit a complete application, such action may not be reconsidered by the respective ZBA/DRB at a later time unless in accordance with 24 V.S.A. § 4470. The applicant shall clearly demonstrate that:
  - a. Circumstances affecting the property that is the subject of the application have substantially changed,
  - b. New information is available that could not with reasonable diligence have been presented at a previous hearing. A request to be heard on this basis shall be filed with the AO within the time period for an appeal. However, such a request does not extend the period within which an appeal shall be taken.
  - c. Appeals from any decision or act of the ZBA/DRB in connection with this bylaw shall be made to the Vermont Superior Court, Environmental Division as provided for in 24 V.S.A. § 4471.

**III. Administrative Responsibilities, Records**

A. Records

The AO shall properly file and maintain a record of:

1. All permits issued for development under the jurisdiction of this bylaw;
2. A FEMA Elevation Certificate with the as-built elevation (consistent with the datum of the elevation on the current Flood Insurance Rate Maps for the community) of the lowest floor, including basement, of all new, replacement, substantially improved, substantially damaged or flood-proofed buildings (not including accessory buildings) in the Flood Hazard Area;
3. All floodproofing and other certifications required under this regulation; and
4. All decisions of the AO and ZBA/DRB (including those for substantial improvement, substantial damage, variances, and violations) and all supporting findings of fact, conclusions, and conditions.

- B. Substantial Improvement and Substantial Damage Determinations, Post Flood Procedures
1. When a proposal for the renovation, rehabilitation, restoration, or repair of a structure located within any Flood Hazard Overlay District is reviewed, the AO shall make a substantial improvement determination.
  2. In the event of damage to a structure located within any Flood Hazard Overlay District from flooding or other causes (such as, but not limited to, fire, wind or snow), the AO shall make a substantial damage determination based on the damage sustained by the structure regardless of intended repair at that time.
  3. Substantial improvement or substantial damage determinations shall be made in accordance with current FEMA guidelines<sup>1</sup> or procedure established by the ZBA/DRB in accordance with 24 V.S.A. § 1972 and 24 V.S.A. § 4461 and shall be used to determine the appropriate development standards for repair and rebuilding.
  4. A substantial improvement or substantial damage determination can be appealed by an applicant or property owner to the ZBA/DRB in accordance with sub-paragraph C.II.G [Appeals of a Permit Decision] of this bylaw. In the consideration of an appeal of the AO's determination, the ZBA/DRB shall consider additional documentation provided by the applicant which may include:
    - a. A recent building appraisal (within the past calendar year, or as determined to still be applicable) completed by a licensed and qualified real estate appraiser that documents the structure's market value (excluding land value) prior to the damage or improvement; or
    - b. A project/repair cost estimate provided by a qualified contractor, professional engineer or licensed architect. The material and labor cost estimate shall include a detailed accounting of the proposed improvements, additions, reconstruction or rehabilitation work, repairs or associated construction and development; or
    - c. In the case of substantial damage, an estimate of structure damage provided or reviewed by a local official from FEMA's *Substantial Damage Estimator* software.
- C. Certificate of Occupancy
1. In accordance with 24 V.S.A. § 4449, it shall be unlawful to use or occupy, or permit the use or occupancy of any land or structure, or part thereof, created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure within the areas affected by this bylaw, until a certificate of occupancy is issued by the AO stating that the proposed use of the structure or land conforms to the requirements of this bylaw.
  2. A certificate of occupancy is not required for structures that were built in compliance with the bylaws at the time of construction and have not been improved since the adoption of this bylaw.
  3. Upon receipt of the application for a certificate of occupancy, the AO shall review the permit conditions and inspect the premises to ensure that:
    - a. any required state and federal permits that have been received,
    - b. all work has been completed in conformance with the zoning permit and associated approvals, and

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<sup>1</sup> FEMA P-758, Substantial Improvement/Substantial Damage Desk Reference: <https://www.fema.gov/media-library/assets/documents/18562>

- c. all required as-built documentation has been submitted to the AO, e.g. updated FEMA Elevation Certificate, dry floodproofing certificate, as-built volumetric analysis, or as-built floodway encroachment analysis.
4. If the AO fails to grant or deny the certificate of occupancy within 29 days of the submission of the application, the certificate shall be deemed issued on the 30<sup>th</sup> day. If a certificate of occupancy cannot be issued, notice will be sent to the owner and copied to the lender.

D. Enforcement

1. This bylaw shall be enforced in accordance with 24 V.S.A. §§ 1974a, 4451, and 4452. All notices of violation shall be provided to the State NFIP Coordinator.
2. No new flood insurance shall be provided for any property which the Federal Insurance Administrator finds has been declared to be in violation of local flood hazard area regulations. If any appeals have been resolved, but the violation remains, the AO shall submit a declaration to the Administrator of the National Flood Insurance Program requesting a denial of flood insurance to the property pursuant to Section 1316 of the National Flood Insurance Act of 1968, as amended. New and renewal flood insurance shall be denied to a structure upon a finding by the Federal Insurance Administrator of a valid declaration of a violation.