

# Article 9 Administration & Enforcement

## Section 9.1 Municipal Land Use Permits and Approvals

(A) **Permit Requirements.** No land development or subdivision of land, as defined herein, may commence in the Town of Warren until all applicable municipal land use permits and approvals have been issued as provided for in the Act [§4446 ]; or the development is specifically exempted from the provisions of these regulations under Section 9.2. Such permits and approvals include:

- (1) **Zoning Permit** under Section 9.3 for all land development as defined, excluding the subdivision of land;
- (2) **Conditional Use Approval** under Article 5 for uses subject to conditional use review;
- (3) **Subdivision Approval** under Article 6 for the subdivision of land;
- (4) **Planned Unit or Planned Residential Development Approval** under Article 8 for planned unit or planned residential development; or
- (5) **Certificates of Zoning and Subdivision Compliance** under Section 9.4.

**Municipal Land Use Permit:** Any of the following, as issued by the Town: (1) a zoning, subdivision, site plan or building permit or approval, any of which relate to "land development" as defined in statute, that has received final approval from the applicable board, commission or officer of the municipality; (2) a wastewater system permit issued by the municipality; (3) final official minutes of a meeting that relate to a permit or approval above that serve as the sole evidence of that permit or approval (4) certificates of occupancy and compliance, and (5) any amendments to the above [ §4303(11)].

(B) **Additional Permits & Approvals.** Additional local permits and approvals may be required for activities associated with land development, including, but not necessarily limited to, the following:

- (1) **Warren Village Decentralized Municipal Wastewater System** issued by the Warren Select Board,
- (2) **Driveway Access (Curb-cut) Permit** issued by the Warren Select Board; and
- (3) **Special Events Permit** issued by the Warren Select Board.

(C) The Administrative Officer will coordinate the development review process on behalf of the Town of Warren, refer applications to the Development Review Board or other appropriate municipal or state official for review, and provide information and assistance to applicants for municipal land use permits [§§4448(c), 4460(e)].

(D) A permit is required for all proposed construction and other development within Special Flood Hazard Areas (SFHA).

## Section 9.2 Exemptions

(A) **Local Exemptions.** The following uses and structures have been determined by the town to impose little or no potential impact on the surrounding area or overall pattern of land development in Warren and, as such, are exempted from these regulations in accordance with the Act [§4446]. No zoning permit or approval shall be required for the following, with the exception that all development in the Flood Hazard Overlay District requires a permit:

- (1) Normal maintenance and repair of an existing structure, utilities or infrastructure that does not result in any change to the footprint or height dimensions of the structure, or a change in use.

- (2) Residential entry stairs (excluding deck or porch areas), handicap ramps, walkways, and fences or walls less than eight (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, or are not opaque (e.g., stockade) fences located within front yards in the Warren Village Historic Residential District or Warren Village Commercial District.
- (3) Any alteration contained within the interior of a building with a total estimated cost not greater than \$10,000.
- (4) 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).
- (5) Non-commercial outdoor recreation which does not involve the development or use of structures.
- (6) Up to two (2) accessory structures, neither of which is greater than 150 square feet in floor area nor greater than 15 feet in height, and each of which meets all setback distances for the district in which they are located.
- (7) School bus and other public transit shelters, which are exempt from minimum front setback requirements if they are located out of the road travel way, and do not interfere with intersection site distances.
- (8) Garage sales, yard sales, auctions or related activities not exceeding three (3) consecutive days, nor more than 10 days in any calendar year.

(B) **State Exemptions.** The following uses and structures are specifically exempted from municipal land use and development regulations by the state. In accordance with the Act [§4413], no municipal zoning permit or approval under these regulations shall be required for:

- (1) Accepted agricultural and best management practices (AAPs, BMPs), including farm structures, as defined by the Secretary of Agriculture, Food and Markets in accordance with the Act; 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 Administrative Officer prior to any construction as required under the AAPs.
- (2) Accepted management practices (AMPs) for silviculture (forestry) as defined by the Commissioner of Forests, Parks, and Recreation, pursuant to the Act.
- (3) Public utility power generating plants and transmission facilities that are regulated by the Vermont Public Service Board [under 30 V.S.A. §248], including net-metered wind generation facilities and solar panels.
- (4) Hunting, fishing or trapping on public or private land as specified by state [under 24 V.S.A. §2295]. This does not include facilities that may support such activities, such as firing ranges, rod and gun and fish and game clubs, which are subject to these regulations.

### **Section 9.3 Zoning Permit**

(A) **Applicability.** No land development subject to these regulations shall commence in the Town of Warren until a zoning permit has been issued by the Administrative Officer in accordance with the Act [§§4448,4449] and these regulations. No permit may be issued by the Administrative Officer except in conformance with these regulations.

(B) **Application Requirements.** An application for a zoning permit shall be submitted to the Administrative Officer on forms provided by the Town, along with any application fees as established by the Select Board under Section 9.8(B). 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 2 copies no smaller than 8½" x 11" sketch plan, drawn to scale, that accurately depict and include:

- (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) such other information as may be needed to determine compliance with these regulations.

(2) **Conditional Use Approval.** Uses that also require conditional use approval by the Development Review Board under Article 5 shall include a development review application prepared and submitted in accordance with Section 5.2.

(C) **Issuance of Zoning Permit.** A zoning permit shall be issued by the Administrative Officer only in accordance with the Act [ §4449] and the following provisions:

(1) No zoning permit shall be issued by the Administrative Officer for any use or structure which requires approval of the Development Review Board, Select Board and/or Health Officer until such approval has been obtained.

(2) No zoning permit shall be issued by the Administrative Officer for the development of a lot for which subdivision approval is required until subdivision approval has been obtained and, where also required, a certificate of subdivision compliance has been issued.

(3) For uses within the Flood Hazard Overlay District requiring state agency referral, no zoning permit or approval shall be issued until the expiration of 30 days following the submission of one or more copies of the application to the Vermont Agency of Natural Resources, Department of Environmental Conservation, River Management Section and the Federal Insurance Administrator, in accordance with the Act [§4424(2)(D)] and Section 5.2 (D). Any permit issued for development that involves the alteration or relocation of a watercourse shall assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.

(4) If a public notice for the first public hearing by the Warren Selectboard has been issued with respect to bylaw or an amendment of these regulations, in accordance with the Act [§4449(d)], the Administrative Officer shall review any new application received within 150 days following the date of public notice under the proposed amendment and applicable existing requirements of these regulations. If the new bylaw or amendment has not been adopted or rejected within this 150-day period, or the bylaw is rejected, the application shall be reviewed under the existing regulations. An application that has been denied under a proposed bylaw or amendment that has not been adopted, or

had been rejected, shall be reviewed again at no cost under the existing regulations at the request of the applicant.

- (5) Within 30 days of receipt of a completed application, including all application materials and fees, the Administrative Officer shall act to either issue or deny a permit or to refer the application to the Development Review Board or Agency of Natural Resources for consideration. If the Administrative Officer fails to act within the 30-day period, a permit shall be deemed issued on the 31<sup>st</sup> day.
- (6) All zoning permits and other determinations of the Zoning Administrator shall be in writing and, in accordance with the Act [§4449(B)], shall include a statement of the period of time in which an appeal may be taken under Section 9.5(A).
- (7) Each zoning permit issued shall also require posting of permit, on a form prescribed by the Town, within view from the public right-of-way nearest to the subject property, until the time for appeal has expired.
- (8) Within three (3) days of issuance, the Administrative Officer shall deliver a copy of the permit to the Listers, and post, for a period of 15 days from issuance, a copy at the Town Office.

**(D) Effective Dates.**

- (1) **Zoning Permits.** No zoning permit shall take effect until the time for appeal under Section 9.5 has passed or, in the event that a notice of appeal is properly filed, until final adjudication of the appeal. Permits shall remain in effect for two (2) years from the date of issuance, unless the permit specifies otherwise. All development authorized by the zoning permit shall be substantially commenced within this period, to at minimum include the complete construction of an access, a foundation, a water supply and wastewater system, or the zoning permit shall become null and void and reapplication and approval for further development shall be required.

(a) **Permit Extensions.** The Administrative Officer may administratively issue one (1) permit extension of not more than two (2) years from the date of application, if the application for an extension is made in writing prior to permit expiration, and it is determined by the Administrative Officer that the extension is justified due to delays in the issuance of other necessary permits, project financing, or other unforeseen circumstances.

- (2) **Board Approvals.** Approvals granted by the Development Review Board, including conditional use and variance approvals, shall expire upon the expiration of the zoning permit issued subsequent to Board approval. The Board may grant a longer period of time for a zoning permit and associated Board approvals to remain in effect, as specified in the Board's written approval, to accommodate phased development or projects that reasonably may require more than two (2) years to complete.

## **Section 9.4 Certificates of Compliance**

(A) **Certificate of Zoning Compliance.** In accordance with the Act [§4449(a)(2)], after the effective date of these regulations a certificate of compliance issued by the Administrative Officer shall be required prior to the use or occupancy of any land or structure, or part thereof, for which a zoning permit has been issued.

- (1) An application for a certificate of compliance shall be provided with the zoning permit issued by the Administrative Officer. The applicant shall submit the application prior to the use or occupancy of the land or structure.
- (2) Within 20 days of receipt of the application for a certificate of compliance, 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. A certificate of compliance may be issued for unfinished residential structures providing that the Administrative Officer can determine it meets all applicable zoning permit conditions. If the Administrative Officer fails to either grant or deny the certificate of compliance within 20 days of the submission of an application, the certificate shall be deemed issued on the 21<sup>st</sup> day. Regarding the determination that the permitted use or structure meets all setback requirements, the Administrative Officer may rely on any information contained in the zoning permit application regarding the location of parcel boundaries. In the event that there is a discrepancy between the information provided by the applicant and true facts, the Town does not waive future enforcement authority with the issuance of a certificate of compliance.
- (3) If approval is required for the disposal of domestic or other wastes or effluent in accordance with the Town of Warren Health Ordinance, a certificate of compliance shall not be issued by the Administrative Officer until evidence of such approval, including a Town of Warren Health Permit or a permit issued under the Environmental Protection Rules of the State of Vermont, has been filed with the Administrative Officer.

**(B) Certificate of Subdivision Compliance.** After the effective date of these regulations, the Development Review Board may require, as a condition of subdivision approval, including approvals for Planned Residential Developments and Planned Unit Developments, that a certificate of compliance be obtained to ensure public and private improvements have been installed in accordance with the conditions of subdivision approval prior to any further land development.

- (1) The application for a certificate of compliance shall be submitted to the Administrative Officer with as-built plans drawn to scale which show the location of all monuments, utilities, structures, roadways, easements, and other improvements as constructed. The Administrative Officer shall rely upon any information submitted as part of the subdividers application for subdivision approval to determine whether the as-built drawings conform to the approved plat and all associated conditions. In the event of any discrepancies between the approved subdivision and the as-built drawings, the Administrative Officer shall initiate enforcement action pursuant to Section 9.7. The Administrative Officer may rely on any information contained in the zoning permit application regarding the location of parcel boundaries. In the event that there is a discrepancy between the information provided by the applicant and true facts, the Town does not waive future enforcement authority with the issuance of a certificate of compliance.
- (2) Within 20 days of receipt of the application for a certificate of compliance, the Administrative Officer will inspect the subdivision to ensure that all work has been completed in conformance with the conditions of subdivision approval. If the Administrative Officer fails to either grant or deny the certificate of compliance within 20 days of the submission of an application, the certificate shall be deemed issued on the 21<sup>st</sup> day.

## **Section 9.5 Appeals**

**(A) Decisions of the Administrative Officer.**

In accordance with the Act [ §4465], in addition to the applicant, any **interested person** may appeal a decision or act of the Administrative Officer, within 15 days of the date of the decision or act, by filing a notice of appeal with the Secretary of the Development Review Board, or the Town Clerk if no Secretary has been elected, and by filing a copy of the notice of appeal with the Administrative Officer.

(1) The Development Review Board shall hold a public hearing on a notice of appeal within 60 days of its filing, as required under the Act [§4468]. The Board shall give public notice of the hearing under Section 9.8(C), and mail a copy of the hearing notice to the appellant not less than 15 days prior to the hearing date.

(2) In accordance with the Act [§4470], the Development Review 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.

(3) In accordance with the Act [§4468] and Section 9.8(D), all appeal hearings shall be open to the public and the rules of evidence applicable at these hearings shall be the same as the rules of evidence applicable in contested cases in hearings

before administrative agencies as set forth in state statute [3 V.S.A. §810]. Any interested person may appear and be heard in person or be represented by an agent or attorney at the hearing.

(4) A decision on appeal, to include written findings of fact, shall be rendered within 45 days after hearing adjournment, pursuant to the Act [§4464(b)] and Section 9.8(E). The decision shall be sent by certified mail to the appellant within the 45-day period. Copies of the decision shall also be mailed to every person or body having been heard at the hearing, and filed with the Administrative Officer and the Town Clerk as part of the public records of the municipality, in accordance with Section 9.8(G).

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

■ A person owning title to a property, or a municipality or solid waste district empowered to condemn it or an interest in it, affected by these regulations, who alleges that the regulations impose on the property unreasonable or inappropriate restrictions off present or potential use under the particular circumstances of the case.

■ The Town of Warren 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 Warren Town Plan or regulations of the Town.

■ Any ten (10) registered voters and/ or real property owners within the Town 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 accord with the policies, purposes or terms of the Warren Town Plan or regulations of the Town. The petition must designate one person to serve as the representative of the petitioners regarding all matters relating to the appeal.

■ Any department ~~or~~ and administrative subdivision of the State owning property or any interest in property within the Town or adjoining municipality, and the Vermont Agency of Commerce and Community Development.

(B) **Notice of Appeal.** Pursuant to the Act [§4466], a notice of appeal filed with the Development Review Board under this section 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 provisions of these regulations;
- (4) the relief requested by the appellant, including any request for a variance from one or more provisions of these regulations; and
- (5) the alleged grounds why such relief is believed proper under the circumstances.

(C) **Decisions of the Development Review Board.** The applicant or any other **interested person** who has participated in a regulatory proceeding of the Development Review Board may appeal a decision rendered by the Board within 30 days of such decision to the Vermont Environmental Court, in accordance with the Act [§4471].

- (1) "Participation" in a board proceeding shall consist of offering, through oral and written testimony, evidence of a statement of concern related to the subject of the proceeding.
- (2) The notice of appeal shall be filed by certified mailing, with fees, to the Environmental Court and by mailing a copy to the Warren Town Clerk, or the Administrative Officer if so designated, who shall supply a list of interested persons 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.

(D) **Court Stays.** If an appeal is taken to the Environmental Court, a permit shall not take effect until the court rules on whether to issue a stay, or until the expiration of 15 days, whichever comes first.

## **Section 9.6 Variances**

(A) The Development Review Board shall hear and decide upon requests for variances pursuant to the Act [§4469] and appeal procedures under Section 9.5. **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 the zoning 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 the provisions of the zoning regulations and that the authorization of a variance is necessary to enable the reasonable use of the property.
- (3) The unnecessary hardship has not been created by the appellant.

- (4) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, nor substantially or permanently impair the appropriate use or development of adjacent property, nor reduce access to renewable energy resources, nor be detrimental to the public welfare.
- (5) The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from the zoning regulations and from the Warren Town Plan.
- (6) Because variances granted within SFHAs can create an increased risk to life and property, variances from flood elevation or other requirements in the flood ordinance should be rare. Variances shall not be issued within SFHAs if any increase in flood levels during the base flood discharge would result. Any such variances should be based only on a structure-by-structure review, and must be made with reference to and be consistent with the guidelines set out in 44 CFR 60.6(a).

(B) 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.

(C) In granting a variance, the Development Review Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the Warren Town Plan currently in effect. In no case shall the Board 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.

(D) In granting a variance, the Development Review Board may impose conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the Warren Town Plan currently in effect. In no case shall the Board 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 9.7 Violations & Enforcement**

(A) **Violations.** The commencement or continuation of any land development, subdivision or use which is not in conformance with the provisions of these regulations shall constitute a violation. All violations will be pursued in accordance with the Act [§4451,4452,4454]. Each day that a violation continues shall constitute a separate offense. The Administrative Officer 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 for violations shall be paid over to the Town.

(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 seven (7) days notice by certified mail that a violation exists. The warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven (7) days and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven (7) days. The notice of violation for violations of the flood hazard area provisions of these regulations also shall include a statement regarding the prospective denial of flood insurance. 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) Upon determination that a violation of the flood hazard area provisions of these regulations exists, the Administrative Officer also shall submit a declaration to the Administrator of the National Flood Insurance Program requesting a denial of flood insurance. The declaration shall consist of:

- (1) The name of the property owner and address or legal description of the property sufficient to confirm its identity or location.
- (2) A clear and unequivocal declaration that the property is in violation of a cited state or local law or regulation.
- (3) A clear statement and citation under these regulations of the Administrative Officer's authority to make such a declaration.
- (4) Evidence that the property owner has been provided a notice of violation and the prospective denial of insurance.
- (5) A clear statement that the declaration is being submitted pursuant to Section 1316 of the National Flood Insurance Act of 1968 as amended.

(D) **Limitations on Enforcement.** The Town shall observe the 15-year limitations on enforcement proceedings relating to municipal permits and approvals as set forth in the Act [§4454].

### **Section 9.8 Municipal Administrative Requirements**

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

- (1) **Administrative Officer.** The Select Board shall appoint, from nominations submitted by the Planning Commission, an Administrative Officer for a term of three (3) years in accordance with the Act [ §4448]. In the absence of the Administrative Officer, an Acting Administrative Officer may be appointed by the Select Board from nominations submitted by the Planning Commission. The Administrative Officer shall literally administer and strictly enforce the provisions of these regulations, and in doing so shall inspect developments, maintain records, and perform other associated tasks as is necessary and appropriate.
- (2) **Development Review Board.** Development Review Board members and alternates shall be appointed by the Select Board for specified terms in accordance with the Act [§4460]. The Development Review Board existing on the date of adoption of these regulations shall continue as the Development Review Board for terms as specified. The Board shall adopt rules of procedure and rules of ethics with regard to conflicts of interest 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 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:
  - applications for land development without frontage as authorized in Section 3.1;
  - applications for subdivision approval;
  - applications for conditional use approval, including waivers from the dimensional requirements of these regulations
  - applications for planned unit or planned residential development;
  - appeals from any decision, act or failure to act by the Administrative Officer; and
  - variance requests.
- (3) **Planning Commission.** A Planning Commission shall be appointed by the Select Board in accordance with the Act [§4321]. The Select Board shall determine the Board's members as well as their number and term of office. As authorized by the Act [§4325,] the Planning Commission, in

addition to other powers and duties, shall have the following duties in association with these regulations:

- prepare or consider bylaws and amendments to these regulations;
- prepare a written report regarding the conformance of a proposed amendment to these regulations with the Warren Town Plan; and
- to hold public forums and hearings on proposed bylaws and amendments to these regulations.

(B) **Fee Schedule.** In accordance with the Act [§4440], the Select Board shall establish a schedule of fees to be charged in administering these regulations, with the intent of covering the Town's administrative costs. The Select Board may also, in consultation with the Development Review Board, establish the procedures and standards for requiring an applicant to pay for the reasonable costs of a independent technical review of an application.

(C) **Public Notice Requirements:**

- (1) Pursuant to the Act [§4464], a warned public hearing shall be required for conditional use review (Section 5.2), appeals and variances (Sections 9.5 and 9.6) and preliminary and final subdivision review (Sections 6.3 and 6.4). Any public notice for a warned public hearing shall be given not less than 15 days prior to the date of the hearing by *all* of the following:
  - (a) publication of the date, place and purpose of the public 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 in conformance with state posting requirements [1 V.S.A. §312(c)(2)], including the posting of a hearing notice within view of the public right(s)-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 subdivision or 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 town boundary, written notification to the clerk of the adjoining municipality.
- (2) Public notice for other quasi-judicial hearings of the Development Review Board shall be given not less than seven (7) days prior to the date of the public hearing and shall at minimum include *all* of the following:
  - (a) posting of the date place, and purpose of the public hearing in three (3) or more public places within the municipality in conformance with state posting requirements [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 subdivision or 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
- (3) The applicant shall be required to bear the cost of public warning, and the cost and responsibility of notifying adjoining property owners as required under Subsections (C)(1) and (C)(2) above, as determined from the municipal grand list. The applicant shall also demonstrate proof of delivery to

adjoining property owners either by certified mail, return receipt requested, or by written notice hand delivered or mailed to the last known address, supported by a signed, sworn certificate of service.

- (4) No defect in the form or substances of any public notice under this section shall invalidate an action of the Development Review Board where reasonable efforts have been made to provide adequate posting and notice. An 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 Development Review Board or the Environmental Court, the action shall be remanded to the Development Review Board to provide new posting and notice, hold a new hearing, and take a new action.

**(D) Meeting & Hearing Requirements.** In accordance with the Act [ §§4461, 4464], all meetings and hearings of the Development Review Board, except for deliberative and executive sessions, shall be open to the public. In addition:

- (1) For the conduct of any meeting and the taking of any action, a quorum shall be not less than a majority of the members of the Board. Any action of the Board shall be taken by a concurrence of the majority of the members of the Board.
- (2) The Board shall keep minutes of all its proceedings, showing the vote of each member upon each question or indication of a member's absence or failure to vote, and shall keep records of its examination and other official actions which shall be filed immediately in the Town Office as public records.
- (3) Public hearings of the Board shall be noticed and warned in accordance with Subsection (C). In any regulatory hearing of the Board opportunity shall be provided for each person wishing to achieve status as an interested person for purposes of appeal under Section 9.5 to demonstrate that the criteria set forth in that section are met. The Development Review Board shall keep a written record of the name, address and participation of each of these persons.
- (4) Officers of the Board may administer oaths and compel the attendance of witnesses and the production of material germane to any issue under review. The Board may also require an independent technical review of one or more aspects of an application, to be paid for by the applicant, in accordance with any policies and standards set by the Select Board under Subsection (B).
- (5) The Board may recess the proceedings on an application pending the submission of additional information, and should close evidence promptly after all parties have submitted requested information.

**(E) Decisions.** In accordance with the Act [§4464(b)], the Development Review Board shall issue decision on an application or appeal within 45 days after the date of hearing adjournment. Failure to issue a decision within this 45-day period shall be deemed approval and shall be effective on the 46<sup>th</sup> day.

- (1) All decisions of the Board shall be issued in writing and shall include a statement of the factual basis on which the Board has made its conclusions (findings) and a statement of the conclusions. The minutes of the meeting may suffice provided the factual bases and conclusions related to the review standards are provided in conformance with this section. The decision shall also include a statement of the time within which appeals may be taken under Section 9.5.
- (2) In rendering a decision in favor of an applicant or appellant, the Board may attach reasonable conditions and safeguards as it deems necessary to implement the purposes of the Act, these regulations, and the Warren Town Plan then in effect. Conditions of approval may include:

- (a) The submission of a performance bond, escrow account or other form of surety acceptable to the Warren Select Board, for a fixed term of up to 3 years, which may be extended for an additional 3-year period with the consent of the owner, to assure project completion, including the installation of required improvements, adequate stabilization, or protection of public facilities that may be affected by a project.
  - (b) A requirement that no zoning permit or certificate of occupancy or compliance be issued for an approved subdivision or development unless required improvements have been satisfactorily installed in conformance with the conditions of approval.
  - (c) A requirement for the phasing of development as necessary to avoid or mitigate any undue adverse impacts to existing or planned community facilities, in conformance with the timing of construction or implementation of such facilities and services under the Town's adopted capital budget and program
- (3) All decisions shall be sent to the applicant or appellant by certified mail within the 45-day period. Copies of the decision shall also be mailed to every person or body appearing and having been heard at the hearing, and shall be filed with the Administrative Officer and Town Clerk as part of the records of the municipality, in accordance with Subsection 9.8(H) and the Act [§4464(b)(3)].
- (4) Any decision issued by the Development Review Board may authorize that subsequent changes or amendments to an approved project may be allowed subject to administrative review by the Administrative Officer, rather than Board review, in accordance with Subsection (F).
- (F) **Administrative Review.** The Administrative Officer may subsequently review applications for, and act to approve or deny, minor amendments to conditional use permits, subdivision plats and plans, and planned unit or planned residential developments previously approved by the Development Review Board, in accordance with the Act [§4464(c)], and the following requirements:
- (1) The following types of amendments shall be considered eligible for administrative review and approval by the Administrative Officer:
    - (a) Relocation of site improvements and/or accessory structures that have been previously approved, provided such relocations are located within or do not alter any previously approved rights-of-way, building envelopes, set backs or coverage requirements for the site.
    - (b) Approval of as-built plans that deviate from approved plans, only to the extent that such deviations do not or require an amendment of any condition of approval.
    - (c) Minor alterations to approved landscaping or screening plans, for example to allow for the substitution of landscaping or screening materials that do not violate or alter the conditions of previous approvals.
    - (d) An increase in building area and/or impervious coverage totaling no more than 3% of the overall site coverage, or 1,000 square feet, whichever is less, and the total coverage is less than or equal to the maximum allowed lot coverage.
    - (e) A change of use from an approved conditional or permitted use to another permitted use allowed within the district that does not alter or have the effect of altering the conditions of previous approvals.

- (f) Boundary or lot line adjustments between parcels that do not result in the creation of new or nonconforming lots under these regulations, do not substantially alter the subdivision or conditions of approval, and do not result in the creation of a major subdivision.
  - (g) Other types of revisions or amendments, as specified in the Board's findings and conditions, if the decision clearly specifies the thresholds and conditions under which administrative review and approval shall be allowed.
- (2) No new development shall be approved that results in a substantial impact under any of the standards of these regulations or the conditions of approval; and no amendment issued as a result of an administrative review shall have the effect of substantially altering the findings of fact of the Board's most recent approval.
- (3) At least 15 days prior to the issuance of an administrative amendment:
- (a) Notice of an application for an administrative amendment shall be posted in three (3) or more public places in the municipality, including posting of the notice within view of the public right(s)-of-way nearest to the property for which the application is being made.
  - (b) Written notification of the application shall be mailed to the owners of all properties adjoining the property subject to subdivision or development, without regard to public rights-of-way, and to every person or body appearing and having been heard in related proceedings before the Development Review Board, and to the Development Review Board members. Applicant shall also demonstrate proof of delivery to those persons listed above, either by certified mail, return receipt requested, or by written notice hand delivered or mailed to the last known address, supported by a signed, sworn statement of service.
  - (c) Prior to the issuance of the administrative amendment, any interested person, including any Development Review Board member, may file a request that the application be heard by Development Review Board, rather than be acted upon by the Administrative Officer. Such request shall be filed with the Secretary of the Development Review Board or the Town Clerk if no Secretary has been elected, and by filing a copy of the request with the Administrative Officer. A request filed with the Development Review Board under this section shall be in writing and include:
    - (1) the name and address of the requesting party;
    - (2) a brief description of the property with respect to which the request is made;
    - (3) a reference to applicable provisions of these regulations;
    - (4) the request that the application be heard by the Development Review Board, rather than be acted upon by the Administrative Officer; and
    - (5) the alleged grounds why such application should not be acted upon by the Administrative Officer but rather heard by the Development Review Board..

The matter will then be scheduled and heard by the Development Review Board in its ordinary course of business.

- (4) Administrative approvals shall be issued by the Administrative Officer in the same manner as zoning permits are issued under Section 9.3(C), and may be appealed to the Development Review Board in accordance with Section 9.5(A). The Administrative Officer shall create a written decision and copies of the decision shall also be sent, within three (3) days of issuance, to the owners of all properties adjoining the property subject to subdivision or development, without

regard to public rights-of-way, and to every person or body appearing and having been heard in related proceedings before the Development Review Board.

- (5) The Administrative Officer shall report on all administrative approvals issued to the Development Review Board at the next regular meeting of the board following the date of approval.
- (6) Administrative approvals shall be recorded in the same manner as other permits and approvals, and in accordance with the requirements of Section 9.8 (G). Administrative amendments to an approved subdivision plat shall also meet plat recording requirements under Section 6.5.

**(G) Recording Requirements.**

- (1) Pursuant to the Act [§4449(c)], within 30 days after the issuance or denial of a municipal land use permit, or within 30 days of the issuance of any notice of violation, the Administrative Officer shall deliver either the original, a legible copy, or a notice of the permit, denial or violation to the Town Clerk for recording in the land records of the town as provided in 24 V.S.A. §1154.
- (2) For development within the Floodplain District, the Administrative Officer shall also maintain a record of:
  - (a) All permits issued for development in areas of special flood hazard.
  - (b) The elevation, consistent with the NFIP map elevation datum, of the lowest floor, including basement, or all new or substantially improved buildings.
  - (c) The elevation, consistent with the NFIP map elevation datum, to which buildings have been flood proofed.
  - (d) All flood proofing certifications required under this regulation.
  - (e) All variance actions, including the justification for their issuance.