

ARTICLE 7: ADMINISTRATION & ENFORCEMENT

Section 7.1 Permits & Approvals

- (A) **Permit Requirements.** In accordance with the Act [§4446], no development or subdivision of land may begin in the Town of East Montpelier until all applicable municipal land use permits and approvals have been issued, unless the development is specifically exempted from these regulations under Section 7.2. Such permits and approvals are summarized in Table 1.1.
- (B) The Zoning Administrator will coordinate the development review process on behalf of the Town of East Montpelier, refer applications to the appropriate board or municipal officer, and provide information and assistance to applicants for municipal land use permits as appropriate [§4448(c)].

Municipal Land Use Permit: a zoning, subdivision, site plan or building permit or approval, any of which related to land development as defined in these regulations, which has received final approval from the applicable board, commission or officer of the municipality; and a Certificate of Compliance issued by the Zoning Administrator. [24 V.S.A 4303(1)]

Section 7.2 Exemptions

- (A) In accordance with the Act [§4446], the following uses and structures have been determined to impose little or no impact on the surrounding area and the overall pattern of land development within the town. Therefore, under most circumstances, no zoning permit shall be required for the uses and structures listed below. However, the exemptions listed below do not apply in the Regulated Flood Hazard Areas [see Article 9]. Outside of the Regulated Flood Hazard Areas, no zoning permit shall be required for:
- (1) Normal maintenance, repair, remodeling or interior alteration of an existing structure that does not result in a change in use or any change to the footprint, height dimensions or expansion in the total area of the structure, unless such structure is subject to the terms and conditions of prior approval (e.g., conditional use, site plan), and such remodeling or interior alteration would not be compliant with said approval.
 - (2) Residential entry stairs (excluding deck or porch areas), handicap ramps, walkways, and fences or walls six feet or less in height, which do not extend into or obstruct public rights-of-way, or interfere with corner visibility or sight distances for vehicular traffic.
 - (3) Up to two (2) accessory structures, such as a shed, tree house, doghouse, child's play house, or similar structure with a floor area of not more than 80 square feet (each) and a height of not more than 10 feet which complies with all applicable setbacks for the district in which it is located. A zoning permit is required for all other accessory structures.
 - (4) Up to two (2) prefabricated, temporary carports and storage covers, assembled out of metal structural supports and fabric, provided such covers are not affixed to a permanent foundation, do not exceed 400 square feet of covered area, and meet all setback standards for the district in which they are located.
 - (5) Home occupations, including home childcare facilities that meet the criteria set forth in Section 4.9.
 - (6) Outdoor recreation, including walking, hiking, cross-country skiing and snow mobile trails, that does not involve the development or use of structures or substantial site improvements (e.g., construction of parking area at a trail head).
 - (7) Grading and excavation outside of a public right-of-way associated with road and driveway maintenance (including culvert replacement and re-surfacing) and yard improvements associated

Juliana 3/22/2015 6:02 PM

Comment [1]: Definition in box revised to match statutory reference:
"Municipal land use permit" means any of the following whenever issued:
(A) A zoning, subdivision, site plan, or building permit or approval, any of which relate to "land development" as defined in this section, that has received final approval from the applicable board, commission, or officer of the municipality.
(B) A wastewater system permit issued under any municipal ordinance adopted pursuant to chapter 102 of this title.
(C) Final official minutes of a meeting that relate to a permit or approval described in subdivision (11)(A) or (B) of this section that serve as the sole evidence of that permit or approval.
(D) A certificate of occupancy, certificate of compliance, or similar certificate that relates to the permits or approvals described in subdivision (11)(A) or (B) of this section, if the bylaws so require.
(E) An amendment of any of the documents listed in subdivisions (11)(A) through (D) and (F) of this section.
(F) A certificate of approved location for a salvage yard issued under subchapter 10 of chapter 61 of this title.

Juliana 3/22/2015 5:48 PM

Deleted: ; a wastewater system construction and use permit issues by the East Montpelier Sewage Officer

Juliana 3/22/2015 5:49 PM

Deleted: Special

Juliana 3/22/2015 5:49 PM

Deleted: Flood Hazard Area Regulations

Juliana 3/22/2015 5:49 PM

Deleted: Special

with accessory uses to existing principle uses (contouring yards, establishing garden and landscape areas).

- (8) Activities within a public right-of-way associated with road and highway maintenance and improvements, provided such activities are undertaken by the Vermont Agency of Transportation or East Montpelier Selectboard.
- (9) Signs specifically exempted from these regulations under Section 3.15.
- (10) Transit or bus stop shelters which do not exceed 80 square feet in floor area and 10 feet in height, and are set back a minimum of 15 feet from edge of the travel lane, and do not otherwise interfere with visibility or sight distances for vehicular traffic. Any transit or bus shelter located within a public right-of-way shall be approved by the Selectboard in the case of town roads, and Vermont Agency of Transportation in the case of state highways.
- (11) Garage sales, yard sales and auctions not exceeding three (3) consecutive days, nor more than 12 per calendar year, which do not cause unsafe traffic conditions or parking problems.
- (12) Fuel storage as an accessory structure to an allowed use.
- (13) Accepted management practices (AMPs) for silviculture (forestry), as defined by the Commissioner of Forests, Parks and Recreation, in accordance with the Act [§4413(d)].
- (14) Agriculture (Accepted Agricultural Practices – AAPs), including the construction or expansion of farm structures, as defined by the Secretary of the Agency of Agriculture, Food and Markets. In accordance with the Act [§4413(d)], written notification to the Zoning Administrator is required prior to any construction of a farm structure, and such structures shall meet all setback requirements under these regulations unless waived by the Secretary. Notification shall include a sketch plan of the structure showing setback distances from road rights-of-way, property lines and surface waters.
- (15) Public utility power generating plants and transmission facilities regulated by the Vermont Public Service Board (under 30 V.S.A. §248) are specifically exempted from these regulations in accordance with the Act [§4413(b)].
- (16) The maintenance or installation of telecommunications lines within a public right-of-way.

Section 7.3 Zoning Permit Requirements

- (A) **Application Requirements.** The application for a zoning permit must be submitted to the Zoning Administrator on forms provided by the town, along with any application fees as established by the Selectboard. In addition, the following will be required as applicable:
- (1) Applications for permitted uses shall include a statement describing the existing and intended use of the land and structures and/or any proposed structural changes, and be accompanied by two copies of a sketch plan, no smaller than 8 ½" x 11", that accurately depicts the following:
 - (a) The dimensions of the lot, including existing and proposed property boundaries;
 - (b) The location, footprint, and height of existing and proposed structures and additions;
 - (c) The location, and dimensions of existing and proposed accesses (curb cuts), driveways and parking areas;
 - (d) The location of existing and proposed easements, rights-of-way and utilities;
 - (e) Setbacks from property boundaries, road rights-of-way, surface waters, and wetlands;
 - (f) The location of existing and proposed water and wastewater systems, as well as all required isolation distances from such systems;
 - (g) The location of all features delineated as falling within the Conservation Overlay Districts [see Table 2.6]; and
 - (h) Such other information as may be needed to determine compliance with these regulations.

- (2) For development requiring one or more approvals from the Development Review Board, and/or Selectboard prior to the issuance of a zoning permit, applicable application materials and fees shall be submitted concurrently with the application for a zoning permit.
- (3) An additional copy of any application within the Regulated Flood Hazard Areas [see Article 9] shall be provided by the applicant. The Zoning Administrator shall forward the copy of the application to the appropriate agency within 10 business days of receipt of the application.
- (4) The Zoning Administrator will be responsible for deeming an application as complete. The application shall not be considered complete until all information and associated fees have been submitted. The Zoning Administrator shall sign and date the complete application.

Juliana 3/22/2015 5:50 PM

Deleted: ,

Juliana 3/22/2015 5:50 PM

Deleted: and/or Wastewater Officer

(B) **Issuance of Zoning Permits.** A zoning permit shall be issued by the Zoning Administrator only in accordance with the Act [§§4448, 4449], and the following provisions:

- (1) No zoning permit shall be issued by the Zoning Administrator for any use or structure that requires approval of the Development Review Board and/or Selectboard, until such approval has been obtained. In addition, no zoning permit shall be issued by the Zoning Administrator for the development of a lot for which subdivision approval is required, until subdivision approval has been obtained.
- (2) For uses requiring state agency referral and compliance with Regulated Flood Hazard Areas requirements [see Article 9], no zoning permit shall be issued until a response has been received, or the expiration of 30 days following the submission of the application to the agency, whichever is sooner.
- (3) If public notice has been issued for the first public hearing of the Selectboard to consider a proposed amendment to these regulations, the Zoning Administrator shall, for a period of 150 days following that notice, review any new application for compliance with the proposed amendment and applicable existing bylaws. If the new bylaw or amendment has not been adopted by the conclusion of the 150-day period, or if the proposed bylaw or amendment is rejected, the permit shall be reviewed under all applicable provisions of this bylaw [§4449(d)].
- (4) Within 30 days of receipt of a complete application, including all application materials, fees, and required approvals, the Zoning Administrator shall act to either issue or deny a zoning permit in writing, or to refer the application to the Development Review Board for consideration. In accordance with the Act [§4448], if the Zoning Administrator fails to act within the 30-day period, a permit shall be deemed issued on the 31st day.
- (5) Each zoning permit issued shall include a statement of the time within which appeals may be taken under Section 7.5, and shall require posting of a notice of permit, on a form prescribed by the municipality, within view of the nearest public right-of-way until the time for appeal has expired.
- (6) Within three (3) days of issuance, the Zoning Administrator shall deliver a copy of the permit to the Listers, and post a copy at the Town Office for a period of 15 days from the date of issuance.

(C) **Effective Dates**

- (1) **Zoning Permits.** No zoning permit shall take effect until the time for appeal under Section 7.5 has passed, or in the event that a notice of appeal is properly filed, until final adjudication of the appeal. Permits and associated conditions will run with the land and be binding upon the landowner's future heirs and assigns. A permit will, however, expire and become null and void within one (1) year from the date of issuance if the permitted development has not been substantially commenced. Prior to the expiration of the permit, the Zoning Administrator may issue an extension for one (1) additional year in the event the permittee can document an unavoidable delay in the substantial commencement of the project.
- (2) **Board Approvals.** Approvals of the Development Review Board shall expire upon the expiration of the zoning permit issued subsequent to Board approval. The Board may grant a

longer period of approval to accommodate phased development or other projects that reasonably require a long period of time for project completion.

- (D) **Display of Zoning Permit.** In accordance with the Act [§4449], the notice of a zoning permit must be displayed within view from the public right-of-way nearest to the property until the time for appeal under Section 7.5 has passed.

Section 7.4 Certificates of Compliance

- (A) No structure, other than accessory structures to single family dwellings, for which a zoning permit has been issued shall be occupied or used, in whole or in part, until the Zoning Administrator has issued a certificate of compliance.
- (1) An application for a certificate of compliance shall be provided with the zoning permit issued by the Zoning Administrator. The applicant shall submit a completed application for a certificate of compliance to the Zoning Administrator prior to the expiration of the permit, as per Section 7.3(C) above.
 - (2) The applicant shall certify and affirm, in the presence of a notary public and to the satisfaction of the Zoning Administrator, that the constructed building or addition is in conformance with the zoning permit and any associated approvals, including all applicable permit conditions.
 - (3) The Zoning Administrator may, but is not required to, inspect the site layout before acting on the certificate of compliance. In all cases, the Zoning Administrator's decision to approve or deny an application for a certificate of compliance shall be based on the applicant's certifications and representations, and the issuance of a certificate of compliance shall not preclude a subsequent zoning enforcement action for any violations of the zoning permit or zoning regulations that may have existed prior to the issuance of the certificate of compliance.
 - (4) An application for a certificate of compliance shall be approved or denied by the Zoning Administrator within 30 days of receipt. If the Zoning Administrator fails to either grant or deny the certificate of compliance within 30 days of the submission, the certificate shall be deemed approved on the 31st day. The decision of the Zoning Administrator may be appealed to the Development Review Board under Section 7.5(A).

Section 7.5 Appeals

- (A) Decisions of the Zoning Administrator. In accordance with the Act [§4465], the applicant or any other **interested person** may appeal a decision or act of the Zoning Administrator by filing a notice of appeal with the Development Review Board or the Town Clerk within 15 days of the date of such decision or act. A copy of the notice of appeal also shall be filed with the Zoning Administrator.
- (1) In accordance with the Act [§§4464, 4466], the notice of appeal shall be in writing and include:
 - (a) The name and address of the appellant;
 - (b) A brief description of the property with respect to which the appeal is taken;

Interested Person. In accordance with the Act [§4465(a)], in addition to the applicant the definition of an "interested person" includes the following:

- The Town of East Montpelier or an adjoining municipality;
- A person owning or occupying property in the immediate neighborhood of the property that is the subject of a decision or act taken under these regulations, who can demonstrate a physical or environmental impact on the person's interests 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 bylaw of the town;
- Any 10 voters or property owners within the town who, by signed petition to the Board, allege that any relief requested by a person under these regulations, if granted, will not be in compliance with the plan or bylaw of the town; 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.

Juliana 3/19/2015 2:21 PM

Deleted: approved

Juliana 3/19/2015 2:21 PM

Deleted: The applicant shall certify that such structure conforms to the approved plans, specifications, and requirements of the permit.

Juliana 3/19/2015 2:22 PM

Deleted: ,

Juliana 3/26/2015 3:58 PM

Deleted: proposed

- (c) A reference to applicable bylaw provisions;
 - (d) The relief requested by the appellant, including any request for a variance from one or more provisions of these regulations;
 - (e) The alleged grounds why such relief is believed proper under the circumstances; and
 - (f) Proof of notification to adjoining and facing landowners in accordance with Subsection 7.8(E)(3).
- (2) The Development Review Board shall hold a public hearing on a notice of appeal within 60 days of the filing of the appeal. The Board shall give public notice of the hearing as required under Subsection 7.8(E)(1), and shall mail a copy of the hearing notice to the appellant at least 15 days prior to the hearing date.
- (3) The Board may reject an appeal or request for reconsideration without hearing and render a decision, which shall include 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 [§4470].
- (4) All appeal hearings shall be open to the public in accordance with the Act [§4468]. Any interested person or body may appear and be heard in person or be represented by an agent or attorney at the hearing. 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 statutes [3 V.S.A. §810]. The hearing may be adjourned by the Board from time to time, provided that the date and place that the hearing will be reconvened is announced at the time of adjournment.
- (5) A decision on appeal shall be rendered within 45 days after the adjournment of the hearing, as required under Section 7.8(F)(1). Failure to issue a decision within this period shall be deemed approval and shall be effective on the 46th day. Decisions shall be issued in writing and shall include a statement of the factual bases on which the Board has made its conclusions, and a statement of conclusions. The decision shall also include a statement of the time within which appeals may be taken under Subsection (B). The decision shall be sent by certified mail to the appellant within the 45-day period. Copies of the decision shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Zoning Administrator and the Town Clerk as part of the public records of the municipality [§4464(b)(3)].
- (B) Development Review Board Decisions.** The applicant, appellant or other interested person who has participated in a regulatory proceeding of the Development Review Board may appeal the 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 or commission proceeding shall consist of offering, through oral or 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 East Montpelier Town Clerk, or the Zoning Administrator if so designated, 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 7.6 Variances

- (A) Landowners seeking variances from one or more setback standards should refer to Section 3.14 regarding setback waivers before submitting an application for a variance under this section
- (B) The Development Review Board shall hear and decide upon requests for variances pursuant to the Act [§4469(a)], and appeal procedures under Section 7.5. 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 topographic or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions and not the circumstances of conditions generally created by the provisions of these 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 these regulations, and that the authorization of a variance is therefore 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, substantially or permanently impair the appropriate use of development of adjacent property, reduce access to renewable energy resources, or be detrimental to public welfare.
 - (5) The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and from the plan.
- (C) **Renewable Energy Structures.** 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 Development Review Board may grant that variance and render a decision in favor of the appellant only if **all** the following facts, as listed in the Act [§4469(b)], are found, and the findings are specified in its decision:
- (1) It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource structure in conformance with these regulations;
 - (2) The hardship was not created by the appellant;
 - (3) 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 of development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare;
 - (4) The variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from these regulations and the plan.
- (D) **Flood Hazard Area.** Variances within Regulated Flood Hazard Areas [see Article 9] shall be granted by the Development Review Board only:
- (1) In granting a variance under this section, the Development Review Board may attach conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect;
 - (2) Upon a determination that during the base flood discharge the variance will not result in increased flood levels; and
 - (3) Upon a determination that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
- (E) In granting a variance under this section, the Development Review Board may attach conditions it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect.

Section 7.7 Violations & Enforcement

- (A) **Violations.** The commencement or continuation of any land development or use that does not meet the requirements of these regulations shall constitute a violation. All violations shall be pursued in

accordance with the Act [§§4451, 4452]; each day that a violation continues shall constitute a separate offense. The Zoning Administrator shall institute, in the name of the Town of East Montpelier, any appropriate action, injunction or other proceeding to enforce the provisions of these regulations. All fines imposed and collected shall be paid over to the town.

(B) **Notice of Violation.** 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, as required under the Act [§4451]. The notice of violation also shall be recorded in the land records of the town under Section 7.8(G). The warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the seven days, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the seven days. Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of the regulations after the seven-day notice period and within the next succeeding 12 months.

(C) **Limitations of Enforcement.** An action, injunction or other enforcement proceeding relating to the failure to obtain or comply with the terms and conditions of any required or duly recorded municipal land use permit may be instituted against the alleged offender if the action, injunction or other enforcement proceeding is instituted within 15 years from the date the alleged violation first occurred, and not thereafter, in accordance with the Act [§4454]. The burden of proving the date the alleged violation first occurred, shall be on the person against whom the enforcement action is instituted. No enforcement proceeding may be instituted to enforce an alleged violation of a municipal land use permit unless the permit or a notice of the permit has been recorded in the land records of the municipality under Section 7.8(G).

Section 7.8 Municipal Administrative Requirements

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

(1) **Zoning Administrator.** The Selectboard shall appoint a Zoning Administrator, from nominations submitted by the Planning Commission, for a term of ~~one (1) year~~, in accordance with the Act [§4448] and the East Montpelier Charter [24 V.S.A Chapter 114E, Section 4]. In the absence of the Zoning Administrator, an acting Zoning Administrator may be appointed by the Selectboard, from nominations submitted by the Planning Commission, who shall have the same duties and responsibilities of the Zoning Administrator in the Zoning Administrator's absence. The Zoning Administrator shall literally administer and strictly enforce the provisions of these regulations, and in doing so shall inspect development, maintain records, and perform other related tasks as is necessary and appropriate.

(2) **Development Review Board.** Development Review Board members and alternates shall be appointed by the Selectboard for specified terms in accordance with the Act [§4460]. The Board shall adopt rules of procedure to guide its official conduct as required under the Act and Vermont's Open Meeting Law. The 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 act upon:

- Requests for land-locked parcel access approval [Section 3.3];
- Requests for site plan approval [Section 5.4];
- Requests for conditional use approval [Section 5.5];
- Applications for planned residential and planned unit developments [Section 5.6];
- Requests for subdivision approval [Section 6.1];
- Appeals of any decision, act or failure to act by the Zoning Administrator [Section 7.5(A)]; and
- Variance requests [Section 7.6].

(3) **Planning Commission.** The Planning Commission shall be elected to specified terms by the voters of the Town in accordance with the Act [§§4321, 4323]. The Commission shall adopt

Juliana 3/19/2015 2:18 PM
Deleted: three (3)
Juliana 3/19/2015 2:18 PM
Deleted: s
Juliana 3/19/2015 2:26 PM
Deleted: Development Review Board

Juliana 3/19/2015 2:37 PM
Deleted: 3
Juliana 3/19/2015 2:37 PM
Deleted: 4
Juliana 3/19/2015 2:37 PM
Deleted: 5

rules of procedure to guide its official conduct in accordance with the requirements of the Act [§4323] and Vermont's Open Meeting Law [1 V.S.A. §310-314]; and shall have powers and duties as set forth in the Act [§4325], including but not limited to the power to hear and decide requests and petitions for bylaw amendments.

(B) **Fee Schedule.** The Selectboard shall establish a schedule of fees to be charged in administering these regulations, with the intent of covering the town's administrative costs. Such fees may be revised from time to time as deemed necessary by the Selectboard. In accordance with the Act [§4440(d)], the fee schedule may authorize the Development Review Board to charge the applicant for the reasonable costs of an independent technical assessment of an application that may be incurred during the review process under these regulations.

(C) **Independent Technical Review.** In accordance with the Act [§4440(d)], the Development Review Board may require an applicant for one or more approvals under these regulations to pay the reasonable costs of an independent technical review of the application. In exercising this requirement, the Board shall:

- (1) Prepare a scope of work for the technical review that shall be limited and relevant to specific review criteria upon which the Board must base its decision on the application.
- (2) Require that the review be completed within a timely manner.
- (3) Retain a competent and, where applicable, licensed individual or firm qualified in the pertinent field(s) to conduct the review.

(D) **Independent Compliance Review.** In some cases and following the issuance of a permit, the Development Review Board may require an applicant to pay the reasonable costs of an independent technical review to periodically monitor compliance with conditions of an approved permit. In exercising this requirement, the Board shall adhere to actions noted in Section 7.8(C) above.

(E) **Public Hearing Notice Requirements**

- (1) In accordance with the Act [§4464(a)], a warned public hearing shall be required for conditional use review [Section 5.5], appeals and variances [Sections 7.5, 7.6], and final subdivision review [Section 6.5]. 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 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;
 - (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; and
 - (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 [Section 5.4], shall be given not less than seven (7) days prior to the date of the public hearing, and shall at a minimum include the following:
 - (a) Posting of the date, place and purpose of the hearing in three (3) or more public places within the municipality;
 - (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, which includes a description of the proposed project, information that clearly informs the recipient where additional

Juliana 3/26/2015 1:48 PM

Deleted: 2

information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal; and

- (c) Publication of the date, place and purpose of the hearing in a newspaper of general circulation in the town.
 - (3) The applicant or appellant shall be required to bear the cost of the public warning, and the cost and responsibility of notifying adjoining landowners, as required under Subsection (E)(1) and (E)(2). The applicant shall be required to demonstrate proof of delivery to adjoining landowners, as determined from the most recent municipal grand list, by certified mail.
 - (4) No defect in the form or substance of any required public notice under this section shall invalidate the action of the Development Review Board 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 the Environmental Court rules an action to be invalid, the action shall be remanded to the Board to provide new posting and notice, hold a new hearing, and take a new action.
 - (5) Public hearings concerning proposed amendments to these regulations shall be noticed and warned in accordance with the Act [§§4441, 4444].
- (F) **Decisions.** In accordance with the Act [§4464(b)], the Development Review Board may recess proceedings on any application pending the submission of additional information. The Board will close evidence promptly after all parties have submitted requested information, and shall issue a decision within 45 days after the adjournment of the hearing. Failure to issue a decision within the 45-day period shall be deemed approval and shall be effective the 46th day.
- (1) All decisions shall be issued in writing and shall separately state findings of fact and conclusions of law. Findings of fact shall explicitly and concisely restate the underlying facts that support the decision, based exclusively on evidence of the record. Conclusions shall be based on the findings of fact. The decision shall also include a statement of the time within which appeals may be taken under Section 7.5. At the discretion of the Board, minutes of the hearing at which a decision was made may serve as a written decision provided such minutes satisfy the requirements of this section.
 - (2) In rendering a decision in favor of the applicant, the Board may attach additional reasonable conditions and safeguards as it deems necessary to implement the purposes of the Act, these regulations, and the municipal plan currently in effect. This may include, as a condition of approval:
 - (a) The submission of a three-year performance bond, escrow account, or other form or surety acceptable to the East Montpelier Selectboard, which may be extended for an additional three-year period with the consent of the owner, to assure the completion of a project, adequate stabilization, or protection of public facilities that may be affected by a project; and/or
 - (b) A requirement that no zoning permit be issued for an approved development until required improvements have been satisfactorily installed in accordance with the conditions of approval.
 - (3) All decisions shall be sent by certified mail, within the required 45-day period, to the applicant or to the appellant on matters of appeal. Copies of the decision shall be mailed to every person or body appearing and having been heard at the hearing, and filed with the Zoning Administrator and Town Clerk as part of the public record of the municipality, in accordance with Subsection (G).

(G) Permit & Violation Recording Requirements

- (1) Within 30 days of the issuance of a municipal land use permit or a notice of violation, the Zoning Administrator shall deliver either the original, a legible copy, or a notice of the municipal land use permit or notice of violation to the Town Clerk for recording in the land records of the town

generally as provided for in 24 V.S.A. §1154(a) and (c), and file a copy in the Town Office in a location where all municipal land use permits shall be kept, as required under the Act [§4449(c)]. The applicant may be charged for the cost of the recording fees.

- (2) For development within the Regulated Flood Hazard Areas [Article 9], the Zoning Administrator shall also maintain a record of:
- (a) Permits issued for development in Regulated Flood Hazard Areas;
 - (b) Elevation certificates that show 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 the regulation; and
 - (e) All variance actions, including the justification for their issuance.

Juliana 3/22/2015 5:55 PM

Deleted: , Section 8

Juliana 3/22/2015 5:55 PM

Deleted: areas of special flood hazard

DRAFT