

4 ADMINISTRATION

400 Roles and Responsibilities

4001 ZONING ADMINISTRATOR

4001.A The Planning Commission will nominate and the Selectboard will appoint a Zoning Administrator in accordance with the East Montpelier charter and state statute. The Selectboard may appoint an Acting or Assistant Zoning Administrator to act under the supervision of the Zoning Administrator, in the Zoning Administrator's absence, and/or if the Zoning Administrator has a conflict of interest.

4001.B The Zoning Administrator will:

- (1) Assist applicants in determining whether and which town permits and/or approvals will be needed for a project;
- (2) Provide applicants with application forms;
- (3) Inspect projects during construction as necessary;
- (4) Maintain records;
- (5) Respond to complaints and violations; and
- (6) Perform all other tasks necessary to administer these regulations.

4001.C The Zoning Administrator must enforce the provisions of these regulations strictly and may only issue zoning permits for development that conforms to these regulations.

4001.D The Zoning Administrator will refer applications to the Development Review Board as required under these regulations.

4002 PLANNING COMMISSION

4002.A The Selectboard appoints members to the Planning Commission in accordance with the East Montpelier charter and state statute.

4002.B The Planning Commission may prepare amendments to these regulations and make recommendations to the Selectboard on the amendment of these regulations.

4002.C The Planning Commission does not perform any development review functions under these regulations, but may make recommendations on planning and development issues in East Montpelier generally.

4003 DEVELOPMENT REVIEW BOARD

4003.A The Selectboard appoints members to the Development Review Board in accordance with the East Montpelier charter and state statute.

4003.B The Development Review Board performs development review functions as specified in these regulations, state statute and its adopted rules of procedure.

410 Fees and Filing Requirements

4101 PERMIT FEES

4101.A The Selectboard will establish reasonable fees for the Zoning Administrator or other town employees to charge for administering these regulations. These fees may include, but are not limited to, the cost of posting and publishing notices, holding public hearings, recording documents, and conducting periodic inspections during construction.

4101.B An applicant must pay the applicable permit fee(s) when submitting an application. The Zoning Administrator must not deem an application complete until all applicable permit fee(s) are paid in full.

4102 IMPACT FEES

4102.A The Town of East Montpelier may require applicants to pay impact fees in accordance with any duly adopted impact fee ordinance and state statute.

4102.B An applicant must pay the applicable impact fee(s) when submitting an application. The Zoning Administrator must not deem an application complete until all applicable impact fee(s) are paid in full.

4103 TECHNICAL OR LEGAL REVIEW COSTS

4103.A The Zoning Administrator or Development Review Board may hire qualified professionals to provide an independent technical and/or legal review of an application when deemed necessary to ensure compliance with these regulations.

4103.B The applicant must pay the reasonable cost of any required technical or legal review. The Zoning Administrator must not issue a permit until all applicable technical or legal review costs are paid in full.

4104 PERFORMANCE BONDS OR SURETIES

4104.A The Zoning Administrator or Development Review Board may require an applicant to provide a performance bond or similar surety in a form acceptable to the Selectboard as a condition of approval to insure the completion of proposed development in accordance with approved plans and the protection of public facilities that may be affected by proposed development in accordance with applicable town or state specifications.

4104.B The Zoning Administrator or Development Review Board may require an applicant to provide a quote prepared by a qualified professional for the full project cost and then may base the amount of any bond or surety on that quote.

4104.C The Town of East Montpelier will only release a required bond or surety after certification by the applicant and determination by the Zoning Administrator that the proposed development has been satisfactorily completed.

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4105 MONITORING OR INSPECTION COSTS

4105.A The Zoning Administrator or Development Review Board may condition approval upon monitoring and inspection during construction or once the use has commenced when deemed necessary to ensure compliance with these regulations, the cost of which will be paid the applicant.

4106 AS-BUILT DRAWINGS

4106.A The Zoning Administrator or Development Review Board may require an applicant to file as-built drawings as a condition of approval.

4106.B The Town of East Montpelier will require as-built drawings for any infrastructure to be built within public rights-of-way or to be turned over to the town.

4106.C The Zoning Administrator may require an applicant to file as-built drawings when approved plans are amended or when minor adjustments to approved plans are necessary to respond to unforeseen conditions that arise during construction.

4107 OTHER PERMITS, APPROVALS AND CERTIFICATIONS

4107.A The Zoning Administrator or Development Review Board may condition approval upon the applicant filing other permits, approvals or certifications required by the Town of East Montpelier, the state or other regulatory entities prior to the issuance of a zoning permit, the start of construction, and/or the issuance of a certificate of compliance.

420 Zoning Permits

4201 SUBMITTING A ZONING PERMIT APPLICATION

4201.A **Zoning Administrator.** The Zoning Administrator will assist prospective applicants by:

- (1) Determining whether a project will require a zoning permit, and any associated development approvals, under these regulations;
- (2) Providing applicants with the necessary form(s) to apply for the applicable permit(s) and approval(s);
- (3) Notifying applicants of the fees or other charges that the town may charge in relation to the application or proposed development;
- (4) Informing applicants that state permits may be required for the proposed development and recommending that applicants contact the regional permit specialist; and
- (5) Providing applicants with copies of the state energy standards for residential or commercial buildings as applicable.

4201.B **Applicant.** The applicant must:

- (1) Submit all required forms, supporting materials and fees to the Zoning Administrator to apply for a zoning permit, and any associated development approval, under these regulations;
- (2) Provide all the information necessary to demonstrate compliance with these regulations; and
- (3) Certify, by signing the application form, that all the information provided is complete and accurate to the best of his/her knowledge.

4201.C **Application Requirements.** The Zoning Administrator:

- (1) May waive an application requirement upon finding the information is not necessary to determine compliance with these regulations;
- (2) May require an applicant to provide additional information as necessary to demonstrate compliance with these regulations; and
- (3) Must keep written documentation of any application requirement waived or additional information requested as part of his/her office records.

4201.D **Determination of Completeness.** The Zoning Administrator must:

- (1) Determine whether an application is complete promptly and in no case more than 15 days after the applicant submits it; and
- (2) Inform the applicant of his/her determination. If the application is incomplete, the Zoning Administrator must inform the applicant in writing of what additional information is required.

4201.E **Appeal of Administrative Actions.** The applicant or other interested person may appeal any of the Zoning Administrator's actions or decisions under this section to the Development Review Board as specified in Section 4402.

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4202 ACTING ON A COMPLETE ZONING PERMIT APPLICATION

4202.A **Time to Act.** Once the Zoning Administrator determines that an application for a zoning permit is complete, he/she must act within 30 days to approve, deny or refer it to the Development Review Board except that the time period within which the Zoning Administrator must act will not commence for a zoning permit application that requires:

- (1) One or more development approvals under these regulations until the applicant has obtained all those necessary approvals for the proposed development; or
- (2) Notification of a state agency until the agency comments or the comment period elapses, whichever occurs first.

4202.B **Deemed Approval.** If the Zoning Administrator does not act on a complete application within 30 days, the applicant may file an appeal directly with the Environmental Division of the Vermont Superior Court to recognize that the Zoning Administrator's failure to act within the 30-day period resulted in a "deemed approval" of the application.

4202.C **Decisions.** The Zoning Administrator must approve or deny applications in writing and specifically provide the following information:

- (1) When approving an application, the Zoning Administrator must inform the applicant that he/she must:
 - (a) Post a notice of the zoning permit (to be provided by the Zoning Administrator) in a visible location on the subject property throughout the 15-day appeal period and until the development authorized by the permit is complete; and
 - (b) Not commence the development authorized by the permit until the appeal period has ended and he/she provides the Zoning Administrator with copies of any state permits or approvals as per Subsection 4202.D.
- (2) When denying an application, the Zoning Administrator must:
 - (a) Inform the applicant that he/she may appeal the denial to the Development Review Board within 15 days of the date of the decision; and
 - (b) Include a copy of Section 4402, which explains the appeal process.

4202.D **Permit Issuance.** The Zoning Administrator:

- (1) **Conditions of Approval.** May issue a zoning permit with conditions as necessary to ensure compliance with these regulations;
- (2) **Temporary Permits.** May issue a zoning permit to allow a temporary use or structure for a specified period not to exceed 3 years with conditions requiring the use to terminate or the structure to be removed, or that applicant obtain a zoning permit for a permanent use or structure, prior to the expiration of the permit;

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- (3) **Notification Prior to Use or Occupancy.** Must condition any zoning permit on the applicant notifying the Zoning Administrator when construction is completed and/or the use will be commencing (some proposed development will require a Certificate of Compliance see Section 4207);
- (4) **Energy Certificates.** Must condition any zoning permit for proposed development that is subject to the state's residential or commercial building energy standards on the applicant providing the Zoning Administrator with a copy of an energy certificate for the building when construction is completed;
- (5) **Wastewater Permits.** Must condition any zoning permit for proposed development that requires the construction, modification or replacement of a potable water supply or wastewater system, or that increases the design flow or modifies the operational requirements of a potable water supply or wastewater system on the applicant obtaining and providing the Zoning Administrator with a copy of that permit prior to the start of construction;
- (6) **Stormwater Permits.** Must condition any zoning permit for proposed development that requires a state stormwater permit on the applicant obtaining and providing the Zoning Administrator with a copy of that permit prior to the start of construction; and
- (7) **Highway Access Permits.** Must condition any zoning permit for proposed development that requires a new or modified curb cut on the applicant obtaining and providing the Zoning Administrator with a copy of the state or town highway access permit, as applicable, prior to the start of construction.

4202.E **Posting Requirements.** The Zoning Administrator must post a copy of the zoning permit in at least one public place within 3 days after issuing it. The copy must remain posted throughout the 15-day appeal period.

4202.F **Filing Requirements.** The Zoning Administrator must:

- (1) Deliver an original, signed copy of the zoning permit or the notice of zoning permit to the Town Clerk for recording within 30 days after it becomes effective;
- (2) File a copy of the permit as part of his/her office records; and
- (3) Provide a copy of the permit to the Listers.

4202.G **Bylaw Amendments.** The Zoning Administrator must act on any application submitted when Selectboard is considering amendments to these regulations in accordance with the provisions of 24 V.S.A. § 4449(d).

4203 OBTAINING A ZONING PERMIT

4203.A **Permit Takes Effect.** A zoning permit takes effect on the 16th day after the Zoning Administrator issues it provided that no appeal is filed during the previous 15 days (see Section 4402) or that the applicant has not requested a delay (see Subsection 4203.B). If an interested person files an appeal, the zoning permit will not take effect until the appeal is decided.

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- 4203.B **Delay in Effect.** The applicant may request that a zoning permit and any associated development approvals not take effect until he/she has obtained all permits and approvals necessary to commence the development in accordance with the following:
- (1) The Zoning Administrator may delay the effective date of a permit and any associated development approvals for no more than 18 months unless the Development Review Board approves a longer delay due to factors beyond the applicant's control (e.g., extended or contested Act 250 proceedings or litigation).
 - (2) It will be the applicant's responsibility to notify the Zoning Administrator when he/she is ready to commence the development and request that the zoning permit and any associated development approvals take effect.
- 4203.C **Permit Timeframe and Extension.** Zoning permits and any associated development approvals expire 3 years from the date the permit takes effect unless:
- (1) The Development Review Board specifies otherwise as a condition of approval;
 - (2) The applicant commences any use and/or substantially completes any construction authorized by the permit prior to its expiration; or
 - (3) Prior to the zoning permit's expiration, the applicant requests and receives from the Zoning Administrator an extension of not more than 2 years. The Zoning Administrator may only grant one such extension upon the applicant demonstrating that:
 - (a) Any improvements completed to date conform to the conditions of the permit and any associated development approvals; and
 - (b) There have been no amendments to these regulations or change in external circumstances that would have caused a material change in the decision(s) on the original application(s).
- 4203.D **Transfer of Permit.** Zoning permits and any associated development approval remain in effect as specified in these regulations irrespective of any change in ownership or tenancy of the subject property. All subsequent property owners or tenants are subject to the requirements and conditions of any zoning permit and associated development approvals.
- 4203.E **Expired Permits.** If a zoning permit expires before the applicant substantially completes the construction or commences the use authorized by the permit, the applicant must apply for a new zoning permit and any other associated development approvals under these regulations.
- 4204 AMENDING PERMITS OR APPROVALS**
- 4204.A An applicant may submit a written request for the Zoning Administrator to amend a zoning permit, and any associated development approval, prior to the permit's expiration. The applicant must demonstrate that the proposed changes to the development:
- (1) Are minor modifications that conform to all applicable provisions of these regulations;

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- (2) Do not have the effect of materially or substantively altering any of the findings of fact of the permit and any associated development approvals; and
- (3) Do not change the scale, location, type, character or intensity of the approved development or use to a greater extent than specified below:
 - (a) Any proposed increase in structure height must not exceed 5 feet;
 - (b) Any proposed decrease in setback from the road and property lines resulting from a change in the structure's footprint or location must not exceed the lesser of 10 feet or 50%;
 - (c) Any proposed increase in building footprint must not exceed the lesser of 250 feet or 50%;
 - (d) Any proposed increase in the total amount of impervious surface on the lot must not exceed the lesser of 500 square feet or 50%;
 - (e) Any proposed modification must not result in an increased requirement for parking or loading spaces; and
 - (f) Any proposed substitution of plant materials must not change the overall landscape design concept and function.

4204.B The scope of the review will be limited to those aspects of the development affected by the proposed changes.

4204.C The Zoning Administrator may decline to amend a permit, and any associated development approval, and refer the request to the Development Review Board for review under Section 4309.

4204.D The approval of an amendment will not affect the expiration date of the original permit and any associated development approvals.

4205 REVOKING PERMITS OR APPROVALS

4205.A The Zoning Administrator may petition the Environmental Division of Superior Court to revoke a zoning permit and any associated development approvals if an applicant omitted or misrepresented a material fact on an application or at a hearing.

4206 INSPECTING DEVELOPMENT DURING CONSTRUCTION

4206.A The Zoning Administrator may inspect any development during construction as necessary to ensure compliance with these regulations and any permit or approval conditions.

4207 OBTAINING A CERTIFICATE OF COMPLIANCE

4207.A **When Required.** An applicant must request a certificate of compliance from the Zoning Administrator before he/she occupies or commences the use of any development subject to site plan or conditional use approval.

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- 4207.B **Application.** The Zoning Administrator will provide applicants with the necessary form to apply for a certificate of compliance. The applicant must submit the completed form prior to the expiration of the associated zoning permit.
- 4207.C **Time to Act.** The Zoning Administrator must act on a complete application for a certificate of compliance promptly and in all cases within 30 days. The Zoning Administrator may:
- (1) Require the applicant to submit documentation from a qualified professional certifying that the development as constructed conforms to the approved plans; and/or
 - (2) Inspect the subject property and consult with other town or state personnel as necessary to determine compliance.
- 4207.D **Deemed Approval.** If the Zoning Administrator does not act on a complete application for a certificate of compliance within 30 days, the applicant may file an appeal directly with the Environmental Division of the Vermont Superior Court to recognize that the Zoning Administrator's failure to act within the 30-day period resulted in a "deemed approval" of the application.
- 4207.E **Criteria.** Before receiving a final certificate of compliance, the applicant must certify and demonstrate to the Zoning Administrator that:
- (1) The development is substantially complete and conforms to the requirements of the zoning permit and any associated development approvals, the filed plans, and the applicable provisions of these regulations;
 - (2) All commonly-owned or shared improvements and infrastructure connections are complete and conform to any applicable town or state specifications, the requirements of the zoning permit and any associated development approvals, the filed plans, and the applicable provisions of these regulations;
 - (3) The applicant has recorded all required documents with the town including, but not limited to, as-built drawings, energy certificate, wastewater and potable water supply permit, access permit, and stormwater permit; and
 - (4) The applicant has paid all required fees.
- 4207.F **Temporary Certificate.** The Zoning Administrator may issue a temporary certificate of compliance that conditions use or occupancy on full completion of all required improvements within not more than 180 days as follows:
- (1) The Zoning Administrator may require the applicant to submit a performance bond in accordance with Section 4104 to insure full completion of the outstanding work;
 - (2) The Zoning Administrator will require the applicant to submit a performance bond in accordance with Section 4104 if any commonly-owned or shared improvements or infrastructure connections remain incomplete; and
 - (3) The applicant must apply for a final certificate of compliance prior to the expiration of the temporary certificate.

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- 4207.G **Phased Development.** If the development will be phased, Zoning Administrator may issue certificates of compliance for individual phases as they are completed in accordance with the permit and associated conditions of approval.
- 4207.H **Decisions.** The Zoning Administrator must approve or deny applications for a certificate of compliance in writing as follows:
- (1) When approving an application, the Zoning Administrator must inform the applicant that the issuance of a certificate of compliance will not preclude the Town of East Montpelier taking enforcement action in accordance with Subchapter 460 for any violation of the zoning permit or associated development approvals.
 - (2) When denying an application, the Zoning Administrator must:
 - (a) State the reasons for the denial;
 - (b) Inform the applicant that he/she may appeal the denial to the Development Review Board within 15 days of the date of the decision; and
 - (c) Include a copy of Section 4402, which explains the appeal process.
- 4207.I **Denials.** If the Zoning Administrator denies an application for a certificate of compliance:
- (1) The Zoning Administrator must commence appropriate enforcement action under Subchapter 460 if he/she finds a violation of these regulations.
 - (2) The applicant may re-apply after remedying any conditions identified as the reason for the denial.
- 4207.J **Filing Requirements.** The Zoning Administrator must:
- (1) Deliver an original, signed copy of the certificate of compliance or the notice of certificate of compliance to the Town Clerk for recording within 30 days after it is issued;
 - (2) File a copy of the certificate as part of his/her office records; and
 - (3) Provide a copy of the certificate to the Listers.

430 Development Approvals

4301 APPLICATION PROCESS

4301.A **Pre-Application Conference.** A prospective applicant may request a pre-application conference with the Zoning Administrator prior to submitting a complete application. A pre-application conference is an informal meeting that provides the prospective applicant with an opportunity to consult with and receive advice in order to save time and expense in the preparation of the application. Any comments or recommendations made are intended to provide general direction to the prospective applicant, but will not be deemed binding in the preparation or review of any subsequent application for development approval.

4301.B **Zoning Administrator.** The Zoning Administrator will assist prospective applicants by:

- (1) Determining whether a project will require one or more development approvals, including design review, under these regulations;
- (2) Providing applicants with the necessary form(s) to apply for the required approval(s); and
- (3) Notifying applicants of the fees or other charges that the town may charge in relation to the application or proposed development.

4301.C **Applicant.** The applicant must:

- (1) Submit all required forms, supporting materials and fees to the Zoning Administrator to apply for a development approval under these regulations;
- (2) Provide all the information necessary to demonstrate compliance with these regulations; and
- (3) Certify, by signing the application form, that all the information provided is complete and accurate to the best of his/her knowledge.

4301.D **Determination of Completeness.** The Zoning Administrator must:

- (1) Determine whether an application is complete promptly and in no case more than 15 days after the applicant submits it; and
- (2) Inform the applicant of his/her determination. If the application is incomplete, the Zoning Administrator must inform the applicant in writing of what additional information is required.

4301.E **Waiver of Application Requirements.** The Zoning Administrator:

- (1) Will waive requirements for site plan drawings (Subsection 4302.A) for minor site plan applications that do not involve physical changes to the exterior of a structure or to the site;
- (2) Will waive requirements for site plan drawings (Subsection 4302.A) for sign applications;
- (3) Will waive the requirement for submitting a full boundary survey of a lot subject to a lot line adjustment or lot merger if the lot is more than 10 acres in size;

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- (4) Will waive the requirement for submitting a full boundary survey of a parent parcel provided that the retained portion is more than 10 acres in size and is not less than 70% of the total acreage before subdivision.
- (5) May waive an application requirement upon written request by the applicant and upon the applicant demonstrating that the information is not necessary to determine compliance with these regulations;
- (6) May require an applicant to provide additional information as necessary to determine compliance with these regulations; and
- (7) Must keep written documentation of any application requirement waived or additional material requested as part of his/her office records and submit that information to the Development Review Board with the application.

4301.F **Referral to Development Review Board.** Once the Zoning Administrator determines that an application is complete, he/she must warn a public hearing on the application by the Development Review Board at their next available regularly scheduled meeting following the warning period required under Section 4501.

4301.G **Appeal of Administrative Actions.** The applicant or other interested person may appeal any of the Zoning Administrator's actions or decisions under this section to the Development Review Board as specified in Section 4402.

4302 APPLICATION REQUIREMENTS

4302.A **Site or Subdivision Plan.** Applicants must submit a site or subdivision plan with any application for a development approval that at a minimum conforms to the specifications below unless a specific requirement is waived in accordance with Subsection 4301.E. It is the applicant's responsibility to provide the information necessary to demonstrate compliance with these regulations. As per Section 4301, the Zoning Administrator may require an applicant to provide additional materials.

- (1) **Scale.** All plan drawings must be to scale. Site plan drawings should be at a scale of 1" = 30' or less whenever possible.
- (2) **Project Narrative.** The applicant must submit a written statement demonstrating that the proposed development conforms to the applicable standards of these regulations by listing the facts and reasons why the application meets each of the applicable criteria of Figure 4-01.
- (3) **Site or Subdivision Plan Drawing(s).** The applicant must submit a site or subdivision plan drawing(s) that includes the following information:
 - (a) **Drawing Details.** Drawing details must include:
 - (i) The location of all existing and proposed lot lines, building envelopes, setbacks, easements or rights-of-way, monuments or survey pins;
 - (ii) The location of significant natural, historic or archeological resources including but not limited to: watercourses, wetlands, flood hazard areas, fluvial erosion hazard areas, steep slopes, critical wildlife habitat and rare, threatened or endangered species;
 - (iii) The location, height, footprint and use of all structures and impervious

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surfaces;

- (iv) The location and use of all greenspace, open space and green stormwater infrastructure;
 - (v) The location and use of all existing and proposed utilities and associated easements; and
 - (vi) The location and dimensions of all existing and proposed roads, sidewalks and walkways, bikeways and paths, driveways, parking facilities, loading spaces, dumpster locations, snow storage locations, points of access to surrounding roads, points of access to surrounding bike and sidewalk network, and associated easements.
- (4) **Landscape and Lighting Plan Drawing(s).** When landscaping and/or outdoor lighting will be installed or modified, the applicant must submit a landscape and/or a lighting plan drawing(s) that includes the following information:
- (a) **Landscaping Details.** Landscaping details must include:
 - (i) Location and species of all plant materials that will be used to meet landscaping or screening requirements under these regulations;
 - (ii) Existing and proposed amenities associated with the landscape plan (hardscapes, fencing, walls, recreation facilities, benches, trash receptacles, bike racks, other site furniture, public art, etc.).
 - (b) **Lighting Details.** Lighting details must include:
 - (i) Location, height and initial output (measured in lumens) of all proposed outdoor light fixtures to be installed and existing outdoor light fixtures to be retained; and
 - (ii) Specifications of all proposed light fixtures including any shields, mounting hardware, poles or bases demonstrating compliance with the requirements of Section *.
- (5) **Architectural Drawing(s).** For new principal buildings or exterior modifications to existing principal buildings in the village districts, building elevations and other architectural drawings as necessary to demonstrate compliance with the applicable standards of these regulations.
- (6) **Erosion Control and Stormwater Management Plan Drawing(s).** When the provisions of Section * and/or Section * apply to proposed development, the applicant must submit erosion control and/or stormwater management plan drawing(s) that demonstrate compliance with Section * and/or Section * as applicable.

4302.B

Signage. Applicants must submit a signage plan with any application for a development approval that involves the installation or modification of a sign that includes all required elements listed below unless a specific requirement is waived in accordance with Subsection 4301.E:

- (1) Type, location, height and area of all existing and proposed signs;
- (2) Design, materials and colors of all existing and proposed signs; and
- (3) Location, type and initial output (measured in lumens) of all existing and proposed sign lighting.

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4302.C **State Highways.** The applicant must submit a letter of intent from the Vermont Agency of Transportation with any application for proposed development that involves access to a state highway.

4302.D **Appeal of Administrative Actions.** The applicant or other interested person may appeal any of the Zoning Administrator's actions or decisions under this section to the Development Review Board as specified in Section 4402.

4303 SIGN REVIEW

4303.A **Applicability.** The provisions of this section will apply to any application for a new or modified sign associated with an existing use or with a use not subject to site plan review. All other signs will be reviewed as part of the site plan review for the proposed development (see Section 4304).

4303.B **Review Process.** The Zoning Administrator:

- (1) May approve, deny or refer sign applications to the Development Review Board;
- (2) Must act on a complete sign application within 30 days in accordance with Subchapter 420;
- (3) Must find that the proposed sign conforms to the standards of Section * before approving a sign application; and
- (4) May approve a sign application with conditions as necessary to ensure compliance with these regulations.

4303.C **Appeal of Administrative Actions.** The applicant or other interested person may appeal any of the Zoning Administrator's actions or decisions under this section to the Development Review Board as specified in Section 4402.

4304 SITE PLAN REVIEW

4304.A **Applicability.** All proposed development other than a single-family or two-family dwelling, and any accessory uses or structures to such a dwelling, requires site plan approval before the Zoning Administrator may issue a zoning permit.

4304.B **Purpose.** The purpose of site plan review is to ensure that:

- (1) The physical aspects of proposed development comply to all applicable provisions of these regulations;
- (2) Proposed development is of high quality and designed with landscaping, screening, outdoor lighting, signage, building form and mass, and architectural details that will be compatible with and enhance its setting;
- (3) Proposed development is appropriately sited, and is complimentary to and functionally integrated with surrounding development to the greatest extent feasible;

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- (4) Curb cuts, driveways, parking facilities, emergency access, utilities and other infrastructure are adequate and available to support the proposed development; and
- (5) Proposed development is energy efficient and avoids, mitigates and/or minimizes (listed in order of preference) adverse environmental effects to the greatest extent feasible.

4304.C **Classification.** The Zoning Administrator will classify a site plan application for proposed development as follows:

- (1) **Minor Site Plan.** Proposed development that not meet the definition of a major site plan will be a minor site plan that may be reviewed by the Zoning Administrator (see Subsection 4304.D); and
- (2) **Major Site Plan.** Proposed development that includes any of the following will be a major site plan that must be reviewed by the Development Review Board (see Subsection 4304.E):
 - (a) Commencement of a new conditional use (this will not be interpreted to include expansions of an existing conditional use or the commencement of a new accessory use to an existing conditional use);
 - (b) Construction or major renovation of a principal building or of an accessory building with a footprint greater than 625 square feet;
 - (c) Any increase in the number of units within a dwelling resulting in the total number of units in the building being 3 or more;
 - (d) Construction of a new curb cut (this will not be interpreted to include modification of existing curb cuts); or
 - (e) Any increase of 2,500 square feet or more in impervious surface on a lot (this will not be interpreted to include resurfacing of existing impervious surfaces).

4304.D **Minor Site Plans.** The Zoning Administrator:

- (1) Must act on a complete minor site plan application within 30 days in accordance with Subchapter 420;
- (2) May approve, deny or refer minor site plan applications to the Development Review Board;
- (3) Must find that the proposed development meets all of the applicable criteria specified in Figure 4-01 before approving a site plan application; and
- (4) May approve a minor site plan application with conditions as necessary to ensure compliance with these regulations.

4304.E **Major Site Plans.** The Development Review Board:

- (1) Must hold a public hearing and issue a decision on a site plan application in accordance with Subchapter 450;
- (2) Must find that the proposed development meets all of the applicable criteria specified in Figure 4-01 before approving a site plan application; and

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- (3) May approve a site plan application with conditions as necessary to ensure compliance with these regulations.

4304.F **Appeal of Administrative Actions.** The applicant or other interested person may appeal any of the Zoning Administrator's actions or decisions under this section to the Development Review Board as specified in Section 4402.

4305 **CONDITIONAL USE REVIEW**

4305.A **Applicability.** The commencement of or major change to a conditional use requires approval from the Development Review Board before the Zoning Administrator may issue a zoning permit. Proposed development that includes any of the following will be considered a major change of an existing conditional use that must be reviewed by the Development Review Board:

- (1) Modification of any conditions of approval;
- (2) Construction or major renovation of a principal building or of an accessory building with a footprint greater than 625 square feet;
- (3) Increase in the number of dwelling units (this will not be interpreted to include accessory dwellings in accordance with Section *);
- (4) New or expanded drive-through service;
- (5) More than 25% increase in daily truck trips or in peak hour traffic; or
- (6) Construction of additional parking spaces or loading areas (this will not be interpreted to include construction of previously approved reserve parking or loading spaces).

4305.B **Purpose.** The purpose of conditional use review is to ensure that proposed development will not have undue adverse effects on the neighborhood, environment, and public infrastructure, facilities or services.

4305.C **Acting on a Conditional Use Application.** The Development Review Board must hold a public hearing and issue a decision on a conditional use application in accordance with Subpart 450.

4305.D **Review Criteria.** To approve a conditional use application, the Development Review Board must find that the applicant has demonstrated that the proposed development meets all of the applicable standards specified in Figure 4-01.

4305.E **Conditions of Approval.** The Development Review Board may approve a conditional use application with conditions as necessary to ensure compliance with these regulations.

4306 **PLANNED UNIT DEVELOPMENT REVIEW**

4306.A A planned unit development (PUD) will require subdivision approval under these regulations.

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4306.B If proposed development within a PUD also requires site plan and/or conditional use approval under these regulations, the Development Review Board will conduct those reviews concurrently with subdivision review in accordance with Section 4308.

4307 SUBDIVISION REVIEW

4307.A Applicability

- (1) Without first recording an approved subdivision plat in the town's land records in full conformance with these regulations, a property owner must not:
 - (a) Commence any clearing, site preparation, construction or land development on land to be subdivided; or
 - (b) Subdivide, sell, transfer or lease land, except that he/she may:
 - (i) Lease land for agricultural or forestry purposes;
 - (ii) Sell or grant rights-of-way or easements that do not result in the subdivision of land; or
 - (iii) File boundary surveys and/or corrective deeds in the town's land records to repair boundary metes and bounds or to correct technical errors with previously recorded surveys or deeds for existing parcels with known boundaries.
- (2) The Zoning Administrator must not issue any permits for land development on a lot created by subdivision until the property owner has recorded a subdivision plat in the town's land records in conformance with these regulations.

4307.B **Purpose.** The purpose of subdivision review is to ensure that:

- (1) Subdivided lots are suitable for development without endangering public health, safety or welfare;
- (2) Appropriate provisions are made for necessary improvements including, but not limited to, water supply, sewage disposal, stormwater management, fire and emergency protection and access, and utilities;
- (3) Proposed subdivisions are complimentary to and functionally integrated with surrounding development and the town's road network to the greatest extent feasible; and
- (4) Proposed subdivisions are energy efficient and avoid, mitigate and/or minimize (listed in order of preference) adverse environmental effects to the greatest extent feasible.

4307.C Lot Line Adjustment and Lot Merger

- (1) The Zoning Administrator may approve the realignment, relocation or elimination of a boundary line between adjoining lots in accordance with the procedures of Subchapter 420 provided that the proposed change:
 - (a) Will not result in an increase in the number of lots;
 - (b) Will not create a new nonconforming lot or structure (it may involve a pre-existing nonconformity);

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- (c) Will not substantially increase the degree of nonconformity of a pre-existing nonconforming lot or structure; and
 - (d) Will not violate any conditions of a prior permit or approval.
- (2) The Zoning Administrator may refer applications to the Development Review Board for review as a minor subdivision.
- (3) Within 180 days after the Zoning Administrator approves an application, the applicant must file a final subdivision plat for recording in the town's land records in accordance with Subsection 4307.H.

4307.D

Sketch Plan Review

- (1) The applicant must file a complete application and sketch plan for review by the Zoning Administrator.
- (2) The Zoning Administrator must notify the owners of all properties adjoining the subject property (including those across the road) in writing of the applicant's intent to subdivide the subject property. The notification must include a description of the proposed subdivision and must clearly explain to the recipient where to obtain additional information.
- (3) The Zoning Administrator must send the applicant a written response to a complete sketch plan application within 30 days of its filing that:
- (a) Indicates whether the subdivision as proposed generally conforms to the standards of these regulations.
 - (b) Makes recommendations to guide the applicant in preparation of more detailed plans.
 - (c) Requests any additional application materials deemed necessary to determine compliance with these regulations.
 - (d) Determines whether the applicant will be required to file a preliminary plan or may file a final plan for review by the Development Review Board in accordance with Subsection 4307.E.
- (4) After the Zoning Administrator determines that the applicant is ready to move forward, the applicant will have 6 months to file the materials required for the next step of the subdivision review process.
- (5) The Zoning Administrator's actions under this section will not constitute a formal decision on the subdivision plan.
- (6) The applicant or other interested person may appeal any of the Zoning Administrator's actions or decisions under this section to the Development Review Board as specified in Section 4402.

4307.E

Classification. The Zoning Administrator will classify an application for a proposed subdivision as follows:

- (1) **Major Subdivision.** An applicant for a major subdivision approval must submit a preliminary and final plan for review and approval by the Development Review Board in accordance with the provisions of this section. A subdivision that includes any of the following will be a major subdivision:

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- (a) The creation of 4 or more lots from a parent parcel in any 4-year period (inclusive of the parent parcel);
 - (b) The re-subdivision of a lot within 4 years (will not be interpreted to include lot line adjustments or lot mergers); or
 - (c) The construction of a new, extended or upgraded road.
- (2) **Minor Subdivision.** An applicant for a minor subdivision approval may skip the preliminary approval process and submit a final plan for review and approval by the Development Review Board in accordance with the provisions of this section. A subdivision that not meet the definition of a major subdivision will be a minor subdivision.

4307.F

Preliminary Plan Review

- (1) An applicant for major subdivision approval must file a complete application and preliminary subdivision plan for consideration by the Development Review Board.
- (2) The Development Review Board must hold a public hearing and act on a preliminary subdivision plan in accordance with Subchapter 450.
- (3) The Development Review Board must issue a written response to the preliminary plan that includes:
 - (a) Findings of fact that address each of the applicable criteria in Figure 4-05;
 - (b) Any proposed conditions of approval to be placed on the final plan;
 - (c) Any specific changes requested in the final subdivision plan;
 - (d) The issues to be analyzed and addressed in the final subdivision plan review;
 - (e) Any modification or waiver of application requirements for final plan review. The Development Review Board may:
 - (i) Request any additional application materials deemed necessary to determine compliance with these regulations; and
 - (ii) Modify or waive application requirements deemed unnecessary to determine compliance with these regulations.
- (4) Following the Development Review Board issuing a written response, the applicant will have 6 months to file the final subdivision plan.
- (5) The written response to a preliminary subdivision plan is intended to provide direction to the applicant in preparing the final subdivision plan. It is not a binding decision on the subdivision application that can be appealed under Section 4403.

4307.G

Final Plan Review

- (1) The applicant must file a complete application and final subdivision plan for consideration by the Development Review Board.

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- (2) The purpose of final review is to evaluate the plan's conformance with the purposes and specific standards of these regulations and to assure that the applicant has addressed the issues raised in the preliminary plan review.
- (3) The Development Review Board must hold a public hearing and act on a final subdivision plan in accordance with Subchapter 450. If a proposed subdivision will be located within 500 feet of the town line, a copy of the hearing notice must be sent to the clerk of the adjoining municipality.
- (4) The Development Review Board's approval of a final plan will not constitute the town's acceptance of any road, easement, open space or other feature shown on the plan. Action by the Selectboard is required to accept any road, easement, open space or other feature.

4307.H Filing Requirements

- (1) If the Development Review Board approves the final plan, the applicant will have 180 days to submit a final subdivision plat for recording in the town's land records. If the subdivision will be phased, the applicant must file a plat for the first phase within 180 days and for subsequent phases in accordance with any schedule or time period established in the conditions of approval.
- (2) The Zoning Administrator may grant a 90-day extension to the filing deadline upon written request by the applicant if other local or state permits are still pending.
- (3) The final subdivision plat must meet all state requirements (see 27 VSA § 1403).
- (4) The Zoning Administrator or the Chair of the Development Review Board must sign the final subdivision plat before it is recorded in the town land records.
- (5) No one must make any changes, erasures, modifications or revisions to a final plat after it has been signed.
- (6) Once lawfully filed, a final subdivision plat will not expire.

4307.I Modification of Approved Subdivisions

- (1) Except for lot line adjustments or lot mergers approved under Subsection 4307.C, the Development Review Board must review any request to amend an approved subdivision plat.
- (2) The process for applying for an amendment will be the same as for the original approval.
- (3) The process for reviewing and issuing a decision on an amendment will be the same as for the original approval except that the scope of the review will be limited to those aspects of the plat affected by the proposed amendment.
- (4) The applicant must file an approved, amended plat in accordance with the provisions of Subsection 4307.H.

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4308 COMBINED REVIEW

- 4308.A When proposed development requires more than one approval, the Development Review Board must warn and hold a single hearing for the purpose of reviewing and acting on the application unless the applicant requests separate hearings for each approval.
- 4308.B The Zoning Administrator will identify applications appropriate for combined review and assist applicants in preparing and submitting coordinated applications to facilitate combined review.
- 4308.C The Development Review Board must hold a public hearing and act on an application for combined review in accordance with Subchapter 450. In addition, the hearing notice must:
- (1) Include a statement that the hearing will be a combined review of the proposed development; and
 - (2) List each type of review the Development Review Board will conduct.
- 4308.D All hearing and decision requirements and deadlines applicable to each review process will apply.
- 4308.E The Development Review Board may issue separate written decisions for each review conducted as part of the combined hearing, but decisions should be coordinated where appropriate.

4309 AMENDING APPROVED PLANS

- 4309.A The Development Review Board must review any request to amend an approved plan that the Zoning Administrator cannot approve under Section 4204.
- 4309.B The process for applying for an amendment will be the same as for the original approval.
- 4309.C The process for reviewing and issuing a decision on an amendment will be the same as for the original approval except that the scope of the review will be limited to those aspects of the approved development affected by the proposed amendment.
- 4309.D The applicant must demonstrate that the proposed amendment is justified due to changes:
- (1) In factual or regulatory circumstances that were beyond the applicant's control;
 - (2) In the construction or operation of the proposed development that were not reasonably foreseeable at the time of the original application; or
 - (3) In technology.
- 4309.E The Development Review Board may determine that the proposed amendment would change the approved development to such an extent that it needs to be reviewed as a new application, and may deny the amendment request and require the applicant to apply for a new zoning permit and any associated development approvals.

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4309.F The approval of an amendment will not affect the expiration date of the original permit and any associated development approvals.

Figure 4-01. Development Review Criteria

CRITERIA	SITE PLAN	CONDITIONAL USE	PUD OR SUBDIVISION
1 The dimensional standards of the proposed development conform to the standards of the applicable district or of Subchapter Error! Reference source not found. if a pre-existing nonconformity.	✓	✓	✓
2 The off-site impacts of the proposed development will not exceed the levels established in Section Error! Reference source not found. .	✓	✓	–
3 The proposed development will provide safe and adequate access and circulation that conforms to the standards of Sections Error! Reference source not found. and Error! Reference source not found. .	✓	✓	✓
4 The proposed development will provide sufficient parking and loading areas that conform to the standards of Section Error! Reference source not found. .	✓	✓	–
5 The proposed development will provide exterior lighting where necessary for public safety and to facilitate nighttime use that conforms to the standards of Section Error! Reference source not found. .	✓	✓	✓
6 The proposed development will include landscaping, screening and buffers to add visual appeal and mitigate off-site impacts that conform to the standards of Sections Error! Reference source not found. and Error! Reference source not found. .	✓	✓	✓
7 The proposed development will implement appropriate erosion control and stormwater management practices that conform to the standards of Sections Error! Reference source not found. and Error! Reference source not found. .	✓	✓	✓
8 Signs for the proposed development will conform to the standards of Section Error! Reference source not found. .	✓	✓	✓
9 The proposed development will conform to town (or state, if applicable) specifications for construction of necessary improvements (roads, sidewalks, driveways, utilities, etc.), building codes, and standards for emergency service access.	✓	✓	✓
10 The demand for water supply, wastewater, educational and municipal services to serve the proposed development will be reasonable and will not create an undue adverse effect upon the capacity existing or planned community facilities.	–	✓	✓
11 The proposed development will be compatible with and will not have undue adverse effects on the character of the area as defined in Paragraph Error! Reference source not found. .	–	✓	✓
12 Traffic generated by the proposed development will not exceed the capacity of or create congestion or unsafe conditions on roads, highways and intersections in the vicinity.	–	✓	✓
13 The proposed development will avoid, minimize and/or mitigate (listed in order of preference) undue adverse effects on significant natural resources and environmental quality.	–	✓	✓
14 The proposed development will logically extend existing settlement patterns and create interconnected road networks to the maximum extent feasible given the terrain and other characteristics of the land.	–	–	✓
15 The proposed development will be designed and laid out to make efficient use of land and to minimize the amount of roads and other infrastructure necessary to serve the lots.	–	–	✓
16 Lots within the proposed development will vary in size and frontage, and buildings will vary in design (form, style, color, materials, etc.) and placement, to replicate rural or village settlement patterns (i.e., not a 'cookie-cutter' subdivision).	–	–	✓

440 Appeals

4401 WHO MAY APPEAL

4401.A An applicant or other interested person may appeal an action taken or decision made under these regulations as specified in this subchapter.

4401.B For the purposes of these regulations, an interested person is:

- (1) An applicant who alleges that these regulations impose unreasonable or inappropriate restrictions on the existing or future use of his/her property.
- (2) The Town of East Montpelier or any adjoining municipality.
- (3) A person owning or occupying property in the immediate area of proposed development who can demonstrate:
 - (a) A physical or environmental impact on his/her interests; and
 - (b) That the action taken or decision made under these regulations is not in accord with the policies, purposes, or terms of these regulations or the *East Montpelier Town Plan*, as most recently adopted.
- (4) Any combination of at least 10 voters or landowners in East Montpelier who by signed petition allege that the relief an applicant is requesting under this subchapter is not in accord with the policies, purposes, or terms of these regulations or the *East Montpelier Town Plan*, as most recently adopted.
- (5) Any department or administrative subdivision of the state that owns property or interest in property in East Montpelier, and the Vermont Agency of Commerce and Community Development.

4402 APPEALS OF ZONING ADMINISTRATOR DECISIONS

4402.A An interested person may appeal any action or decision of the Zoning Administrator to the Development Review Board by filing two copies of a notice of appeal and any applicable fees with the East Montpelier Town Clerk within 15 days of the date of the Zoning Administrator's action or decision.

4402.B The Town Clerk will forward one copy of the notice of appeal to the Development Review Board and the other to the Zoning Administrator.

4402.C A notice of appeal must be in writing and must include all of the following information:

- (1) The name and address of the appellant (the person filing the appeal);
- (2) A copy of the Zoning Administrator's decision or description of the action (if appealing a zoning permit, also include a copy of the permit application);
- (3) A brief description of the subject property;
- (4) A reference to the section(s) of these regulations that the appellant alleges the Zoning Administrator has not properly followed or applied; and
- (5) A statement of the relief the appellant is requesting and why the appellant believes the requested relief to be appropriate under the circumstances.

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- 4402.D If an appeal is filed by a group of interested persons, then the notice of appeal must designate one person to serve as a representative of the group regarding all matters related to the appeal.
- 4402.E The appellant may request a stay of enforcement as part of the notice of appeal by including a sworn statement that irreparable damage will directly result if the Development Review Board does not grant the stay.
- 4402.F Upon receipt of a complete notice of appeal, the Development Review Board must either:
- (1) Hold a public hearing and act on the appeal in accordance with Chapter 450; or
 - (2) Reject the appeal without a hearing and render a decision within 10 days of the appellant filing the notice, if the Development Review Board determines that it decided the issues in an earlier appeal.
- 4402.G An appeal to the Development Review Board is the exclusive remedy for an interested person with respect to an action or decision of the Zoning Administrator.
- 4402.H If no interested person appeals the Zoning Administrator's action or decision to the Development Review Board within 15 days, the action or decision will not be able to be contested at a later time.

4403 APPEALS OF DEVELOPMENT REVIEW BOARD DECISIONS

- 4403.A Any interested person who participated in a hearing on a matter before the Development Review Board may appeal the board's action or decision to the Environmental Division of the Vermont Superior Court within 30 days of the date of the board's action or decision.
- 4403.B The appellant must send a notice of appeal to every interested person who participated in the hearing by certified mail. The Zoning Administrator must provide a prospective appellant with the interested person list upon request.
- 4403.C If the Zoning Administrator has issued a zoning permit based on a Development Review Board approval, the appeal of that approval will be considered an appeal of the zoning permit as well and the applicant must not commence any use or development authorized by the zoning permit until the appeal is resolved. An interested person cannot use the procedures of Section 4402 to appeal the Zoning Administrator's issuance of a zoning permit implementing a Development Review Board approval.
- 4403.D An appeal to the Environmental Division of the Vermont Superior Court is the exclusive remedy for an interested person with respect to an action or decision of the Development Review Board except as otherwise provided by state statute.
- 4403.E If no interested person appeals a Development Review Board action or decision to the Environmental Division of the Vermont Superior Court within 30 days, all interested persons will be bound by that action or decision and will not be able to contest it at a later time.

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4404 WAIVERS

4404.A The Development Review Board:

- (1) May approve waivers that authorize an adjustment of up to 25% to a dimensional standard of these regulations;
- (2) Must not approve waivers within the Flood Hazard Overlay District;
- (3) Must not approve waivers to reduce any riparian or wetland setback or buffer required under these regulations; and
- (4) Must not approve a waiver to allow a prohibited use, an increase in residential density, or the subdivision of a lot that does not conform to the applicable provisions of these regulations.

4404.B The applicant must file a complete zoning permit application and a written request for a waiver with the Zoning Administrator that includes all of the following:

- (1) A brief description of the subject property and proposed development;
- (2) A reference to the dimensional standard(s) of these regulations that the applicant is requesting a waiver from;
- (3) The specific modification(s) that the applicant is requesting; and
- (4) A response to each of the criteria that the Development Review Board will use to decide whether to approve the waiver (see Figure 4-02).

4404.C The Development Review Board must hold a public hearing and act on the waiver request in accordance with Chapter 450. If the applicant is requesting a waiver from the required setback from a state highway, notice of the hearing must also be sent to the Vermont Secretary of Transportation.

4404.D To approve a waiver, the Development Review Board must find that all of the applicable criteria specified in Figure 4-02 have been met.

4405 VARIANCES

4405.A The Development Review Board:

- (1) May approve variances that authorize adjustments to the dimensional standards of these regulations under the specific circumstances described in this section.
- (2) Must not approve a variance to allow a prohibited use, an increase in residential density, or the subdivision of a lot that does not conform to the applicable provisions of these regulations.

4405.B The applicant must file a complete zoning permit application and a written request for a variance with the Zoning Administrator that includes all of the following:

- (1) A brief description of the subject property and proposed development;
- (2) A reference to specific provision(s) of these regulations that the applicant is requesting a variance from;
- (3) The specific modification(s) that the applicant is requesting; and

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- (4) A response to each of the criteria that the Development Review Board will use to decide whether to approve the variance (see Figure 4-02).

4405.C The Development Review Board must hold a public hearing and act on the variance request in accordance with Chapter 450. If the applicant is requesting a variance from the required setback from a state highway, notice of the hearing must also be sent to the Vermont Secretary of Transportation.

4405.D To approve a variance, the Development Review Board must find that all of the applicable criteria specified in Figure 4-02 have been met as follows:

- (1) If the variance is for a renewable energy structure, only the criteria specific to a renewable energy variance apply;
- (2) If the variance is for development within the Flood Hazard Overlay District, only the criteria specific to a flood hazard variance apply; or
- (3) For all other variances, the general variance criteria apply.

Figure 4-02. **Waiver and Variance Review Criteria**

CRITERIA	WAIVER	GENERAL VARIANCE	RENEWABLE ENERGY VARIANCE	FLOOD HAZARD VARIANCE
1 The proposed development will not alter the essential character of the area in which the property is located.	✓	✓	✓	✓
2 The proposed development will not substantially or permanently impair the lawful use or development of adjacent property.	✓	✓	✓	✓
3 The proposed development will not be detrimental to public health, safety or welfare.	✓	✓	✓	✓
4 The proposed development is beneficial or necessary for the continued reasonable use of the property.	✓	-	-	-
5 The applicant is proposing adequate mitigation of any dimensional encroachment through design, screening or other remedy.	✓	-	-	-
6 The applicant has not created the unnecessary hardship.	-	✓	✓	✓
7 The applicant is proposing the least deviation possible from these regulations that will afford relief.	-	✓	✓	✓
8 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. These conditions, and not the circumstances or conditions generally created by the provisions of these regulations in the district in which the property is located, have created an unnecessary hardship for the applicant. These physical circumstances or conditions prevent the property from possibly being developed in strict conformity with these regulations and a variance is necessary to enable reasonable use of the property.	-	✓	-	✓
9 It would be unusually difficult or unduly expensive for the applicant to build a renewable energy structure in conformance with these regulations.	-	-	✓	-
10 The proposed development will not reduce access to renewable energy resources on adjacent property.	-	-	✓	-
11 The proposed land development meets all applicable federal and state rules for compliance with the National Flood Insurance Program.	-	-	-	✓

450 Notice, Hearings and Decisions

4501 NOTICE OF HEARING

4501.A The Zoning Administrator must notify the public at least 15 days before a hearing for all conditional use, variance, appeal, and final subdivision or planned unit development applications by all of the following:

- (1) Publishing the date, place and purpose of the hearing in a newspaper of general circulation in East Montpelier.
- (2) Posting the date, place and purpose of the hearing at the Town Office and at least one other public place within East Montpelier.
- (3) Providing the applicant with a sign with the date, place and purpose of the hearing to be posted on the subject property within public view.
 - (a) It will be the applicant's responsibility to ensure that the notice remains posted for the entire warning period and to remove the sign within 2 days of the close of public hearing.
- (4) Notifying the owners of all properties adjoining the subject property (including those across the road) in writing.
 - (a) The notification must include a description of the proposed project and must clearly explain to the recipient where to obtain additional information and that he/she must participate in the hearing in order to have the right to any subsequent appeal.

4501.B The Zoning Administrator must notify the public at least 7 days before a hearing for all other Development Review Board actions by all of the following:

- (1) Posting the date, place and purpose of the hearing at the Town Office and at least two other public places within East Montpelier.
- (2) Notifying the owners of all properties adjoining the subject property subject (including those across the road) in writing. The notification must:
 - (a) Include a description of the proposed project;
 - (b) Identify where the recipient can obtain additional information; and
 - (c) Explain that the recipient must participate in the hearing in order to have the right to any subsequent appeal.

4501.C A defect in the form or substance of the public notice requirements will not invalidate any action or decision under these regulations when a reasonable effort has been made to provide adequate posting and notice.

4502 SITE VISITS

4502.A The Zoning Administrator or Development Review Board may require an applicant to grant them access to a site prior to making a decision on an application when deemed necessary to ensure compliance with these regulations.

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4502.B A site visit must be warned as a public meeting in accordance with Section 4501 and open to the public if a quorum of Development Review Board members will be present.

4503 CONDUCTING A HEARING AND TAKING EVIDENCE

4503.A The Development Review Board must hold a public hearing within 60 days of the Zoning Administrator determining that an application is complete unless otherwise specified in these regulations or the applicant agrees to a later hearing date.

4503.B The Development Review Board must conduct public hearings, hear testimony and take evidence according to its adopted rules of procedures.

4503.C All hearings must be open to the public as follows:

- (1) Any individual or group may appear and participate in a public hearing in person or by authorized representative or counsel, or may submit written testimony in advance of the hearing.
- (2) The Development Review Board must give all those wishing to participate an opportunity to be heard as is relevant to the proceeding.

4503.D The applicant or an authorized representative must be present at any public hearing when the Development Review Board will be considering his/her application.

- (1) The Development Review Board will continue its consideration of an application to its next regularly scheduled meeting if the applicant or an authorized representative is not present.
- (2) In the case of such a continuation, the intervening days will not be counted as part of any time period within which the Development Review Board is required to act.

4503.E Development Review Board members must not communicate directly or indirectly with any applicant, interested person or their representative regarding a matter that is under consideration except during a properly noticed hearing.

4504 RECESSING OR CONTINUING A HEARING

4504.A The Development Review Board may recess or continue a hearing on any application pending submission of additional information necessary to determine compliance with these regulations or upon the applicant's request.

4504.B If the Development Review Board recesses or continues a hearing to a specific date and time, the hearing will not have to be warned again when resumed.

4505 DECISIONS

4505.A **Deliberations.** The Development Review Board must deliberate and make a decision on an application in a closed deliberative session.

4505.B **Time to Act.** Within 45 days of closing a hearing, the Development Review Board must issue a written decision to approve, approve with conditions or deny the application.

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- 4505.C **Deemed Approval.** If the Development Review Board does not issue a decision within 45 days of closing a hearing, the applicant may file an appeal directly with the Environmental Division of the Vermont Superior Court to recognize that the board's failure to act resulted in a "deemed approval" of the application.
- 4505.D **Findings.** The written decision must include a statement of the facts upon which the Development Review Board is basing its decisions and a statement of conclusions relating to the applicable review criteria and standards of these regulations.
- 4505.E **Conditions of Approval.** The Development Review Board:
- (1) May attach any conditions it deems necessary to an approval to achieve the purposes of these regulations including, but not limited to:
 - (a) Specific performance standards such as limitations on hours of operation, noise, light or other off-site impacts;
 - (b) Required improvements to public facilities or infrastructure to serve the proposed development;
 - (c) Schedule or phasing of development;
 - (d) Inspection or monitoring; and/or
 - (e) Performance bonds.
 - (2) Must specifically describe any conditions or limitations in the written decision. Any conditions attached to the Development Review Board's approval will be considered part of any subsequent zoning permit issued by the Zoning Administrator for the approved development.
- 4505.F **Submittal of Revised Plans.** If the Development Review Board attaches conditions on an approval that require amendments to a plan, the applicant must submit an amended plan that satisfies those conditions prior to Zoning Administrator issuing a zoning permit for the proposed development.
- 4505.G **Notification and Filing.** The Development Review Board must:
- (1) Send a copy of the decision to applicant by certified mail;
 - (2) Send a copy of the decision to all others who participated in the hearing; and
 - (3) File a copy of the decision with the Zoning Administrator.
- 4505.H **Effect and Expiration.** If the approved development is:
- (1) Not substantially completed or commenced before the zoning permit expires as established in Section 4203, the development approval will expire with the zoning permit.
 - (2) Substantially completed or commenced before the zoning permit expires as established in Section 4203, the development approval will remain in effect unless the use is abandoned or discontinued as established in Section **Error! Reference source not found.** Development Review Board approvals and any related conditions run with the land and remain in effect irrespective of whether the property changes ownership.

460 Violations and Penalties

4601 APPLICABILITY

4601.A The Zoning Administrator must act to enforce these regulations in accordance with state law and the provisions of this chapter.

4601.B A violation of these regulations will constitute a civil offense enforced in accordance with the provisions of 24 VSA §1974(a) or 24 VSA §4451.

4601.C Nothing in this chapter will prevent the Town of East Montpelier from exercising its authority to abate or remove public health risks or hazards.

4602 INVESTIGATION AND ACTION BY THE ZONING ADMINISTRATOR

4602.A **Investigation.** The Zoning Administrator must investigate alleged violations of these regulations. Violations include, but are not limited to:

- (1) Commencing land development for which zoning permit or development approval is required without first obtaining such an approval or permit;
- (2) Failing to comply with all requirements, representations and conditions of any approved plan or permit;
- (3) Commencing or continuing land development if the permit or approval authorizing the work has expired;
- (4) Commencing clearing, site preparation or other land development prior to subdivision approval; and
- (5) Selling, transferring or offering to sell or transfer land unless a subdivision plat has been approved and filed in full compliance with these regulations.

4602.B **Action.** Upon determining that a violation exists, the Zoning Administrator must take appropriate action in an effort to enforce these regulations including, but not limited to any combination of the following:

- (1) Issuing a municipal civil complaint ticket (see Section 4604) or a notice of violation (see Section 4605);
- (2) Issuing a stop work order;
- (3) Requiring the property owner to apply for a curative zoning permit;
- (4) Requiring the immediate removal of a violating structure or cessation of a violating use;
- (5) Denying a certificate of compliance; and/or
- (6) Imposing fines and penalties to the maximum extent allowed under state law until the property owner remedies the violation.

4602.C **Limitations on Enforcement.** The Zoning Administrator must not enforce any violation:

- (1) That has existed for more than 15 years; or

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- (2) Of a zoning permit that was issued after July 1, 1998 and was not filed in the town's land records.

4603 LIABILITIES AND PENALTIES

4603.A The property owner will be held responsible for any violation and be subject to any penalties imposed under these regulations.

4603.B Each day that a violation exists constitutes a separate offense and may be separately ticketed under Section 4604.

4603.C If any enforcement action results in the need for a new or amended zoning permit or development approval, East Montpelier may impose penalties in addition to the standard permit fees.

4604 MUNICIPAL CIVIL COMPLAINT TICKET

4604.A The Zoning Administrator or other authorized town staff may issue a municipal complaint ticket for any violation of these regulations in accordance with the Judicial Bureau's procedure for municipal complaint tickets.

4604.B A violation ticketed under this section will be punishable by a fine of:

- (1) \$150 for a first offense, with a waiver fee of \$50.
- (2) \$450 for a second offense ticketed for the same violation within 1 year, with a waiver fee of \$200.
- (3) \$800 for a third and any subsequent offense ticketed for the same violation within one year, with a waiver fee of \$400.

4604.C Upon the fourth offense, the Town of East Montpelier may request that the case be transferred from the Judicial Bureau to the Environmental Division of Superior Court or another court of competent jurisdiction.

4605 NOTICE OF VIOLATION

4605.A The Zoning Administrator may issue a notice of violation for any violation of these regulations.

4605.B The Zoning Administrator must:

- (1) Send a notice of violation to the property owner by certified mail that:
 - (a) Describes the violation;
 - (b) Identifies the specific provision(s) of these regulations being violated;
 - (c) States the specific action required to cure the violation;
 - (d) States that if the violation is not cured within 7 days, the town may institute court proceedings to obtain a court order directing compliance with these regulations and awarding fines up to the maximum amount allowed under state statute for each day that the violation continues

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from the date of the notice;

- (e) States that further enforcement may occur without notice and an opportunity to cure if the violation occurs again within the next 12 months; and
 - (f) States that the notice of violation may be appealed as per Section 4402.
- (2) Deliver a copy of a notice of violation to the Town Clerk for recording in the town's land records.
 - (3) Upon failure of the property owner to cure a violation of these regulations, the Town of East Montpelier may institute appropriate court action.