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Title 24 : Municipal And County Government

Chapter 117 : Municipal And Regional Planning And Development

Subchapter 007 : Bylaws

(Cite as: 24 V.S.A. § 4414)

§ 4414. Zoning; permissible types of regulations

Any of the following types of regulations may be adopted by a municipality in its bylaws in conformance with the plan and for the purposes established in section 4302 of this title.

(1) Zoning districts. A municipality may define different and separate zoning districts, and identify within these districts which land uses are permitted as of right, and which are conditional uses requiring review and approval, including the districts set forth in this subdivision (1).

(A) Downtown, village center, new town center, and growth center districts. The definition or purpose stated for local downtown, village center, new town center, or growth center zoning districts should conform with the applicable definitions in section 2791 of this title. Municipalities may adopt downtown, village center, new town center, or growth center districts without seeking State designation under chapter 76A of this title. A municipality may adopt a manual of graphic or written design guidelines to assist applicants in the preparation of development applications. The following objectives should guide the establishment of boundaries, requirements, and review standards for these districts:

(i) To create a compact settlement oriented toward pedestrian activity and including an identifiable neighborhood center, with consistently higher densities than those found in surrounding districts.

(ii) To provide for a variety of housing types, jobs, shopping, services, and public facilities with residences, shops, workplaces, and public buildings interwoven within the district, all within close proximity.

(iii) To create a pattern of interconnecting streets and blocks, consistent with historic settlement patterns, that encourages multiple routes from origins to destinations.

(iv) To provide for a coordinated transportation system with a hierarchy of appropriately designed facilities for pedestrians, bicycles, public transit, and automotive vehicles.

(v) To provide for natural features and undisturbed areas that are incorporated into the open space of the neighborhood as well as historically compatible squares, greens, landscaped streets, and parks woven into the pattern of the neighborhood.

(vi) To provide for public buildings, open spaces, and other visual features that act as landmarks, symbols, and focal points for community identity.

(vii) To ensure compatibility of buildings and other improvements as determined by their arrangement, building bulk, form, design, character, and landscaping to establish a livable, harmonious, and diverse environment.

(viii) To provide for public and private buildings that form a consistent, distinct edge, are oriented toward streets, and define the border between the public street space and the private block interior.

(B) Agricultural, rural residential, forest, and recreational districts. Where, for the purposes set forth in section 4302 of this title, it is deemed necessary to safeguard certain areas from urban or suburban development and to encourage that development in other areas of the municipality or region, the following districts may be created:

(i) Agricultural or rural residential districts, permitting all types of agricultural uses and prohibiting all other land development except low density residential development.

(ii) Forest districts, permitting commercial forestry and related uses and prohibiting all other land development.

(iii) Recreational districts, permitting camps, ski areas, and related recreational facilities, including lodging for transients and seasonal residents, and prohibiting all other land development except construction of residences for occupancy by caretakers and their families.

(C) Airport hazard area. In accordance with 5 V.S.A. chapter 17, any municipality may adopt special bylaws governing the use of land, location, and size of buildings and density of population within a distance of two miles from the boundaries of an airport under an approach zone and for a distance of one mile from the boundaries of the airport elsewhere. The designation of that area and the bylaws applying within that area shall be in accord with applicable airport zoning guidelines, if any, adopted by the Vermont Transportation Board.

(D) Shorelands.

(i) A municipality may adopt bylaws to regulate shorelands as defined in 10 V.S.A. § 1422 to prevent and control water pollution; preserve and protect wetlands and other terrestrial and aquatic wildlife habitat; conserve the scenic beauty of shorelands; minimize shoreline erosion; reserve public access to public waters; and achieve other municipal, regional, or State shoreland conservation and development objectives.

(ii) Shoreland bylaws may regulate the design and maintenance of sanitary facilities; regulate filling of and other adverse alterations to wetlands and other wildlife habitat areas; control building location; require the provision and maintenance of vegetation; require provisions for access to public waters for all residents and owners of the development; and impose other requirements authorized by this chapter.

(E) Design review districts. Bylaws may contain provisions for the establishment of design review districts. Prior to the establishment of such a district, the planning commission shall prepare a report describing the particular planning and design problems of the proposed district and setting forth a design plan for the areas which shall include recommended planning and design criteria to guide future development. The planning commission shall hold a public hearing, after public notice, on that report. After this hearing, the planning commission may recommend to the legislative body a design review district as a bylaw amendment. A design review district may be created for any area containing structures of historical, architectural, or cultural merit, and other areas in which there is a concentration of community interest and participation such as a central business district, civic center, or a similar grouping or focus of activities. These areas may include townscape areas that resemble in important aspects the earliest permanent settlements, including a concentrated urban settlement with striking vistas, views extending across open fields and up to the forest edge, a central focal point and town green, and buildings of high architectural quality, including styles of the early 19th century. Within such a designated design review district, no structure may be erected, reconstructed, substantially altered, restored, moved, demolished, or changed in use or type of occupancy without approval of the plans by the appropriate municipal panel. A design review board may be appointed by the legislative body of the municipality, in accordance with section 4433 of this title, to advise any appropriate municipal panel.

(F) Local historic districts and landmarks.

(i) Bylaws may contain provisions for the establishment of historic districts and the designation of historic landmarks. Historic districts shall include structures and areas of historic or architectural significance and may include distinctive design or landscape characteristics, areas, and structures with a particular relationship to the historic and cultural values of the surrounding area, and structures whose exterior architectural features bear a significant relationship to the remainder of the structures or to the surrounding area. Bylaws may reference National and State Registers of Historic Places, properties, and districts. A report prepared under section 4441 of this title with respect to the establishment of a local historic district or designation of an historic landmark shall contain a map that clearly delineates the boundaries of the local historic district or landmark, justification for the boundary, a description of the elements of the resources that are integral to its historical, architectural, and cultural significance, and a statement of the significance of the local historic district or landmark.

(ii) With respect to external appearances and other than normal maintenance, no structure within a designated historic district may be rehabilitated, substantially altered, restored, moved, demolished, or changed, and no new structure within an historic district may be erected without approval of the plans therefor by the appropriate municipal panel. The panel shall consider the following in its review of plans submitted:

(l) The historic or architectural significance of the structure, its distinctive characteristics, and its relationship to the historic significance of the surrounding area.

(II) The relationship of the proposed changes in the exterior architectural features of the structure to the remainder of the structure and to the surrounding area.

(III) The general compatibility of the proposed exterior design, arrangement, texture, and materials proposed to be used.

(IV) Any other factors, including the environmental setting and aesthetic factors that the panel deems to be pertinent.

(iii) When an appropriate municipal panel is reviewing an application relating to an historic district, the panel:

(I) Shall be strict in its judgment of plans for those structures deemed to be valuable under subdivision (1)(F)(i) of this section, but is not required to limit new construction, alteration, or repairs to the architectural style of any one period, but may encourage compatible new design.

(II) If an application is submitted for the alteration of the exterior appearance of a structure or for the moving or demolition of a structure deemed to be significant under subdivision (1)(F)(i) of this section, shall meet with the owner of the structure to devise an economically feasible plan for the preservation of the structure.

(III) Shall approve an application only when the panel is satisfied that the proposed plan will not materially impair the historic or architectural significance of the structure or surrounding area.

(IV) In the case of a structure deemed to be significant under subdivision (1)(F)(i) of this section, may approve the proposed alteration despite subdivision (1)(F)(ii)(III) of this section if the panel finds either or both of the following:

(aa) The structure is a deterrent to a major improvement program that will be of clear and substantial benefit to the municipality.

(bb) Retention of the structure would cause undue financial hardship to the owner.

(iv) This subdivision (1)(F), and bylaws issued pursuant to it, shall apply to designation of individual landmarks as well as to designation of local historic districts. A landmark is any individual building, structure, or site that by itself has a special historic, architectural, or cultural value.

(v) The provisions of this subdivision (1)(F) shall not in any way apply to or affect buildings, structures, or land within the "Capitol complex," as defined in 29 V.S.A. chapter 6.

(G) River corridors and buffers. In accordance with section 4424 of this title, a municipality may adopt bylaws to protect river corridors and buffers, as those terms are defined in 10 V.S.A. §§ 1422 and 1427, in order to protect public safety; prevent and control water pollution; prevent and control stormwater runoff; preserve and protect wetlands and waterways; maintain and protect natural channel, streambank, and floodplain stability; minimize fluvial erosion and damage to property and transportation infrastructure; preserve and protect the habitat of terrestrial and aquatic wildlife; promote open space and

aesthetics; and achieve other municipal, regional, or State conservation and development objectives for river corridors and buffers. River corridor and buffer bylaws may regulate the design and location of development; control the location of buildings; require the provision and maintenance or reestablishment of vegetation, including no net loss of vegetation; require screening of development or use from waters; reserve existing public access to public waters; and impose other requirements authorized by this chapter.

(2) Overlay districts. Special districts may be created to supplement or modify the zoning requirements otherwise applicable in underlying districts in order to provide supplementary provisions for areas such as shorelands and floodplains, aquifer and source protection areas, ridgelines and scenic features, highway intersection, bypass, and interchange areas, or other features described in section 4411 of this title.

(3) Conditional uses.

(A) In any district, certain uses may be allowed only by approval of the appropriate municipal panel, if general and specific standards to which each allowed use must conform are prescribed in the appropriate bylaws and if the appropriate municipal panel, under the procedures in subchapter 10 of this chapter, determines that the proposed use will conform to those standards. These general standards shall require that the proposed conditional use shall not result in an undue adverse effect on any of the following:

(i) The capacity of existing or planned community facilities.

(ii) The character of the area affected, as defined by the purpose or purposes of the zoning district within which the project is located, and specifically stated policies and standards of the municipal plan.

(iii) Traffic on roads and highways in the vicinity.

(iv) Bylaws and ordinances then in effect.

(v) Utilization of renewable energy resources.

(B) The general standards set forth in subdivision (3)(A) of this section may be supplemented by more specific criteria, including requirements with respect to any of the following:

(i) Minimum lot size.

(ii) Distance from adjacent or nearby uses.

(iii) Performance standards, as under subdivision (5) of this section.

(iv) Criteria adopted relating to site plan review pursuant to section 4416 of this title.

(v) Any other standards and factors that the bylaws may include.

(C) One or more of the review criteria found in 10 V.S.A. § 6086 may be adopted as standards for use in conditional use review.

(4) Parking and loading facilities. A municipality may adopt provisions setting forth standards for permitted and required facilities for off-street parking and loading which may vary by district and by uses within each district. These bylaws may also include provisions covering the location, size, design, access, landscaping, and screening of those facilities. In determining the number and size of parking spaces required under these regulations, the appropriate municipal panel may take into account the existence or availability of employer "transit pass" and rideshare programs, public transit routes, and public parking spaces in the vicinity of the development.

(5) Performance standards. As an alternative or supplement to the listing of specific uses permitted in districts, including those in manufacturing or industrial districts, bylaws may specify acceptable standards or levels of performance that will be required in connection with any use. These bylaws shall specifically describe the levels of operation that are acceptable and not likely to affect adversely the use of the surrounding area by the emission of such dangerous or objectionable elements as noise, vibration, smoke, dust, odor, or other form of air pollution, heat, cold, dampness, electromagnetic, or other disturbance, glare, liquid, or solid refuse or wastes; or create any dangerous, injurious, noxious, fire, explosive, or other hazard. The land planning policies and development bylaws manual prepared pursuant to section 4304 of this title shall contain recommended forms of alternative performance standards, and the assistance of the Agency of Commerce and Community Development shall be available to any municipality that requests aid in the application or enforcement of these bylaws.

(6) Access to renewable energy resources. Any municipality may adopt zoning and subdivision bylaws to encourage energy conservation and to protect and provide access to, among others, the collection or conversion of direct sunlight, wind, running water, organically derived fuels, including wood and agricultural sources, waste heat, and geothermal sources, including those recommendations contained in the adopted municipal plan, regional plan, or both. The bylaw shall establish a standard of review in conformance with the municipal plan provisions required pursuant to subdivision 4382(a)(9) of this title.

(7) Inclusionary zoning. In order to provide for affordable housing, bylaws may require that a certain percentage of housing units in a proposed subdivision, planned unit development, or multi-unit development meets defined affordability standards, which may include lower income limits than contained in the definition of "affordable housing" in subdivision 4303(1) of this title and may contain different affordability percentages than contained in the definition of "affordable housing development" in subdivision 4303(2) of this title. These provisions, at a minimum, shall comply with all the following:

(A) Be in conformance with specific policies of the housing element of the municipal plan.

(B) Be determined from an analysis of the need for affordable rental and sale housing units in the community.

(C) Include development incentives that contribute to the economic feasibility of providing affordable housing units, such as density bonuses, reductions or waivers of minimum lot, dimensional or parking requirements, reductions or waivers of applicable

fees, or reductions or waivers of required public or nonpublic improvements.

(D) Require, through conditions of approval, that once affordable housing is built, its availability will be maintained through measures that establish income qualifications for renters or purchasers, promote affirmative marketing, and regulate the price, rent, and resale price of affordable units for a time period specified in the bylaws.

(8) Waivers.

(A) A bylaw may allow a municipality to grant waivers to reduce dimensional requirements, in accordance with specific standards that shall be in conformance with the plan and the goals set forth in section 4302 of this title. These standards may:

(i) allow mitigation through design, screening, or other remedy;

(ii) allow waivers for structures providing for disability accessibility, fire safety, and other requirements of law; and

(iii) provide for energy conservation and renewable energy structures.

(B) If waivers from dimensional requirements are provided, the bylaws shall specify the process by which these waivers may be granted and appealed.

(9) Stormwater management and control. Any municipality may adopt bylaws to implement stormwater management and control consistent with the program developed by the Secretary of Natural Resources pursuant to 10 V.S.A. § 1264.

(10) Time-share projects. The bylaws may require that time-share projects consisting of five or more time-share estates or licenses be subject to development review.

(11) Archaeological resources. A municipality may adopt bylaws for the purpose of regulating archaeological sites and areas that may contain significant archaeological sites to make progress toward attaining the goals in the municipal plan concerning the protection of archaeological sites.

(12) Wireless telecommunications facilities and ancillary improvements. A municipality may adopt bylaws to regulate wireless telecommunications facilities and ancillary improvements in a manner consistent with State or federal law. These bylaws may include requiring the decommissioning or dismantling of wireless telecommunications facilities and ancillary improvements, and may establish requirements that a bond be posted, or other security acceptable to the legislative body, in order to finance facility decommissioning or dismantling activities.

(13)(A) Wastewater and potable water supply systems. A municipality may adopt bylaws that:

(i) prohibit the initiation of construction under a zoning permit unless and until a wastewater and potable water supply permit is issued under 10 V.S.A. chapter 64; or

(ii) establish an application process for a zoning or subdivision permit, under which an applicant may submit a permit application for municipal review, and the municipality may condition the issuance of a final permit upon issuance of a wastewater

and potable water supply permit under 10 V.S.A. chapter 64.

(B) For purposes of an appeal of a permit issued under a bylaw adopted under this subdivision (13), the appealable decision of the municipality shall be the issuance or denial of a final zoning or subdivision permit and not the requirement to condition issuance of a permit on issuance of a wastewater and potable water supply permit under 10 V.S.A. chapter 64.

(14) Green development incentives. A municipality may encourage the use of low-embodied energy in construction materials, planned neighborhood developments that allow for reduced use of fuel for transportation, and increased use of renewable technology by providing for regulatory incentives, including increased densities and expedited review.

(15) Solar plants; screening. Notwithstanding any contrary provision of sections 2291a and 4413 of this title or 30 V.S.A. chapter 5 or 89, a municipality may adopt a freestanding bylaw to establish screening requirements that shall apply to a ground-mounted plant that generates electricity from solar energy. In a proceeding under 30 V.S.A. § 248, the municipality may make recommendations to the Public Utility Commission applying the bylaw to such a plant. The bylaw may designate the municipal body to make this recommendation. Screening requirements and recommendations adopted under this subdivision shall be a condition of a certificate of public good issued for the plant under 30 V.S.A. § 248, provided that they do not prohibit or have the effect of prohibiting the installation of such a plant and do not have the effect of interfering with its intended functional use.

(A) Screening requirements under this subdivision shall not be more restrictive than screening requirements applied to commercial development in the municipality under this chapter or, if the municipality does not have other bylaws except flood hazard, 10 V.S.A. chapter 151.

(B) In this section, "plant" shall have the same meaning as in 30 V.S.A. § 8002 and "screening" means reasonable aesthetic mitigation measures to harmonize a facility with its surroundings and includes landscaping, vegetation, fencing, and topographic features.

(C) This subdivision (15) shall not authorize requiring a municipal land use permit for a solar electric generation plant, and a municipal action under this subdivision shall not be subject to the provisions of subchapter 11 (appeals) of this chapter. Notwithstanding any contrary provision of this title, enforcement of a bylaw adopted under this subdivision shall be pursuant to the provisions of 30 V.S.A. § 30 applicable to violations of 30 V.S.A. § 248. (Added 2003, No. 115 (Adj. Sess.), § 95; amended 2005, No. 183 (Adj. Sess.), § 5; 2007, No. 32, § 4; 2007, No. 79, § 15; 2007, No. 32, § 4a, eff. May 18, 2007; 2007, No. 79, § 15a, eff. June 9, 2007; 2007, No. 209 (Adj. Sess.), § 11; 2009, No. 110 (Adj. Sess.), § 7; 2009, No. 145 (Adj. Sess.), § 2, eff. June 1, 2010; 2013, No. 147 (Adj. Sess.), § 14, eff. June 1, 2014; 2015, No. 56, § 26d, eff. June 11, 2015.)