

Section 5.1 Applicability of Development Review Processes

Development review procedures and related standards under this article apply only to development that requires, prior to the issuance of a zoning permit under Section 7.1, the approval of the Development Review Board under one or more of the following review procedures.

- (A) **Site Plan Review.** Site plan review under Section 5.4 shall apply only to permitted uses as listed in Article 2, excluding single (one) and two family dwellings and associated accessory structures, home child care facilities and home occupations, signs, agriculture and forestry, and all other uses specifically exempted from these regulations under Section 7.2. Uses listed as a conditional use under Article 2 are not subject to site plan review *procedures*; however site plan review *standards* shall be applied through conditional use review under Section 5.5.
- (B) **Conditional Use Review.** Conditional use review by the Development Review Board under Section 5.5 shall apply only those uses designated as conditional uses in Article 2 or as otherwise specified in these regulations.
- (C) **Flood Hazard Area Review.** Conditional use approval by the Development Review Board, including the application of flood hazard area development standards, is required for all development identified in Section 9.5(D).
- (D) **Planned Unit Developments (PUDs).** PUD standards and procedures may be applied, at the request of the applicant, to the subdivision of any size parcel within designated zoning districts in accordance with Section 5.6.

Section 5.2 Administrative Amendment of Permits

- (A) **Administrative Amendment.** Amendments to final site plans or conditional use permits previously approved by the Development Review Board may be issued by the Zoning Administrator, with the concurrence of the Development Review Board Chair, or his or her designee, and without additional review by the Development Review Board, only in cases where applicants can demonstrate compliance with each of the following criteria:
 - (1) The amendment will not result in the project's noncompliance with any standards or requirements of the zoning regulations, or any permit conditions.
 - (2) The amendment will not result in changes to the previously approved parking or loading spaces;
 - (3) The amendment will not result in an increase of more than five percent (5%) to the previously approved building footprint or an additional 250 square feet, whichever is less;
 - (4) The amendment will not result in a change in location of any previously approved structure on the property which impacts the original setback distance to adjacent properties by more than ten percent (10%), or which impacts the original front setback by more than fifteen percent (15%);
 - (5) The amendment will not result in any changes to the previously approved project that would require a variance or waiver of the zoning regulations.
- (B) **Application Requirements.** Applications for administrative approval under this Section shall conform with the requirements of Section 7.3 and shall be accompanied by the Administrative Amendment fee. Applicants shall provide any previously approved site plan and/or conditional use decision with the application, and shall highlight all proposed changes in the site plan or conditional use decision for which administrative approval is sought. Applicants shall also forward copies of the application for amendment to all abutting property owners, by certified mail, return receipt requested, within three (3) days following submission of the application to the Zoning Administrator.

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Comment [1]: All references to PRDs removed.

Section 5.3 Application Requirements (Site Plan & Conditional Use Review)

- (A) **Development Plan.** An applicant for site plan review or conditional use review by the Development Review Board shall submit, in addition to a zoning permit application under Section 7.1, one (1) original of a development plan and supporting information. The Board may request additional copies. Supporting information may include the following information, unless specifically waived by the Board under Subsection (B):
- (1) The names of the property owner(s) of record, the applicant if different from the property owners, and the person(s) or firm preparing the application and plan;
 - (2) The names of all adjoining property owners, as determined from the current East Montpelier Grand List, and proof of written notification to all adjoining property owners notifying them of the application, in accordance with Subsection 7.8 (E).
 - (3) A project location map showing the location of proposed development in relation to other properties and roads within the vicinity of the project; and
 - (4) A site development plan, drawn to scale (or a survey) which shows the following, when applicable, unless specifically waived by the Development Review Board:
 - (a) Title block, north arrow, scale, and application date;
 - (b) Existing and proposed property boundaries, easements and rights-of-way;
 - (c) Site features, including contours, prominent topographic features and areas of steep slope (in excess of 25%); mapped surface waters, mapped wetlands and associated setback distances; designated floodplain areas; land cover, including tree lines and large specimen trees; and designated water supply source protection areas;
 - (d) The location of existing and proposed structures and facilities, including building footprints and elevations, utilities, roads, driveways, parking and loading areas and pedestrian paths;
 - (e) Proposed traffic and pedestrian circulation patterns, including access points to adjoining properties, public roads and public waters;
 - (f) The location of proposed water supply and wastewater disposal systems and design details; and
 - (g) Proposed grading, drainage, landscaping, screening, signs and lighting details.
 - (5) If applicable, construction sequence and time schedule for completion of each phase for buildings, parking spaces and landscaped area of the entire development.
- (B) The application shall not be considered complete until all information and associated fees have been submitted. The Development Review Board may waive one or more application requirements upon determination that the information is unnecessary for the comprehensive review of the application.

Section 5.4 Site Plan Review

- (A) **Applicability.** Any use or structure requiring site plan approval shall not be issued a zoning permit by the Zoning Administrator until the Development Review Board grants such approval in accordance with the Act [§4416], and the following standards and procedures.
- (B) **Review Process**
- (1) **Conceptual Site Plan Review.** An applicant may request a conceptual site plan review by the Development Review Board prior to developing and submitting a formal application for site plan review under Section 5.4(B)(2). The purpose of a conceptual site plan review is to acquaint the DRB with the proposed site plan and explore possible concepts for developing a site at an early stage in the design process, prior to the applicant incurring significant expense. Conceptual site plan review is intended to allow for an informal exchange of ideas, in which the applicant explores with the Board site plan design options that best meet the needs of the applicant and the requirements of Section 5.4 (C).

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- (a) **Conceptual site plan review application.** Prior to the scheduling of a conceptual site plan review, the applicant shall submit nine (9) copies of the conceptual site plan with major features (natural and man made) clearly marked. The conceptual site plan shall also include a directional compass (showing north), adjacent streets and parcels (identified by name) and sketches and/or outlines of potential development approaches.
 - (b) **Effect.** The Development Review Board may offer comments and recommendations on the proposed conceptual site plan. Such comments and recommendations are advisory only and, as such, shall not constitute an appealable decision or action of the Board, and shall not be binding on subsequent site plan review. Materials accepted for conceptual review will not be carried forward for site plan review. To proceed, the applicant must submit an application based on the requirements in Section 5.3 above.
- (2) **Public Hearing.** When an application is complete, the Zoning Administrator shall schedule a public hearing, warned in accordance with Subsection 7.8(E). The Board shall act to approve, approve with conditions, or deny an application for site plan review within 45 days of adjournment of the final public hearing; and shall issue a written decision in accordance with Subsection 7.8(F). Failure to act within the 45-day period shall be deemed approval. Copies of the decision shall be mailed, via certified mail, to the applicant, and mailed to every person or body appearing and having been heard at the hearing, and a copy of the decision shall be recorded in accordance with Subsection 7.8(G).
- (C) **General Standards.** The Board shall consider and may impose conditions and safeguards with respect to the adequacy of traffic and pedestrian access, on-site circulation, parking, landscaping and screening, and other aspects of site development, in accordance with the following:
- (1) **Access.** Provision shall be made for adequate and safe access from the site to maintained public or private roads in accordance with the requirements of Section 3.4. The Board may require that access be shared between adjoining properties an/or uses, and may require the reduction, consolidation, or elimination of non-complying accesses or curb cuts. Requirements for shared access shall be made either at the time of site plan approval if similar provision has been made on contiguous parcels, or contingent upon future development of neighboring properties.
 - (2) **Circulation.** Provision shall be made for adequate and safe on-site vehicular and pedestrian circulation, in relation to the intended use and location of buildings and parking areas. Clearly marked travel lanes, pedestrian crossings, and pedestrian paths connecting buildings, parking areas, may be required to ensure vehicular and pedestrian safety and convenience.
 - (3) **Parking, Loading, Service & Outdoor Storage Areas.** On-site parking, loading and service areas shall be provided in accordance with the requirements of Section 3.11. Conditions may be imposed with regard to the extent, siting, landscaping, screening, paving, curbing and/or sharing of parking, loading and service areas as appropriate to ensure site safety, function and attractiveness, and to avoid or minimize adverse off-site impacts.
 - (4) **Landscaping & Screening.** Site plans may be required to incorporate landscaping and screening which preserves and incorporates existing vegetation, is suited to existing site conditions, enhances development and features unique to the site, integrates the development and site with surrounding properties, an/or services to buffer or screen incompatible development and/or outdoor storage or service areas from neighboring properties or public rights-of-way. Conditions may be imposed with regard to the amount, type, size, and location of landscaping and screening materials. The Board may also require a three year landscaping plan, and/or bond or other surety, to ensure installation and maintenance.
 - (5) **Layout & Site Design.** Conditions may be imposed as appropriate with regard to structure siting, orientation, and setbacks to ensure development is compatible with its setting and context.
 - (6) **Lighting.** Information regarding the location, type and level of illumination of all outdoor lighting shall be provided. Exterior lighting shall be kept to the minimum required for safety, security and intended use, consistent with the character of the neighborhood and/or zoning district

in which it is located. Permanent outdoor lighting fixtures shall not direct light onto adjacent properties, roads, or public waters, and shall minimize glare. The Board may restrict the height and/or location of fixtures and the maximum level of illumination on all or a portion of the property.

Section 5.5 Conditional Use Review

(A) **Applicability.** For any use or structure requiring conditional use approval, a zoning permit shall not be issued by the Zoning Administrator until the Development Review Board has granted such approval in accordance with the Act [§4414(3)] and the following standards and procedures.

(B) Review Process

(1) **Conceptual Conditional Use Review.** An applicant may request a conceptual conditional use review by the Development Review Board prior to developing and submitting a formal application for conditional use review under Section 5.5 (B)(2). The purpose of a conceptual conditional use review is to acquaint the DRB with the propose use and explore possible concepts for developing a site at an early stage in the design process, prior to the applicant incurring significant expense. Conceptual site plan review is intended to allow for an informal exchange of ideas, in which the applicant explores with the Board site plan design options that best meet the needs of the applicant and the requirements of Sections 5.5 (C) through (E).

(a) **Conceptual conditional use application.** Prior to the scheduling of a conceptual use review, the applicant shall submit nine (9) copies of the conceptual site plan with major features (natural and man made) clearly marked. The conceptual plan shall also include a directional compass (showing north), adjacent streets and parcels (identified by name) and sketches and/or outlines of potential development approaches.

(b) **Effect.** The Development may offer comments and recommendations on the proposed conceptual conditional use. Such comments and recommendations are advisory only and, as such shall not constitute an appealable decision or action of the Board, and shall not be binding on subsequent conditional use review. Materials accepted for conceptual review will not be carried forward for conditional use review. To proceed, the applicant must submit an application based on the requirements in Section 5.3 above.

(2) **Public Hearing.** When an application is considered complete, the Zoning Administrator shall schedule a public hearing, warned in accordance with Subsection 7.8(E). The Board shall act to approve, approve with conditions, or deny an application for conditional use review within 45 days of adjournment of the final public hearing; and shall issue a written decision in accordance with Subsection 7.8(F). Failure to act within the 45 day period shall be deemed approval. Copies of the decision shall be mailed, via certified mail, to the applicant, and mailed to every person or body appearing and having been heard at the hearing, and a copy of the decision shall be recorded in accordance with Subsection 7.8(G).

(C) **General Standards.** Conditional use approval shall be granted by the Development Review Board upon finding that the proposed development will not result in an undue adverse effect on any of the following:

(1) **The capacity of existing or planned community facilities and services.** The Board shall consider the demand for community facilities and services that will result from the proposed development in relation to the existing and planned capacity of such services and facilities, the Town Plan, and any duly adopted capital budget and program currently in effect. The Board may request information or testimony from appropriate local officials to help evaluate potential project impacts on existing and proposed community facilities and services.

(2) **Character of the neighborhood or area affected.** The Board shall consider the design, location, scale, and intensity of the proposed development in relation to the character of the area or neighborhood, as determined from zoning district purpose statements, the Town Plan, and relevant testimony presented to the Board.

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- (3) **Traffic on roads & highways in the vicinity.** The Board shall consider the potential impact of traffic generated by the proposed development on the capacity, safety, efficiency, and maintenance of roads, highways, intersections, bridges and culverts in the vicinity. A traffic impact assessment may be required.
 - (4) **Bylaws in effect.** The Board shall determine whether the proposed development conforms with other municipal bylaws and ordinances currently in effect, including but not limited to any road and on-site wastewater ordinances.
 - (5) **The utilization or renewable energy resources.** The Board will consider whether the proposed development will interfere with the utilization of renewable energy resources by either diminishing their current or future availability, or by interfering with neighboring property owners' access to such resources (e.g., for solar or wind power).
- (D) **Site Plan Review Standards.** In addition to the general standards set forth in Subsection (C) above, the Development Review Board shall also apply all applicable site plan review standards set forth in Section 5.3(C).
- (E) **Supplemental Standards.** In addition to the standards set forth in Subsection (C), the Development Review Board may also impose conditions in accordance with the following requirements:
- (1) The installation, operation, and maintenance of devices and/or methods of operation as necessary to prevent or reduce fumes, gas, dust, smoke, odor, noise, vibration, or similar nuisance. Performance standards shall be as specified by the appropriate State regulatory agencies.
 - (2) The extent of open spaces between the proposed use and surrounding properties.
 - (3) Up to triple minimum lot size, triple distance from adjacent or nearby uses and triple setback from adjacent roads if necessary to prevent a potential adverse impact on nearby properties.
 - (4) Landscaping and fencing if necessary to maintain the district character.
 - (5) Design and location of signs, structures, and service areas such that district character is maintained.
 - (6) Water supply and sewage disposal systems designed and installed in compliance with all applicable municipal and state requirements.
 - (7) Periodic review to ensure continued compliance.

Section 5.6 Planned Unit Developments

- (A) **Purpose.** The Planning Act (Section 4417) enables towns to authorize Planned Unit Developments (PUDs), which may be residential, non-residential or mixed use in character. PUDs are intended to further the goals and objectives of the East Montpelier Town Plan, and the purpose of the underlying zoning district by permitting flexibility in the application of land development regulations for the purposes below. Flexibility is encouraged in site and lot layout, building design, placement and clustering of buildings use of open areas, provision of circulation facilities including pedestrian facilities and parking, and related site and design considerations that will best achieve these goals and purposes:
- (1) To encourage compact, pedestrian-oriented development and to promote a mix of residential uses, nonresidential uses or both in village districts.
 - (2) To encourage provision of affordable and moderate-income housing.
 - (3) To encourage development in rural areas to be compatible with the use and character of surrounding rural lands.
 - (4) To provide for the conservation of open space features recognized as worth of conservation in the municipal plan, such as the preservation of agricultural land, forest land, trails and other recreational resources, critical and sensitive natural areas, scenic resources, and protection from natural hazards.

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Comment [2]: All references to PRDs removed.

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Comment [3]: This section is new language adapted from statute.

- (5) To provide for efficient use of public facilities and infrastructure.
- (6) To encourage opportunities for energy-efficient development.
- (7) To provide a mechanism by which property owners may create small building lots while retaining large tracts of contiguous land.

(B) **Applicability.** PUDs are allowed in any district, as long as:

- (1) The PUD meets the purposes of Section 5.6(A);
- (2) All of the separate uses for a PUD are permitted in the underlying zoning district or receive conditional use approval; and
- (3) The PUD meets the standards set forth below.

(C) **Review Procedure.** A PUD shall be reviewed concurrently with a subdivision review as set forth in Article 6 of these regulations. In addition to the application requirements of subdivisions set forth in Table 6.1, an application for PUD approval shall include a statement describing all proposed modifications, changes or supplements to existing requirements of these regulations. Modifications of one or more provisions of these regulations approved by the Development Review Board shall be noted in writing and appended to a plat depicting the project to be filed in the East Montpelier Land Records. All other provisions of this bylaw not specifically modified shall remain in effect and be applicable to the project.

(D) **Coordination with Conditional Use Review.** After receiving approval of site plan and subdivision from the Development Review Board, applications for PUD shall be subject to conditional use review by the Board. In conditional use review, the Board shall incorporate any applicable conditions during its approval process.

(E) **General Standards.** The modification of zoning regulations by the Development Review Board may be permitted in accordance with the following standards:

- (1) The PUD shall meet all applicable standards set forth in Article 6 and shall be consistent with the East Montpelier Town Plan. The PUD shall also meet all local and state regulations for sewage disposal and the protection of water quality.
- (2) Principal buildings and mixed uses shall be arranged to be compatible, and buffered as appropriate to ensure visual and acoustical privacy for the residents of the development and for adjacent properties.
- (3) Multiple principal structures and/or uses on a lot, or multiple ownership of a single structure may be permitted.
- (4) The dwelling units in a residential PUD may, at the discretion of the Development Review Board, be of varied types, including single-family, two-family, or multi-family construction, and may be attached or detached.
- (5) A residential or mixed-use PUD may include, subject to conditional use review, an accessory office, common laundry, storage, kitchen/dining area, and/or indoor recreational facility for use by residents of the PUD and their invited guests.
- (6) The minimum front, side and rear yard setbacks at the periphery of the PUD shall be as specified for the particular district unless otherwise specified by the Board. The Board may allow other setback standards within the PUD, such as zero lot lines, as part of approval.
- (7) Vehicular and pedestrian circulation shall be integrated with neighboring properties and public rights-of-way.
- (8) Where a district boundary line divides a parcel, the DRB may allow the development of a single PUD with a total density based on the combined allowable density of each district. The DRB may allow a density increase under subsection (G).

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- (9) Two or more contiguous parcels under the ownership or control of the applicant may be combined for review as a PUD. The permitted density on one parcel may be increased as long as the overall density for the combined parcels does not exceed that which could be permitted, in the Board's judgment, if the land were subdivided into lots in conformance with district regulations. The DRB may allow a density increase under subsection (G).
- (10) All building lots, private or common buildings and accessory structures, outdoor recreational facilities, streets, rights-of-way, sewage disposal areas, and utility easements shall be located within the development envelope.
- (11) The Development Review Board shall encourage energy efficient site planning and layout. For example, east-west orientation of roads to encourage southern exposure of structures, solar access protection and the use of land forms or vegetative wind breaks to the north.

(F) Open Space

- (1) The PUD shall provide for the preservation of stream and stream banks, steep slopes, wetland, soils unsuitable for development, agricultural lands, unique natural and manmade features, watersheds, forestland, wildlife habitat, floodplains, and scenic features. These preserved areas shall be reserved as open space.
- (2) Open space land shall have one or more purposes, such as recreation, conservation, agriculture or the enhancement of the natural environment. Open space land shall take the fullest advantage of all natural features, such as natural watercourses and drainages, topography, existing trees, outlook, agricultural land, forests and other features. The configuration of the open space land shall reflect the purpose of the open land and be suitable for its intended use. Areas preserved for agricultural and forestry use should be of a size that allows for continued productive use of the land and retains their eligibility for available tax abatement programs.
- (3) Open space shall be outside the development envelope and shall not contain any buildings or development, except as primarily devoted to a purpose for which the undeveloped land is intended, such as recreational trails and paths.
- (4) Open space land may be used for water supply and/or septic waste disposal provided that adequate control over the use of the land for these purposes is retained by the party or parties responsible for maintenance of these facilities.
- (5) Open space may be set aside as common land, or as a separate undevelopable lot or portion of a single lot to be held in private ownership. Designated open space shall be indicated with appropriate notation on the final plat.
- (6) The DRB may require that open space be dedicated, either in fee or through a conservation easement approved by the Board, to:
- (a) The Town, if it agrees to accept and maintain the open space;
 - (b) A community association comprising all of the present and future owners of lots in the subdivision; and/or
 - (c) A non-profit land conservation organization that agrees to appropriate conservation restrictions placed on the land which would be recorded with the deed.
- (7) The ownership of the open space should be consistent with the best means of maintaining or managing the resources on the site. All costs associated with administering and maintaining open space and/or common land shall be the responsibility of the applicant and subsequent landowners.

(G) Permitted Densities.

- (1) The total number of allowable residential units and/or commercial or industrial space within the PUD is the number that would be permitted, in the Development Review Board's judgment, if the land were subdivided into lots in conformance with the zoning regulation for the district in which the project is located.

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- (2) The Board may allow for a greater concentration or intensity of development within some section(s) of the development than in others, on individual lots that are smaller than the minimum lot size for the district within which the PRD or PUD is located, provided that there is an offset by a lesser concentration in other sections.
- (3) In village districts (Zones VMU, MDVR and VR) the Development Review Board may authorize a density increase of as much as one hundred percent (100%) above the number of dwelling units otherwise permitted in the zoning district. Requests for a density increase shall be made at sketch plan review.
- (4) In non-village districts the Development Review Board may authorize a density increase of as much as twenty five percent (25%) above the number of dwelling units otherwise permitted in the zoning district. Requests for a density increase shall be made at sketch plan review.

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Comment [9]: 100% comes from the Village Master Plan (see planning area discussion pg. 29-32)

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Comment [10]: Removed additional density increase for affordable housing because the town cannot easily evaluate and monitor perpetual affordability. Not all towns include an affordable housing bonus. Downstreet, which build and owns perpetually affordable housing, has told the PC that without municipal water and sewer they would never be able to get the necessary grants to build affordable housing in East Montpelier.

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Deleted: The Board may, however, grant a density increase of up to fifty percent (50%) of the allowable number of units in any district in instances in which not less than twenty percent (20%) of the total number of dwelling units created are affordable housing units, as defined in Article 8.