Zoning Update Topics for Discussion
October 7, 2021

1. Setbacks for non-conforming residences

Our current regulations have a "Notwithstanding" clause for Zones D and E. The setback reductions we are proposing in the zoning updates make the side and rear elements of the "Notwithstanding" moot. Although we are proposing a 40-foot front setback for all districts, front setbacks could still be an issue for older residences – in all zones.

After discussion with the ZA, the proposal for PC discussion is a new clause that would apply in all districts:

(1) Notwithstanding the ~~side and rear setbacks~~ front setback set forth in Subsection (D), the ~~side and rear setbacks~~ front setback for ~~a lot of less than three acres shall be 25 feet, and the front setback for a lot of less than three acres~~ all lots shall be the existing distance from the point of the dwelling that is closest to the road right-of-way~~, or 25 feet, whichever is less,~~ if less than the Subsection (D) standard, providing that:
   (a) The lot was in existence prior to September 15, 1982; and
   (b) The lot is occupied by a single-family dwelling that existed prior to September 15, 1982, and has occupied the lot continuously since September 15, 1982, in accordance with Section 3.10; and
   (c) A zoning permit is issued in accordance with Section 7.1 for the reconstruction, alteration, relocation, or enlargement of the existing dwelling, or the construction, reconstruction, alteration, relocation, or enlargement of an accessory structure to that dwelling.

2. Waivers and Variances

With the proposed changes in setbacks, we should look at how we deal with waivers (Section 6.2) and variances (Section 7.6). Note that our regulations closely track statute.

State statute allows, but does not require, waivers (24 V.S.A 4418 (D)(2):

(2) Subdivision bylaws may include:
(A) Provisions allowing the appropriate municipal panel to waive or modify, subject to appropriate conditions, the provision of any or all improvements and requirements as in its judgment of the special circumstances of a particular plat or plats are not requisite in the interest of the public health, safety, and general welfare, or are inappropriate because of inadequacy or lack of connecting facilities adjacent or in proximity to the subdivision.

Note that the DRB has substantial latitude in providing a waiver and deciding what makes sense. Currently, no text changes are proposed to the section on waivers in our regulations.

Statute requires that our regulations have a provision for variances, but also establishes prescriptive criteria – all of which must be met:

§ 4469. Appeal; variances
(a) On an appeal under section 4465 or 4471 of this title or on a referral under subsection 4460(e) of this title in which a variance from the provisions of a bylaw or interim bylaw is requested for a

structure that is not primarily a renewable energy resource structure, the board of adjustment or the development review board or the Environmental Division created under 4 V.S.A. chapter 27 shall grant variances and render a decision in favor of the appellant, if all the following facts are found, and the finding is specified in its decision:

(1) There are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to these conditions, and not the circumstances or conditions generally created by the provisions of the bylaw in the neighborhood or district in which the property is located.

(2) Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the bylaw, and that the authorization of a variance is therefore necessary to enable the reasonable use of the property.

(3) Unnecessary hardship has not been created by the appellant.

(4) The variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, or be detrimental to the public welfare.

(5) The variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the bylaw and from the plan.

Currently, only typo corrections are proposed for our regulatory language on variances.

People often struggle with the difference between waivers and variances, so they need to be reviewed together. *For the zoning updates, the question is whether the changes to setbacks and "notwithstanding" clause make it so that we no longer need waivers, or whether we want to keep the waiver provision anyway.*

3. Certificates of Compliance

Statute allows (but does not mandate) municipalities to require a certificate of occupancy before a building is occupied or used (24 V.S.A. 4449(a)(2)):

> (2) If the bylaws so adopted so provide, it shall be unlawful to use or occupy or permit the use or occupancy of any land or structure, or any part thereof, created, erected, changed, converted, or wholly or partly altered or enlarged in its use or structure after the effective date of this chapter, within the area affected by those bylaws, until a certificate of occupancy is issued therefor by the administrative officer, stating that the proposed use of the structure or land conforms to the requirements of those bylaws. Provision of a certificate as required by 30 V.S.A. § 51 (residential building energy standards) or 53 (commercial building energy standards) shall be a condition precedent to the issuance of any such certificate of occupancy.

Certificates of occupancy make most sense when a municipality has building codes and code enforcement officers. The town does not have building or energy codes and does not have staff capable of evaluating compliance with state building and energy codes. Currently, our regulations include a watered-down version – Section 7.4 Certificates of Compliance – that has been of questionable utility and challenging to implement. Our regulations rely solely on self-

certification, and most applicants for zoning permits do not file for a certificate of compliance. It should be noted that the state requires certificates of occupancy for buildings in flood hazard zones in order to be eligible for the Emergency Relief and Assistance Fund, which provides financial assistance to towns after flood events.

It is unclear that our requirements for certificates of compliance provide any real utility to the town or the applicant, but it is clear that the requirement creates administrative and enforcement challenges for the town.

The proposed edits to our regulations would require certificates of occupancy only for buildings in flood hazard areas. This would remove the majority of the administrative burden, while maintaining full eligibility for ERAF.

Section 7.4 Certificates of Compliance

(A) No structure, other than accessory structures to single family dwellings, subject to the Flood Hazard Area Regulations in Article 9 and for which a zoning permit has been issued shall be occupied or used, in whole or in part, until the Zoning Administrator has issued a certificate of compliance.

(1) An application for a certificate of compliance shall be provided with the zoning permit issued by the Zoning Administrator. The applicant shall submit a completed application for a certificate of compliance to the Zoning Administrator prior to the expiration of the permit, as per Section 7.3(C) above.

(2) The applicant shall certify and affirm, in the presence of a notary public and to the satisfaction of the Zoning Administrator, that the constructed building or addition is in conformance with the zoning permit and any associated approvals, including all applicable permit conditions.

(3) The Zoning Administrator may, but is not required to, inspect the site layout before acting on the certificate of compliance. In all cases, the Zoning Administrator's decision to approve or deny an application for a certificate of compliance shall be based on the applicant's certifications and representations, and the issuance of a certificate of compliance shall not preclude a subsequent zoning enforcement action for any violations of the zoning permit or zoning regulations that may have existed prior to the issuance of the certificate of compliance.

(4) An application for a certificate of compliance shall be approved or denied by the Zoning Administrator within 30 days of receipt. If the Zoning Administrator fails to either grant or deny the certificate of compliance within 30 days of the submission, the certificate shall be deemed approved on the 31st day. The decision of the Zoning Administrator may be appealed to the Development Review Board under Section 7.5(A).