

1 Section 7.3. If the Zoning Administrator fails to act within the 30 day period, a
2 permit shall be deemed issued on the 31st day.

3 (3) Within 3 days of issuance, the Zoning Administrator shall deliver a copy of the
4 permit to the Listers, and post a copy at the Town Office for a period of 15 days
5 from issuance.

6 (4) A notice of permit, on a form prescribed by the municipality, must be posted by the
7 applicant within view from the public right-of-way most nearly adjacent to the
8 subject property until the time for appeal has passed.

9 (D) Effective Dates. No zoning permit shall take effect until the time for appeal under
10 Section 7.3 has passed, or in the event that a notice of appeal is properly filed, until final
11 adjudication of the appeal. Permits and associated conditions will run with the land and
12 be binding upon the landowner's future heirs and assigns. A permit will, however, expire
13 and become null and void within 2 years from the date of issuance if the permitted
14 development has not substantially commenced¹. Prior to the expiration of the permit, the
15 Zoning Administrator may issue an extension for one additional year.

16 (E) Certificate of Compliance.

17 (1) Special Flood Hazard Area. It shall be unlawful to use or occupy, or permit the use
18 or occupancy of any land or structure, or part thereof, created, erected, changed,
19 converted, or wholly or partly altered or enlarged in its use or structure within
20 Special Flood Hazard Area until a Certificate of Compliance is issued by the
21 Zoning Administrator stating that the proposed use of the structure or land
22 conforms to the requirements of these bylaws. A Certificate of Compliance shall
23 not required for structures that were built in compliance with the bylaws at the time
24 of construction and have not been improved since the adoption of this bylaw.²

25 (2) Other Development. After the effective date of these regulations, ~~the Planning~~
26 Commission and/or Board of Adjustment Development Review Board may require,
27 as a condition of subdivision or conditional use approval for development outside of
28 the Special Flood Hazard Area, that a Certificate of Compliance be obtained to
29 ensure that all work has been completed in conformance with the zoning permit and
30 associated approvals, including all applicable permit conditions.

31 (~~3~~) The application for a ~~certificate~~ Certificate of Compliance shall be
32 submitted to the Zoning Administrator with as-built plans drawn to scale which
33 show the location of all monuments, utilities, structures, roadways, easements,

¹ Substantially commenced: Visible signs of activity on new construction of a new structure or repair of a damaged structure, including the commitment of resources and materials to a project, such as the pouring of a foundation, the completion of a frame, or the delivery of required building materials to the construction site.

² A Certificate of Occupancy is not required by 44 CFR but is strongly recommended by the VT DEC as a low cost method to support the enforcement of flood hazard regulations. Since your bylaw already allows for a Certificate of Compliance, it seemed reasonable to require it in the Special Flood Hazard Area.

1 parking areas, signs, landscaping and
2 other improvements as constructed.

3 (24) Within 14 days of receipt of the
4 application for a certificate of
5 compliance, the Zoning
6 Administrator will inspect the ~~project~~
7 premises to ensure that all work has
8 been completed in conformance with
9 the conditions of approval. If the
10 Zoning Administrator fails to either
11 grant or deny the certificate of
12 compliance within 14 days of the
13 submission of an application, the
14 certificate shall be deemed issued on
15 the 15th day.

16 (5) If a Certificate of Compliance cannot
17 be issued, notice will be sent to the
18 owner. In the case of development
19 within the Special Flood Hazard
20 Area, notice will be copied to the
21 lender.

22 **Section 7.2 Exemptions**

23 (A) No zoning permit shall be required for the
24 following:

- 25
- 26 (1) Any building for which construction
27 lawfully began prior to the effective
28 date of these regulations, provided
29 that such construction is completed
30 within two years of the effective
31 date.
- 32 (2) Normal maintenance, repair,
33 remodeling or interior alteration of
34 an existing structure outside of the
35 Special Flood Hazard Area that does
36 not result in any change to the
37 footprint or height dimensions, or
38 any expansion in the total area, of the
39 structure, or a change in use.
- 40 (3) Residential entry stairs (excluding
41 deck or porch areas), handicap
42 ramps, walkways, and fences or
43 walls less than 8 feet in height which

Interested Person. In accordance with the Act [§4465 (b)], the definition of an interested person includes the following:

- a person owning title to property, or a municipality or solid waste management district empowered to condemn it or an interest in it, affected by a bylaw, who alleges that the bylaw imposes on the property unreasonable or inappropriate restrictions of present or potential use under the particular circumstances of the case.
- The Town of Hardwick or any municipality that adjoins it.
- a person owning or occupying property in the immediate neighborhood of a property that is the subject of any decision or act taken under this chapter, who can demonstrate a physical or environmental impact on the person's interest under the criteria reviewed, and who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes, or terms of the plan or bylaw of that municipality.
- any ten persons who may be any combination of voters or real property owners within a municipality listed above who, by signed petition to the appropriate municipal panel of a municipality, the plan or a bylaw of which is at issue in any appeal brought under this title, allege that any relief requested by a person under this title, if granted, will not be in accord with the policies, purposes or terms of the plan or bylaw of that municipality. This petition to the appropriate municipal panel must designate one person to serve as the representative of the petitioners regarding all matters related to the appeal.
- any department and administrative subdivision of this state owning property or any interest in property within a municipality listed above, and the agency of commerce and community development of this state.

1 do not extend into or obstruct public rights-of-way, ~~or~~ interfere with corner
2 visibility or sight distances for vehicular traffic, or fail to meet the Flood Hazard
3 Development Standards of 5.3(C) of these Bylaws.

4 (4) Accessory structures, such as a shed, tree house, doghouse, child's play house, or
5 similar structure with a floor area of not more than 100 square feet (each) and a
6 height of not more than ten (10) feet which is located at least 10 feet from all
7 property lines, and outside the Special Flood Hazard Area, and set back 75 feet
8 from all perennial streams and rivers in accordance with Section 3.12. A zoning
9 permit is required for all other accessory structures.

10 (5) Prefabricated, temporary carports and storage covers assembled out of metal
11 structural supports and fabric, provided they are located outside of the Special
12 Flood Hazard Area, and such covers are not affixed to a permanent foundation, do
13 not exceed 240 square feet of covered space and meet all setback standards for the
14 district in which they are located.

15 (6) The ordinary use of a small room of a dwelling for personal office use and/or
16 paperwork for business activity carried on elsewhere, in accordance with Section
17 4.8.

18 (7) Noncommercial outdoor recreation that does not involve the development or use of
19 structures or substantial site improvement (e.g., construction of parking area at a
20 trail head).

21 (8) Minor grading and excavation associated with road and driveway maintenance
22 (including culvert replacement and re-surfacing) and yard improvements associated
23 with accessory uses to existing principle uses (contouring yards, establishing garden
24 and landscape areas), providing they do not alter or impact a perennial stream or
25 alter the flood carrying capacity of any watercourse within the Special Flood
26 Hazard Area.

27 (9) Garage sales, yard sales and auctions not exceeding 3 consecutive days, nor more
28 than 12 days per calendar year, which do not cause unsafe traffic conditions or
29 parking problems.

30 (10) Fuel storage as an accessory structure to an allowed use, provided such storage is
31 outside the Special Flood Hazard Area and meets the requirements of Section 3.15.

32 (11) Accepted management practices (AMPs) for silviculture as defined by the
33 Commissioner of Forests, Parks, and Recreation, pursuant to the Act [§4413(d)].

34 (12) The removal of a building or other structure in whole or in part from the Special
35 Flood Hazard Area.

36 (B) In accordance with the Act [§4413(d)], ~~accepted-required~~ agricultural ~~and best~~
37 ~~management~~ practices (~~AAPs, BMPsRAPS~~), including farm structures, as defined by the
38 Commissioner of Agriculture, Food and Markets, also are also exempted from the permit
39 requirements under Section 7.1. However, written notification, including a sketch plan of
40 the structure showing setback distances from road rights-of-way, property lines, and
41 surface waters shall be made to the Zoning Administrator prior to any construction as
42 required under the ~~AAPsRAPS~~.

1 **Section 7.3 Appeals**

2 (A) Decisions of the Zoning Administrator. In accordance with the Act [§§4465, 4472], the
3 applicant or any interested person may appeal a decision or act of the Zoning
4 Administrator by filing a notice of appeal with the Secretary of the ~~Board of~~
5 ~~Adjustment~~Development Review Board, or the Town Clerk if no Secretary has been
6 elected, within 15 days of the date of such decision or act.

7 (1) ~~As required by the Act [§4468], t~~The ~~Board of Adjustment~~Development Review
8 Board shall hold a public hearing on a notice of appeal within 60 days of the filing
9 of the appeal. The Board shall give public notice of the hearing as required under
10 Section 7.6, and mail a copy of the hearing notice to the appellant at least 15 days
11 prior to the hearing date.

12 (2) The ~~Board of Adjustment~~Development Review Board shall render a decision on
13 appeal, to include written findings of fact, within 45 days after close of hearing
14 ~~completion~~ as required by the Act [§4464]. The Board may reject an appeal without
15 hearing, and render a decision within 10 days of the filing of a notice of appeal, if
16 the Board determines that the issues raised by the appellant have been decided in an
17 earlier appeal, or are based on substantially or materially the same facts, by or on
18 behalf of the appellant. Copies of the decision shall be mailed to the appellant and
19 hearing participants, and filed with the Zoning Administrator and Town Clerk in
20 accordance with the Act.

21 (B) Decisions of the ~~Board of Adjustment or Planning Commission~~Development Review
22 Board. The applicant or any interested person who has participated in the proceeding
23 may appeal a decision of the ~~Board of Adjustment or Planning Commission~~Development
24 Review Board within 30 days of such decision to the Vermont Environmental Court, in
25 accordance with the Act [§§4471, 4472]. Notice of appeal shall be sent to every
26 interested person appearing and having been heard at the hearing before the Board ~~or~~
27 ~~Commission~~.

28 (C) Notice of Appeal. ~~Pursuant to the Act [§4466], a~~A notice of appeal shall be in writing
29 and include:

- 30 (1) the name and address of the appellant;
- 31 (2) a brief description of the property with respect to which the appeal is taken;
- 32 (3) a reference to applicable bylaw provisions;
- 33 (4) the relief requested by the appellant, including any request for a variance from one
34 or more provisions of these bylaws;
- 35 (5) the alleged grounds why such relief is believed proper under the circumstances; and
- 36 (6) any request for a stay of enforcement which may be granted or denied by the
37 Vermont Environmental Court in accordance with the Act [§4449(a)(3)].

38 **Section 7.4 Variances**

39 (A) The ~~Board of Adjustment~~Development Review Board shall hear and decide upon
40 requests for variances pursuant to the Act [§4469] and appeal procedures under Section
41 7.3. The Board may grant a variance, and render a decision in favor of the appellant,

1 only if all of the following facts are found, and the findings are specified in its written
2 decision:

- 3 (1) that there are unique physical circumstances or conditions, including irregularity,
4 narrowness, or shallowness of lot size or shape, or exceptional topographical or
5 other physical conditions peculiar to the particular property, and that unnecessary
6 hardship is due to such conditions and not the circumstances or conditions generally
7 created by the provisions of the zoning regulation in the neighborhood or district in
8 which the property is located;
- 9 (2) that because of such physical circumstances and conditions, there is no possibility
10 that the property can be developed in strict conformity with the provisions of the
11 zoning regulation and that the authorization of a variance is necessary to enable the
12 reasonable use of the property;
- 13 (3) that the unnecessary hardship has not been created by the appellant;
- 14 (4) that the variance, if authorized, will not alter the essential character of the
15 neighborhood or district in which the property is located, substantially or
16 permanently impair the appropriate use or development of adjacent property, reduce
17 access to renewable energy resources, nor be detrimental to the public welfare; and
- 18 (5) that the variance, if authorized, will represent the minimum that will afford relief
19 and will represent the least deviation possible from the zoning regulation and from
20 the plan.

21 (B) ~~On an appeal for a variance from the provisions of these bylaws that is requested for a~~
22 ~~structure that is primarily a renewable energy resource structure, the Board may grant~~
23 ~~such variance only if it finds that all of the facts listed in the Act [§4469] are found in the~~
24 ~~affirmative and specified in its decision.~~

25 ~~(DB)~~ In granting a variance, the Board of Adjustment Development Review Board may impose
26 conditions it deems necessary and appropriate under the circumstances to implement the
27 purposes of these bylaws and the municipal plan currently in effect. In no case shall the
28 Board of Adjustment Development Review Board grant a variance for a use which is not
29 permitted or conditionally permitted within the zoning district, or which results in an
30 increase in allowable density.

31 (C) Variances within the Flood Hazard Area Overlay District shall be granted by the ~~Board of~~
32 ~~Adjustment Development Review Board~~ only:

- 33 (1) in accordance with the Act [§4469, §4424] and in accordance with the criteria for
34 granting variances found in 44 CFR, Section 60.6, of the National Flood Insurance
35 Program regulations;
- 36 (2) upon a determination that during the base flood discharge the variance will not
37 result in increased flood levels; and
- 38 (3) upon a determination that the structure or other development is protected by
39 methods that minimize flood damages during the base flood and create no
40 additional threats to public safety.
- 41 (4) Any variance issued in the Special Flood Hazard Area will inform the applicant in

1 writing over the signature of the Zoning Administrator that the issuance of a
2 variance to construct a structure below the base flood elevation increases risk to life
3 and property and will result in increased flood insurance premiums up to amounts
4 as high as \$25 for \$100 of coverage. Such notification shall be maintained with a
5 record of all variance actions.³

6 ~~(D) In granting a variance, the Board of Adjustment may impose conditions it deems~~
7 ~~necessary and appropriate under the circumstances to implement the purposes of these~~
8 ~~bylaws and the municipal plan currently in effect. In no case shall the Board of~~
9 ~~Adjustment grant a variance for a use which is not permitted or conditionally permitted~~
10 ~~within the zoning district, or which results in an increase in allowable density.~~

11 **Section 7.5 Violations & Enforcement**

12 (A) Violations. The commencement or continuation of any land development or use which is
13 not in conformance with the provisions of these bylaws shall constitute a violation. The
14 Zoning Administrator shall take appropriate action in the name of the Town to enforce
15 the provisions of these bylaws in accordance with the Act [§§4451, 4452]. All fines
16 imposed and collected for violations of these bylaws shall be paid over to the Town.

17 (B) Notice of Violation. ~~As set forth in the Act [§4451], n~~No action may be brought under
18 this Section unless the alleged offender has had at least seven days' notice by certified
19 mail that a violation exists. The warning notice shall state that a violation exists, the
20 nature of that violation, that the alleged offender has an opportunity to cure the violation
21 within the seven days and that the alleged offender will not be entitled to an additional
22 warning notice for the violation occurring after the seven days. Action may be brought
23 without notice and opportunity to cure if the alleged offender repeats the violation of the
24 bylaw after the seven-day notice period and within the next succeeding 12 months.

25 (C) Limitations on Enforcement. The Town shall observe any limitations on enforcement
26 proceedings relating to municipal permits and approvals. Enforcement proceedings must
27 be instituted within 15 years from the date the violation first occurred. The burden of
28 proving the date that the alleged violation first occurred shall be on the person against
29 whom the enforcement action is instituted.

30 (D) Violations in the Flood Hazard Overlay. Notwithstanding 7.5(C) above, a violation in the
31 Flood Hazard Overlay shall remain a violation until such violation is cured.

32 (1) A copy of the notice of violation will be mailed to the State National Flood
33 Insurance Program Coordinator.

34 (2) If any appeals have been resolved, but the violation remains, the Zoning
35 Administrator shall submit a declaration to the Administrator of the National Flood
36 Insurance Program requesting a denial of flood insurance to the property pursuant
37 to Section 1316 of the National Flood Insurance Act of 1968, as amended.

38 (3) Violations of Required Agricultural Practices shall be enforced under this Section
39 as violations of this bylaw. Such violations shall also be immediately reported to the

³ Required for NFIP, 44 CFR Section 60.6 (a) (5)

Section 7.6 Municipal Administrative Requirements

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

(1) Zoning Administrator. The Zoning Administrator shall be nominated by the Planning Commission, with the approval of and appointed by the Selectboard, shall appoint a Zoning Administrator for a term of 3 years in accordance with the Act [§4448]. In the absence of the Zoning Administrator, the Planning Commission may nominate and the Selectboard appoint an Acting Zoning Administrator ~~may be appointed by the Planning Commission in consultation with the Selectboard~~. The Zoning Administrator shall administer these bylaws literally, and shall not have the power to permit any development that is not in conformance with it.

(2) ~~Board of Adjustment~~Development Review Board. ~~The Board of Adjustment existing on the date of adoption of these bylaws shall continue as the Board of Adjustment and the terms of its respective members shall be the same as they were on the effective date.~~ Members of the Development Review Board, which may consist of the members of the Planning Commission, shall be appointed by the Selectboard [§4460]. One or more alternates also may be appointed by the Selectboard to serve for members in the event of an absence or conflict of interest. The Board shall adopt rules of procedure to guide its official conduct in accordance with the requirements of the Act [§4461] and Vermont’s Open Meeting Law [1 V.S.A., §310-314]; and shall have quasijudicial powers and duties as set forth in the Act to administer the provisions of these bylaws, including but not limited to the power to hear and decide:

- requests for access approval under Section 3.3;
- ~~requests for subdivision approval under Section 6.1 and~~
- applications for conditional use approval under Section 5.2 and Section 5.3;
- applications for planned residential and planned unit developments under Section 5.4.
- ~~▪ applications for conditional use approval under Section 5.2;~~
- requests for subdivision approval under Section 6.1 and
- appeals from any decision, act or failure to act by the Zoning Administrator under Section 7.3; and
- variance requests under Section 7.4.

(3) Planning Commission. ~~The Planning Commission existing on the date of adoption of these bylaws shall continue as the Planning Commission and the terms of its respective members shall be the same as they were on the date of adoption.~~ The Planning Commission shall be appointed by the Selectboard ~~unless otherwise elected by the voters of the Town in accordance with the Act [§§4321, 4323]~~. The Commission shall adopt rules of procedure to guide its official conduct in accordance with the requirements of the Act [§4323] and Vermont’s Open Meeting

1 Law [1 V.S.A. 310-314]; and shall have legislative powers and duties as set forth in
2 the Act [§4325], including but not limited to the power to hear and decide requests
3 and petitions for bylaw amendments.;

4 ~~requests for access approval under Section 3.3;~~

5 ~~requests for subdivision approval under Section 6.1 and~~

6 ~~applications for planned residential and planned unit developments under Section~~
7 ~~5.4.~~

- 8 (B) Fee Schedule. The Selectboard shall establish a schedule of fees to be charged in
9 administering these regulations, with the intent of covering the town's administrative
10 costs.
- 11 (C) Hearing Notice Requirements. ~~As required by the Act [§4464], a~~Any public notice
12 required for public hearing under these bylaws shall be given by the publication of the
13 date, place and purpose of such a hearing in a newspaper of general circulation in the
14 Town, and the posting of such notice in three or more public places within the Town
15 including posting by the applicant of a notice of hearing within view from the public
16 right-of-way most nearly adjacent to the property for which an application is made, not
17 less than 15 days prior to the hearing date. Failure by the applicant to comply with this
18 requirement may result in the denial of the application. Written notification of the hearing
19 shall be sent by mail to the applicant and to all adjoining property owners. The applicant
20 will be required to provide a list of adjoining property owners to the Administrator for
21 notification purposes.
- 22 (D) Permit Recording Requirements. As required by
23 the Act [§4443(c)], within 30 days after a
24 municipal land use permit, including but not
25 limited to a zoning permit and associated
26 approvals, has become final, or within 30 days
27 of the issuance of a notice of violation, the
28 Zoning Administrator shall deliver the notice of
29 violation, or memorandum or notice of
30 recording, to the Town Clerk for recording as
31 provided in 24 V.S.A. subsections 1154(a) or
32 (b). The applicant ~~may shall~~ be charged the cost
33 of recording fees.
- Municipal Land Use Permit:** a zoning, subdivision, site plan or building permit or approval, any of which relate to land development as defined in statute, which has received final approval from the applicable board, commission, or officer of the municipality [24 V.S.A. §4303(11)].
- 34 (E) Flood Hazard Overlay ~~District~~ Recording Requirements. For development within the
35 Flood Hazard Overlay ~~District~~, the Zoning Administrator shall also maintain a record of:⁴
- 36 (1) All permits issued in areas covered by this bylaw;
- 37 (2) Elevation Certificates with the as-built elevation (consistent with the datum of the
38 elevation on the current Flood Insurance Rate Maps for the community) of the
39 lowest floor, including basement, of all new or substantially improved buildings

⁴The NFIP requires records to be kept of permits including variances, elevations of new or substantially improved structures, flood proofing, and related certifications. CFR 60.3 (b) (5)

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(not including accessory buildings) in the Special Flood Hazard Area;

(3) All flood proofing and other certifications required under this regulation; and,

(4) All decisions of the Development Review Board (including variances and violations) and all supporting findings of fact, conclusions and conditions.

~~(1) all permits issued for development in areas of special flood hazard;~~

~~(2) the elevation, in relation to mean sea level, of the lowest floor, including basement, or all new or substantially improved buildings;~~

~~(3) the elevation, in relation to mean sea level, to which buildings have been floodproofed;~~

~~(4) all elevation and floodproofing certifications required under this regulation; and~~

~~(5) all variance actions, including the justification for their issuance.~~

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