

ARTICLE II ADMINISTRATIVE PROCEDURES

Section 200: Purpose

The purpose of this Article is to:

- A. Provide for the orderly, equitable, and fair administration of zoning regulations.
- B. Encourage a collaborative and collegial approach between the public and town administrators in achieving compliance with zoning regulations.
- C. Protect the rights and interests of the public and the town of Wilmington in compliance with state laws and regulations.

Section 210: Role of the Zoning Administrator

Section 211: The Role of the Administrative Officer, referred to in this document as “Zoning Administrator”.

The provisions of this ordinance shall be administered and enforced by a Zoning Administrator appointed by the Selectboard. The Zoning Administrator shall administer this ordinance literally, and shall not have the power to Permit land development that is not in conformity with this ordinance. 24 V.S.A. § 4448(a)

Section 212: Land Development Zoning Permits Issued by the Zoning Administrator

Land development as defined herein, which is subject to these regulations, shall not be commenced until a zoning Permit has been issued by the Zoning Administrator, as provided for in 24 V.S.A. § 4449.

Changes in Use as defined herein, shall not commence until a zoning Permit has been issued by the Zoning Administrator, and in the case of Conditional Uses, the Development Review Board. A Change of Use occurs when a Use within a Structure or property changes to another Use of the Structure or property. Changes in Use where the new Use is substantially similar to the prior Use will not be considered a Change in Use for the purposes of this Zoning Ordinance. Any Change in Use that is not substantial similar to the prior Use, even if within the same category of Use must obtain any written decision and approval and/or permit as defined in this ordinance.

Any proposed development not in strict conformity with the requirements of this zoning ordinance or where the applicability and intent of the provisions of this zoning ordinance as relates to the proposed development are unclear shall be referred to the Development Review Board. No zoning permit shall be issued on such a proposed development prior to receiving the written decision and approval from the Development Review Board.

A new Permit may not be issued by the Zoning Administrator for any property on which a Notice of Violation has been issued, except to cure the Violation.

A. Issuance of Zoning Permit: A zoning Permit may not be issued by the Zoning Administrator except in conformity with this ordinance and in accordance with 24 V.S.A. § 4449 and the following provisions:

1. **Within thirty (30) days of receipt** of a complete application, including all application materials and fees, the Zoning Administrator shall act to either issue or deny a zoning Permit in writing, or to refer the application to the Development Review Board. In accordance with 24 V.S.A. § 4448 and § 4449, if the Zoning Administrator fails to act within the thirty (30) day period, a Permit shall be deemed issued on the thirty-first (31st) day.
2. A zoning Permit shall not be issued by the Zoning Administrator for any Use or Structure that requires a written decision and approval of the Development Review Board, until such written decision and approval has been obtained.
3. A zoning Permit shall include a statement of the time within which Appeals may be taken under 24 V.S.A. § 4465, and shall require posting of a notice of Permit, on a form prescribed by the municipality, within view of the nearest public right-of-way until the time for Appeal has expired, pursuant to 24 V.S.A. § 4449(b).
4. **Within three (3) business days of the date of issuance** the Zoning Administrator shall deliver a copy of the zoning Permit to the Listers and shall post a copy of the Permit in the municipal offices **for a period of fifteen (15) days** from the date of issuance. For Permits for new construction, substantial Structure change, or occupancy, the Zoning Administrator shall also deliver a copy to:
 - i. the chief of the fire department, and
 - ii. the chief of police.
5. If public notice has been issued by the Selectboard for their first Public Hearing on a proposed amendment to these regulations, **for a period of one hundred fifty (150) days** following that notice the Zoning Administrator shall review any new application filed for compliance with the proposed amendment and applicable existing bylaws. If the new bylaw or amendment has not been adopted by the conclusion of the one hundred fifty (150) day period, or if the proposed bylaw or amendment is rejected, the Permit shall be reviewed under all applicable provisions of this bylaw, pursuant to 24 V.S.A. § 4449(d).

B. Effective Date of Zoning Permit: A zoning Permit issued pursuant to this Section **shall not take effect until the time for Appeal has passed, which is the 15th day following the issuance of said Permit** [24 V.S.A. § 4465], or in the event that a notice of Appeal is properly filed, such Permit shall not take effect until the final adjudication of such Appeal.

C. Duration: A zoning **Permit shall be valid for a period of twenty-four (24) months** from the date of issuance. If all authorized activities are not substantially completed within twenty-four (24) months, the zoning Permit shall expire and a new zoning Permit or an extension of the existing Permit shall be required.

D. Notice of Expiration: The Zoning Administrator will **notify the Permittee in writing 60 days prior to the expiration** of the Permit if notice of completion has not been received by the Zoning Administrator. The Zoning Administrator shall, within 30 days of notice

of completion or expiration of the Permit, whichever comes first, visit the site to assess compliance with Permit requirements and the provisions of the zoning ordinance.

E. Extensions: The Zoning Administrator may grant one extension to a zoning Permit when any of the following circumstances exist:

1. Weather conditions interfere with work.
2. Inability of the applicant to obtain all necessary State or Federal Permits in time to meet the expiration date.
3. Contractual or Permit obligations or pending litigation cause a delay.

The Zoning Administrator shall not grant an extension if the Zoning Bylaw has been subsequently amended and the amendment relates in any manner to the application, or if a Site Plan written decision and approval from the Development Review Board required for issuance of the zoning Permit has expired.

F. Posting of Permit Notice: Pursuant to 24 V.S.A. § 4449(b) the **Permittee must post the Permit Notice “within view from the public right-of-way most nearly adjacent to the subject property until the time for Appeal has passed, which is the 15th day following the issuance of said Permit [24 V.S.A. § 4465].”** (Refer to Section 275 of this Article for Appeal procedures.)

Section 213: Sign Permits Issued by the Zoning Administrator

A Sign Permit shall be secured from the Zoning Administrator based on Permit requirements outlined in Article VIII Sections 840, 841, 842, 843, and 844.

Section 214: Administrative Waivers Granted by the Zoning Administrator

Waivers may be granted by the Zoning Administrator (Development Review Board written decision and approval is not required) for relief from dimensional requirements for existing buildings under the following conditions:

- A. To improve access for disabled persons, except in the Historic Design Review District, which must be reviewed by the Development Review Board
- B. To improve fire safety
- C. To construct an entryway with a footprint of not more than 25 square feet
- D. To construct an exterior stairway
- E. To install weather proofing and exterior insulation
- F. To allow for non-substantial alteration, extension, or other change (as determined by the Zoning Administrator) to a Development Review Board decision. Substantial alteration includes substantial site plan change, design change, or other change to a Conditional Use that will affect one or more of the Conditional Use standards or other criteria of the zoning ordinance.

Waiver Criteria: Waivers meeting these criteria may be granted by the Zoning Administrator if the waiver is:

- A. For the minimum size necessary to serve its intended function.
- B. No front setback is reduced to less than two (2) feet, except in the Historic Design Review District where it may be zero (0).
- C. The waiver is not to the detriment of the public welfare, including the safety and maintenance of the Town and State highways.

Section 215: Enforcement & Assessment of Penalties by the Zoning Administrator

The Zoning Administrator is responsible for the enforcement of the zoning ordinance and for assessing penalties for violations. The commencement or continuation of any land development or construction, or the erection, alteration or enlargement of a sign, without a Permit, that does not meet the requirements of these regulations, shall constitute a violation. All violations shall be pursued in accordance with 24 V.S.A. § 4451 and § 4452.

The Zoning Administrator shall enforce conformity with this ordinance. Pursuant to 24 V.S.A. § 4451, no such action will be taken until seven (7) days after the violator has received written notice of violation by certified mail stating the nature of the violation and the opportunity to correct the violation without penalty. No seven (7) day advance notice is required for repeat offenses or violations.

Section 216: Penalties for Violations

Pursuant to 24 V.S.A. § 4451(a), penalties are enforceable under this zoning ordinance for up to a maximum of \$200 for each offense, as defined in the table below. As required by 24 V.S.A. § 4451(a) **each day of violation without taking action to correct the violation is a new offense.**

The Zoning Administrator may suspend the imposition of a Penalty, for that time period when the violator is actively and expeditiously working toward resolution of the violation. At any time the violator is not working actively and expeditiously toward resolution, the violation will be reinstated and Penalties applied.

Penalties on any violation with a current Appeal action will be suspended during the Appeal process. Any violation not rectified through the Appeal process will have Penalties reinstated.

Tickets, enforceable through the Environmental Courts, will be issued for Penalties as defined below. Failure to pay an applicable fine within 30 days will result in doubling of the amount of the fine. Fines are payable to the Town of Wilmington.

Table of Penalties:

Article II- Administrative Procedures	First Day of Offense	Each Subsequent Day of Offense
Erection of a Large Structure without obtaining necessary Permit and/or a written decision and approval (over 150 sq ft in area, 10 ft high)	\$200	\$200
Use of a property or Structure without obtaining necessary Permit and/or written decision and approval	\$50	\$100
Article VII – Standards (see also Articles V, VI & IX)	First Day of Offense	Each Subsequent Day of Offense
Failure to comply with Standards	\$50	\$50
Article VIII - Signs	First Day of Offense	Each Subsequent Day of Offense
Erection of a sign without obtaining necessary Permit or written decision and approval	\$20	\$20
Failure to maintain signs in good repair	\$20	\$20
Failure to remove signs within 90 days of discontinuing business	\$20	\$20
Failure to comply with Sign Standards	\$20	\$20

- A. No penalty will be assessed until seven (7) days after the violator has received written notice of the violation by certified mail stating the nature of the violation and the opportunity to correct the violation without penalty within the seven (7) days as provided for in 24 V.S.A. § 4451(a).
- B. No seven (7) day advance notification is required for each new offense or each repeat violation within a twelve (12) month period as provided for in 24 V.S.A. § 4451(a).
- C. A court action under this Section may be initiated in the environmental division or, as appropriate, before the judicial bureau, as provided in 24 V.S.A. § 4452.
- D. The environmental division shall have the authority to revoke any Permit if it determines that the Permittee violated the terms of the Permit or obtained the Permit based on misrepresentation of material facts, as provided for in 24 V.S.A. § 4455.
- E. Actions, injunctions, or other enforcement proceedings related to failure to comply with the terms and conditions of this zoning ordinance must be instituted within fifteen (15) years of the date of the first violation, except in the case of abating or removing public health risk or hazards; as provided for in 24 V.S.A. § 4454.
- F. Housing provisions of this zoning ordinance may be challenged to the Attorney General as provided for in 24 V.S.A. § 4453.

Section 217: Zoning Administrator Maintains an Activity Log

The Zoning Administrator shall keep a daily Activity Log in the Administrative Office and available to the public. The Activity Log shall include a full and accurate record of activity including Permittee information and actions taken, including but not limited to:

- 1) Type of Permit issued: Structure, Use, Sign
- 2) Development Review Board written decision and approval Required Y/N
- 3) Incomplete applications
- 4) Permits denied
- 5) Administrative Waivers granted
- 6) Administrative Extensions granted
- 7) Complaints received
- 8) Violations identified
- 9) Notices of Violation issued
- 10) Violations rectified
- 11) Penalties levied
- 12) Penalties collected

A copy of the monthly Activity Log will be provided to the Selectboard, the Planning Commission, and the Development Review Board as of the first of each month. Inactive Activity Logs will be archived as a permanent record of the Town of Wilmington.

The Zoning Administrator shall record all violations in the Land Record for the Town of Wilmington pursuant to 24 V.S.A. § 4449(c).

Section 218: Zoning Administrator Maintains a Database of Signs

The Zoning Administrator is encouraged to establish and maintain a log of all Signs in the Town of Wilmington, VT, including but not limited to 1) the date or approximate date the sign was erected (if available), and 2) whether the sign a) predated zoning, b) obtained a Permit, c) is in conformity with all applicable zoning regulations.

Section 219: Zoning Administrator Maintains a Database of New Construction

The Zoning Administrator shall establish and maintain a log of all new construction in the town of Wilmington, Vermont taking place on or after the effective date of this Article revision. For each construction the Zoning Administrator shall establish and record information, including not limited to 1) the date or approximate date the construction was started, 2) whether the construction was Permitted, 3) and whether the construction was completed in conformity with all applicable zoning regulations.

Section 220: The Development Review Board

Section 221: The Role of the Development Review Board

The Development Review Board is governed by 24 V.S.A. § 4303(3) and § 4460 addressing Appropriate Municipal Panels (AMPs). The Development Review Board as an AMP is defined as follows:

- A. The Selectboard shall appoint a Development Review Board as provided by law. [24 V.S.A. § 4460 and § 4461]
- B. The Development Review Board shall consist of at least five (5) persons and up to three (3) alternates.
- C. The Development Review Board shall adopt rules of procedure and rules of ethics with respect to conflicts of interest to guide its official conduct, as required under the Act and Vermont's Open Meeting Law.
- D. The Development Review Board shall hold hearings as provided for in 24 V.S.A. §§ 4460-4470. Pursuant to 24 V.S.A. § 4464(b)(1), after closing a hearing the Development Review Board approves or disapproves the applicant's development plan.

Section 222: Land Development and Uses Requiring Development Review Board Written Decision and Approval

The Development Review Board shall perform review functions, including but not limited to review of and making quasi-judicial decisions on the following:

- A. Conditional Uses: Conditional Uses require public hearing and a written decision and approval by the Development Review Board (except in the case of Agriculture and Silviculture/forestry Uses that are governed by the provisions of 24 V.S.A. § 4413(d)). Review of proposed Conditional Uses is authorized by 24 V.S.A. § 4414(3) including:
 - 1. **Changes in Use or a new Use** that is a substantial expansion similar to the prior Use, even within the same category of Use (i.e.; Real Estate Service Business change to Hair Dresser Service Business,
 - 2. **New or substantial Land Development** as defined in this ordinance.
 - 3. **General and Specific Standards** conformity with standards of land development including construction, re-construction or modifications to Structures.
 - 4. **Use Specific Standards** applying to certain Permitted Uses.
 - 5. **Performance Standards** requirements applying to all Conditional Uses. 24 V.S.A. § 4414(3)(B) and 24 V.S.A. § 4414(5)
 - 6. **Commercial Parking and/or Loading Area** requirements applying to all Conditional Uses. 24 V.S.A. § 4414(4)
- B. Nonconforming Structures, Lots and/or Uses: All Land Development and changes to Nonconforming Structures, Lots and/or Uses.
- C. Planned Unit Developments (a Conditional Use): Review of all Planned Unit Developments (PUDs) as authorized in 24 V.S.A § 4417.
- D. Site Plan Review: Review of all Conditional Uses applying Site Plan Review requirements. 24 V.S.A. § 4416.
- E. Design Review Districts: Review land development or Use within a Design Review District. 24 V.S.A. § 4414(1)(E). The Wilmington Historic Design Review District is a Design Review District. It is not a Historic District as governed by 24 V.S.A. § 4414(1)(F).

- F. Waivers or Variances: Review Waiver or Variance requests. 24 V.S.A. § 4414(8) and 24 V.S.A. § 4469
- G. Right-of-way Easements: Review right-of-way or easement for land development without frontage. 24 V.S.A. § 4412(3)
- H. Telecommunications: Reviews Wireless Telecommunications Facilities. 24 V.S.A. § 4414(12)
- I. Flood Hazards: Review Flood Hazard compliance consistent with Article VI, Flood Hazard Area Regulations. 24 V.S.A. § 4414(1)(G) and § 4424
- J. Review Appeals of the decisions, acts, or failures to act by the Zoning Administrator as provided for in 24 V.S.A. § 4465
- K. Extensions: Grant extensions to prior Development Review Board written decision and approval for Land Development or Use.

Section 223: Development Review Board Site Plan and Design Review

Site Plan and Design Review is required for all Development Review Board reviews as defined above. The goals of Site Plan and Design Review are:

- A. To build on the architectural patterns and landscapes that fit the character of the community.
- B. To preserve and enhance the historic architectural patterns and agricultural landscapes of the town, maintaining the character of the community and a tourism corridor along the major highways through the Designated Downtown area.
- C. To preserve the historical character of the Structures recognized by the National and State Register of historic places.
- D. To promote economic development.
- E. To sustain and enhance the physical attributes and natural beauty of the town.
- F. To provide community services meeting the needs of the residents.
- G. To provide for the health, safety, and wellness of the community.

Section 224: Development Review Board Site Plan and Design Review Submission Requirements

Any application for a zoning Permit for development subject to Development Review Board Review shall be made to the Zoning Administrator. Upon receipt of a complete application, the Zoning Administrator shall, within 30 days, submit it to the Development Review Board for a public hearing. Refer to Section 270 – 275 for additional information Development Review Board public hearings.

Prior to filing a completed application, property owners and their agents are encouraged to meet with the Zoning Administrator for a pre-application consultation. The applicant should bring to a pre-application consultation as many of the submission requirements (as defined below) as is available at the time of the consultation. While not required, the pre-application consultation provides an opportunity for the applicant and the Zoning Administrator to clarify the requirements and guidelines of this document and discuss materials that will be required for the hearing.

The application for Site Plan and Design Approval requires the following information when such information is necessary to fully understand the project and its impact on neighbors or the district. Should some aspects of the submission requirements not appear to be

applicable to a proposed project, the applicant should consult with the Zoning Administrator. Application submission requirements include:

- A. A fully completed application including all of the following:
 - a. Existing Site Plan: Lot layout including Lot dimensions, Structure dimensions and location, front, side and rear setbacks.
 - b. Photographs of existing buildings including structural features and materials.
- B. Existing Conditions of Development
- C. Proposed Changes
 - a. Proposed Site Plan: Lot layout including Lot dimensions, Structure dimensions and location, front, side and rear setbacks.
 - b. Planting and/or Landscaping Plan
 - c. Floor Plan

If deemed necessary to determine conformity with this ordinance, the Zoning Administrator and/or the Development Review Board may require:

- D. Survey map
- E. Material Samples
- F. Exterior Elevations
- G. Architectural Details
- H. Grading and Drainage Plan
- I. Utilities Plan
- J. In the case of historic preservation, expert materials and guidelines in support of the proposed changes, such as Historic Preservation Trust guidelines or US Government's National Park Service Preservation Briefs.

Section 225: Development Review Board Site Plan and Design Review Submission Fees

All applications to the Development Review Board shall be accompanied by the appropriate fees as established by the Selectboard to cover the cost of advertising, processing and recording of Memorandum of Municipal Action.

Section 226: Development Review Board Decisions

The Development Review Board shall gather evidence during the course of public hearings, deliberate on, and make findings on all cases presented to the Development Review Board. In determining conformity with zoning requirements the burden of proof shall fall on the applicant, property owner, and/or all successors and assigns.

The Development Review Board's role is to apply the provisions of this zoning ordinance. All Uses and Districts as well as Standards shall be applied. In the case of Standards specific to a certain type of Use, the Use Specific Standard shall take precedence over any Standard for other types of Uses. In the case of conflicting provisions the Standard for the Specific Use shall apply.

Board written decision and approval or disapproval shall be based on its judgment regarding the overall compatibility of the proposed project with the provisions of this ordinance. The

Development Review Board may attach such conditions to a decision that it deems necessary to meet the standards and criteria of the zoning ordinance

Pursuant to 24 V.S.A. § 4464(b)(1), **The Development Review Board shall, within 45 days of closing the public hearing, approve, approve with modifications, or deny such plans.** Failure of the Development Review Board to issue a written decision within this period shall be deemed approval and shall be effective on the 46th day. A deemed approval after the 46th day shall become effective only after the applicant petitions and receives approval from the Environmental Division of the Supreme Court.

Development Review Board written decisions shall address the requirements of the Districts & Uses (Article IV) and Standards (Article VII) of the zoning ordinance as well as the Site Plan and Design Guidelines (Appendix I). In addition, findings shall address such other provisions as may be applicable from the zoning ordinance, including but not limited to:

- Article III Boundary Lines and Subdivision
- Article V Design Review Districts
- Article VI Flood Hazard Area
- Article VIII Signs
- Article IX Telecommunications

For projects not involving complex state or federal Permitting, Development Review Board **decisions shall expire after no more than twenty-four (24) months** from the date of issuance. For projects involving complex state or federal Permitting, the Development Review Board **decision shall expire after no more than forty-eight (48) months** after date of issuance.

The zoning Permit issued by the Zoning Administrator as a result of a Development Review Board hearing and subsequent written decision resulting in an approval shall expire on the same date as the Development Review Board decision expires.

If all authorized activities are not substantially completed, as determined by the Zoning Administrator, prior to the expiration date of the Development Review Board decision and zoning Permit, the applicant may request an administrative extension from the Zoning Administrator. If no administrative extension is received from the Zoning Administrator, the Permit shall be deemed expired and a new hearing shall be required from the Development Review Board.

All changes substantially completed (as determined by the Zoning Administrator) prior to the expiration date and in conformity with the Development Review Board Decision will be considered legal and conforming to this ordinance. Development not determined to be substantially completed on the expiration date shall cease until an extension is issued by the Zoning Administrator or a new Development Review Board hearing is held and decision is issued.

Land Development occurring without obtaining a valid Permit or occurring with an expired Permit that has not received a valid extension is subject to Penalties as defined in this Article. (See sections 215 – 216).

Section 227: Plan Changes after Receiving a Development Review Board Decision

- A. Any substantial alteration or material change (as determined by the Zoning Administrator) to a plan approved by the Development Review Board shall require re-application and review by the Development Review Board.

Substantial alteration or material change means any change to a Permitted development plan approved by the Development Review Board which may have a significant adverse impact on any finding, conclusion, term or condition of the project's Permit or which may result in significant adverse impact with respect to any zoning criteria. This includes but is not limited to site plan and design changes.

- B. For minor, non-substantial changes (as determined by the Zoning Administrator) not involving substantial change in a site plan, design, or other change to a Conditional Use previously addressed in a decision of the Development Review Board, the Zoning Administrator may issue a zoning Permit under Article II Administrative Approvals authority. The Zoning Administrator shall report all such administrative approval amendments to the Development Review Board.

Section 228: State and Federal Permits and Development Review Board Decisions

- A. Any land development, construction, reconstruction, or Use subject to Act 250 pursuant to 10 V.S.A. § 151 shall be subject to the decisions of the Act 250 review and Permit process with regards to issues of:
- 1) Water and air pollution,
 - 2) Availability of sufficient water,
 - 3) Burden on existing water supplies,
 - 4) Soil erosion and soil water absorption,
 - 5) Impact on highway, transportation, transit networks and services,
 - 6) Burden on educational facilities,
 - 7) Burden on municipal and governmental services,
 - 8) Impact on aesthetics, scenic beauty, historic sites, natural areas, wildlife habitat, or endangered species,
 - 9) Conformity with local and regional capability and development plans impact on:
 - a. town or regional growth,
 - b. agricultural soils,
 - c. productive forest soils,
 - d. earth resources,
 - e. extraction of earth resources,
 - f. energy conservation,
 - g. private utility services,
 - h. cost of scattered development,
 - j. public utility services,
 - k. public investments impact, and
 - l. local and regional settlement patterns
 - 10) Conformity with local and regional plans or capital facilities program.

In addition to the findings of the Act 250 review, The Development Review Board may apply such other conditions, findings of fact and conclusions of law it deems necessary to ensure zoning ordinance conformity on the above issues.

For all other issues not addressed by Act 250, development projects shall be governed by and subject to the terms of this zoning ordinance including Development Review Board review and Permitting process as defined herein.

- B. Land development, construction, reconstruction and Uses may be subject to other Permitting as required by the state and federal governments.

State Permitting agencies include but are not limited to the Agency of Natural Resources, the Department of Labor & Industry, the Department of Health, the Agency of Human Services, the Agency of Transportation, the Agency of Agriculture, Food & Markets, and the Department of Liquor Control.

Federal Permitting includes but is not limited to work in wetlands, rivers and streams, lakes and ponds, and historic properties.

The applicant is responsible for determining need for and obtaining any needed State or Federal required Permits. For more information on obtaining state and federal Permits, contact the state Agency of Natural Resources Permitting Specialist.

The Development Review Board shall include in all decisions a statement of applicant responsibility for obtaining any needed State or Federal required Permits.

Section 229: Dimensional and Sign Waivers Granted by the Development Review Board [Pursuant to 24 V.S.A. § 4414(8)]

In the case of proposed development that does not meet the standards of this ordinance, Waivers may be requested only for dimensional requirements when seeking a written decision and approval from the Development Review Board. In applying for a Waiver, the burden of proof is on the Applicant to demonstrate that the Waiver request meets Waiver criteria. The Development Review Board may require a survey to be completed at the owner's expense, if essential to verify the location of property lines.

In the event that a Waiver is granted, the Permittee must comply with all other requirements of this Bylaw.

Section 230: Structural Enlargements Not Eligible for a Dimensional Waiver from the Development Review Board

Structural enlargements to Nonconforming Structures meeting the requirements of Section 706 do not require a Waiver but must receive a written decision and approval by Development Review Board. Structural enlargements that do not meet the requirements of Section 706 are prohibited and are not eligible for a Waiver.

Changes to Nonconforming Undeveloped Lots, including construction of a Structure, meeting the requirements of Section 707 do not require a Waiver but must receive the written decision and approval of the Development Review Board. Development of Nonconforming Undeveloped Lots not meeting the requirements of Section 707 are prohibited and are not eligible for a Waiver.

All changes to Nonconforming Structures, Lots and/or Uses must receive a written decision and approval of the Development Review Board.

For additional information on Structures, Lots and/or Uses that do not conform to the current zoning ordinance but which complied with the zoning ordinance in existence at the time the Structure, Lot and/or Use was created or established, see Article VII Section 705 - 709.

Section 231: Criteria for Obtaining a Dimensional Waiver from the Development Review Board

Waivers may be granted by the Development Review Board only for dimensional requirements. No Waivers shall be granted for Uses, densities or other non-dimensional requirements of this zoning ordinance. No Waivers shall be granted for the alteration, renovation, change or development of a Nonconforming Structure that does not meet the requirements of Section 705-709). No Waivers shall be granted for the development of a pre-existing Non-Conforming Lot that does not meet the requirements of Section 705 - 709.

The Development Review Board may grant a Waiver after assessing the criteria below and finding that the proposed development meet all of the following criteria:

- A. The proposed Land Development is impossible without actions that significantly exceed generally accepted development practices.
- B. The Waiver is for the minimum reduction in the dimensional requirement necessary to provide relief from the specific zoning requirements, provided that
 - 1. The Waiver does not increase the footprint of the building by more than five (5) percent, or by no more than two hundred (200) square feet, whichever is less.
 - 2. No front setback is reduced to less than two (2) feet, except in HDRD where there is a zero (0) setback.
- C. The proposed project is in conformity with the purpose of the Zoning district in which the land development is located and the Town Plan.
- D. The Waiver does not have an undue adverse impact on appropriate Use or development of abutting or neighboring properties.
- E. The proposed project does not have an undue adverse impact on the preservation of open spaces or scenic vistas.
- F. The proposed project will not have an undue adverse effect on the following:
 - 1. Highways, roads, traffic patterns and circulation
 - 2. Public interests, health, safety, and services
 - 3. Water and wastewater capacity

Section 232: Criteria for Obtaining a Sign Waiver from the Development Review Board

The Development Review Board may grant a Waiver to sign requirements if the sign is found to be in the public interest and will contribute to the character of the area and the community. (Refer to Article VIII, Section 850)

Waivers meeting these criteria may be granted by the Zoning Administrator if the waiver is:

1. For the minimum size necessary to serve its intended function.
2. The waiver is not to the detriment of the public welfare, including the safety and maintenance of the Town and State highways.

Section 233: Dimensional and Sign Waiver Application and Review Process of the Development Review Board

- A. An application to the Development Review Board for a dimensional or Sign Waiver may be made as part of, and simultaneously with, an application for Conditional Use review or as a separate application if Conditional Use review is not otherwise required.
- B. Pursuant to 24 V.S.A. § 4460(e), the application shall come to the Development Review Board either as 1) an application from the property owner, 2) an Appeal of a decision made by the Zoning Administrator, or 3) as a referral from the Zoning Administrator.
- C. The application for a Waiver shall follow the same procedure used for Conditional Use review, approvals, and Appeals. (See Section 222 thru 226 of Article II)
- D. The Development Review Board shall assess the impact on abutters in deciding whether to grant the Waiver, or to place conditions in the written decision..
- E. In granting a decision in favor of the Applicant, the Development Review Board may attach reasonable conditions including mitigation by design, screening, or other remedy.
- F. Any Waiver granted under this Section shall be limited to the specific property to which it has been granted. A Waiver on one property shall not be construed as a general guideline or standard for any other property.
- G. Waiver written decisions and approval shall expire if work is not substantially completed within twenty-four (24) months from the date they are approved. All work shall be substantially completed as shown on any approved plan before the expiration date. The Zoning Administrator shall be notified upon completion of the work. The DRB may grant an extension if an Application for an Extension is submitted prior to expiration of the Waiver.

Section 234: Dimensional Variances Granted by the Development Review Board for Other than Renewable Energy Resource Structures

The Development Review Board shall hear and decide requests for dimensional Variances pursuant to 24 V.S.A. § 4469. No Variances shall be granted for zoning requirements other than Dimensions. The Development Review Board shall grant a Variance and render a decision in favor of the appellant only if **all** of the following facts are found and the findings are specified in its written decision:

- A. 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 these regulations in the neighborhood or district in which the property is located,
- B. Because of these physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of these regulations

and that the authorization of a Variance is necessary to enable the reasonable Use of the property,

- C. Unnecessary hardship has not been created by the appellant,
- D. 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, and
- E. The Variance, if authorized, will represent the minimum Variance that will afford relief and will represent the least deviation possible from these regulations and from the Town Plan.

Section 235: Dimensional Variances Granted by the Development Review Board for Renewable Energy Resource Structures

The Development Review Board shall hear and decide requests for Dimensional Variances pursuant to 24 V.S.A. § 4469. No Variances shall be granted for zoning requirements other than Dimensions. The Development Review Board may grant a Dimensional Variance and render a decision in favor of the appellant only if **all** of the following facts are found and the findings are specified in its written decision:

- A. It is unusually difficult or unduly expensive for the appellant to build a suitable renewable energy resource Structure in conformance with the bylaws,
- B. The hardship was not created by the appellant,
- C. 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, and
- D. The Variance, if authorized, will represent the minimum Variance that will afford relief and will represent the least deviation possible from these regulations and from the Town Plan.

Section 240: Appeals

Any decision, action, or failure to act of the Zoning Administrator or Development Review Board may be appealed. Processes and procedures relating to filing an Appeal follow.

Section 241: Appealing Decisions, Acts, or Failures to Act by the Zoning Administrator

Any person may Appeal any decision, act, or failure to act by the Zoning Administrator pursuant to 24 V.S.A. § 4465.

Section 242: Timeframe for Appealing a Decision, Act, or Failures to Act by the Zoning Administrator

An appeal of a decision, action, or non-action by the Zoning Administrator must be filed within 30 days of that decision, action, or failure to act.

Section 243: Where to Send an Appeal of a Decision, Act, or Failures to Act by the Zoning Administrator

Appeals regarding the decisions, actions, or lack of actions by the Zoning Administrator are made in writing to the Development Review Board. A copy shall be provided to the Zoning Administrator.

Section 244: Appealing a Zoning Decision, Zoning Administrator Act, or Failures to Act

The Development Review Board hears and decides Appeals, including those Appeals of determinations, actions, or failures to act by the Zoning Administrator in compliance with this ordinance. (See Section 240 – 245 of Article II)

Prior to initiating an Appeal of a decision or applying for a Variance the applicant may first request a Waiver from the Development Review Board.

In certain situations Waivers may be granted by the Zoning Administrator. Refer to Section 214 of Article II for Zoning Administrator Waivers. A Waiver for dimensional requirements (other than density), Uses, or signs, may be granted by the Development Review Board if the case meets the criteria outlined in Sections 229 – 233 of Article II.

In the event that an Appeal of a Zoning Administrator decision, act, or failure to act is filed, the Development Review Board will hold a public hearing. The Development Review Board will set a date and place for public hearing of the Appeal and provide public notice of hearing as outlined in Section 270 - 275

As a result of the hearing the Development Review Board may 1) uphold the prior decision, 2) overturn the prior decision, or 3) determine that a Variance, with or without conditions (pursuant to 24 V.S.A. §§ 4469 and 4469(c)), may be allowed for the case, as defined in Section 226 - 228 of this Article.

Section 245: Successive Appeals

Requests for reconsideration of an Appeal may be made by providing notice to the Development Review Board, in which case another Appeal hearing may be scheduled. The Development Review Board may reject an Appeal for reconsideration and render a decision without hearing within 10 days of the date of receiving notice of Appeal if the Development Review Board finds the issues have been decided in an earlier Appeal or involve substantially or materially the same facts presented at the prior Appeal. 24 V.S.A. § 4470(a).

Section 246: Appealing Decisions, Acts, or Failures to Act of the Development Review Board

Appeals regarding the decisions, actions, or lack of actions of the Development Review Board are to be made in writing to the Environmental Court within 30 days of the decision, act, or failures to act. Refer to Vermont Rules for Environmental Court Proceedings (V.R.E.C.P.) 5 section (b)(1) for rules on filing an Appeal to the Environmental Court. Enforcement may be by mandate, injunction, process of contempt, or otherwise, pursuant to 24 V.S.A. § 4470(b).

Section 247: Authority for Enforcement

Decisions of the Zoning Administrator and the Development Review Board are enforced by the Town of Wilmington and upon petition, complaint, Appeal, or otherwise, the state's superior court civil or environmental division. 24 V.S.A. § 4470(b).

Section 250: The Role of the Planning Commission

Section 251: The Role of the Planning Commission in Adopting Changes to Zoning Bylaws and the Town Plan

The Planning Commission is made up of three (3) to nine (9) volunteer members appointed by the Selectboard for a term of one (1) to four (4) years. (24 V.S.A. § 4322, 4323) The Planning Commission includes Selectboard members as ex-officio, non-voting members of the Planning Commission (24 V.S.A. § 4322)

The Planning Commission prepares, holds public hearings on, and recommends to the Selectboard changes to the Town Plan (24 V.S.A. § 4349), zoning ordinances and bylaws, in addition to such other duties as may be defined in 24 V.S.A. § 4325.

The Planning Commission reviews, interviews, and recommends to the Selectboard appointments to the position of Zoning Administrator. 24 V.S.A. § 4448.

Section 260: The Role of the Selectboard

Section 261: The Role of the Selectboard in Appointing Planning Commission, Development Review Board, and Zoning Administrator

The Selectboard is the legislative body that appoints volunteers to their roles on the Planning Commission and the Development Review Board. Appointments are generally for a three (3) year term, but this may vary based on special circumstances such as in filling the remaining tenure of a previously filled position.

The Selectboard receives Zoning Administrator appointment recommendations from the Planning Commission. The Selectboard makes all final decisions and appointments on selecting a Zoning Administrator. The Zoning Administrator reports to the Town Manager, as a delegated authority from the Selectboard.

Section 262: The Role of the Selectboard in Adopting Changes to Zoning Ordinances, Bylaws and Town Plan

After the Planning Commission prepares, holds hearing on, and recommends changes to the Town Plan, zoning ordinance, or bylaws they submit the new recommended zoning bylaws, ordinances or Town Plan to the Selectboard. The Selectboard receives recommended changes to Zoning Bylaws from the Planning Commission (see Section 251 of this Article) The Selectboard holds hearings on and makes all final determinations on zoning ordinance, bylaw or Town Plan changes and adopts them.

Section 263: The Role of the Selectboard in Enacting Emergency Ordinances

In the event of an emergency, within 72 hours (3 days) the Selectboard may issue, to property owners of improved properties or the municipality, temporary authorization for projects to address immediate threat to life and/or property. Such projects must:

- A. Be necessary to protect life and/or property,
- B. Be the minimum necessary to protect life and/or property,
- C. Not adversely affect public safety, and
- D. In the case of river and stream management, meet Agency of Natural Resources implementation standards for such projects.

Within 24 hours all river and stream projects must be reported by the Selectboard to the Agency of Natural Resources through their on-line application form. Submission must include:

- 1) Site map (such as a town road map) circling the area impacted
- 2) Sketches of work to be completed including cross-sections and planforms
- 3) Description of all fill amounts and cuts for authorized activity which are limited to
 - removing flood deposits to pre-flood river profile levels
 - filling river beds to pre-flood "armor bed" levels
 - filling river banks to bankfull width goals, without narrowing of beds
 - river stabilization (armoring, bankfull width channels and flood plains)
 - berming (discouraged, allowed only if absolutely essential.)
- 4) Documentation that the project work meets the Agency of Natural Resources implementation standards as defined in the Vermont Rivers and Road Field Manual.

The Agency of Natural Resources will issue a temporary Permit after initial review. A final Permit will be issued after a more complete review. After receiving a state Permit, the town would then seek FEMA authorization if applicable.

The Selectboard may delegate the authority for these approvals to an individual based on expertise and knowledge of relevant Vermont Regulations.

Section 270: Public Hearings on Zoning Decisions

Section 271: Public Hearings

Public Hearings will be held by the Development Review Board to address zoning applications including Site Plan Review, appeal of a Zoning Administrator decision, or Zoning Administrator Failures to Act.

Appeal of a Development Review Board decision is handled by the Superior Court of Vermont, Environmental Division.

Section 272: Who May Attend and Be Heard at a Public Hearing

The public may attend all Public Hearings.

Any “Interested Person” has the right to be heard at a Public Hearing.

Participation in the initial hearing proceedings is a prerequisite to making future Appeals.

An Interested Person, their agent, or their attorney may appear at the hearing and be heard on the issue, in either support or opposition, or to raise a point of interest or concern on the issue being heard. Pursuant to 24 V.S.A. § 4465(b), an Interested Person includes:

- A. A group of ten (10) or more voters or property owners who, by signed petition presented to the Board, allege that the decision, proposed action or failures to act will or will not conform to policies, purposes, or the terms of the bylaw, ordinance or plan. The petition shall designate one person to serve as their representative regarding all matters related to the issue
- B. A person owning title to a property who alleges that the decision, proposed action or failures to act will or will not impose unreasonable or inappropriate restrictions on or potential Use of the property.
- C. A person owning or occupying property in an adjacent neighborhood or property subject to the decision, proposed action or failures to act, who can demonstrate a physical or environmental impact on their interests and who alleges that the decision or proposed action will or will not conform to policies, purposes, or the terms of the bylaw, ordinance, or plan.
- D. The Town of Wilmington having a bylaw, ordinance or plan brought under review.
- E. Any department of the state owning property or with interest in property in the town of Wilmington having a plan, proposed action or failures to act, brought under review and the agency of commerce and community development for the state.

Section 273: Development Review Board Hearing Notice Requirements for Conditional Use, Variance, Subdivision, or Appeal of Zoning

Administrator Administrative Reviews

Pursuant to 24 V.S.A. § 4464(a), public notice of hearing will be provided at least fifteen (15) days prior to hearing for a review of Conditional Use, Variance, Subdivision, or the Administrative Review decision of the Zoning Administrator.

Administrative Review decisions of the Zoning Administrator include those reviews and decisions for new development or amendments to previously approved developments that would otherwise require review by the Development Review Board. The Development Review Board will retain review authority on any new development that results in substantial impact or substantially changes any of the findings of fact under a written decision of the Development Review Board and approval.

The Administrative Review decisions granted to the Zoning Administrator under this zoning ordinance include:

- A. Administrative Waivers granted by the Zoning Administrator as defined in Section 214.
- B. Administrative Permit amendments in Article VIII Section 843 Administrative Amendment to a zoning Permit.

The notices of hearing will be made:

1. In the Wilmington newspaper of record, and
2. In three (3) or more public places in Wilmington in conformance with 1 V.S.A. § 312(c)(2), including within view of the public right-of-way most nearly adjacent to the property for which application is made.

Written notice shall be sent to the applicant and the owners of all properties adjoining the subject property (regardless of whether intersected by a highway or other public right-of-way). The notices of hearing will include:

1. A description of the proposed project,
2. Information on where additional information can be obtained, and
3. Notification that participation in the proceeding is a prerequisite to making a future Appeal.

Section 274: Development Review Board Hearing Notice Requirements for Appeal of Non-Administrative Review Decisions of the Zoning Administrator

Upon receipt of notice of Appeal under 24 V.S.A. § 4465, and pursuant to 24 V.S.A § 4468, the Development Review Board shall set a public hearing date to be held within sixty (60) days of the notice of Appeal filing.

Public notices of hearing will be provided at least fifteen (15) days prior to hearing an Appeal. The notices of hearing will be made:

1. In the Wilmington newspaper of record, and
2. In three (3) or more public places in Wilmington in conformance with 1 V.S.A. § 312(c)(2), including within view of the public right-of-way most nearly adjacent to any property.

Written notice of hearing shall be sent to the appellant and any owners of properties adjoining the subject property (regardless of whether intersected by a highway or other public right-of-way). The notices of hearing will include:

1. A description of the Appeal,
2. Information on where additional information can be obtained, and
3. Notification that participation in the proceeding is a prerequisite to making a future Appeal.

Section 275: Development Review Board Hearing Notice Requirements for Any Other Development Review Purpose Including Site Plan Review

Pursuant to 24 V.S.A. § 4464(a)(2), public notice on all other types of development review, including site plan review, will be provided at least seven (7) days prior to the public hearing.

The notices of hearing will be made in three (3) or more public places in Wilmington in conformance with 1 V.S.A. § 312(c)(2), including within view of the public right-of-way most nearly adjacent to the property for which application is made.

Written notice shall be sent to the applicant as well as the owners of all properties adjoining the subject property (regardless of whether intersected by a highway or other public right-of-way).

The notices of hearing shall include:

1. Date, place, and purpose of hearing,
2. Information on where additional information can be obtained, and
3. Notification that participation in the proceeding is a prerequisite to making a future Appeal.

Section 280: Public Hearings on Changes to Zoning Bylaws

Section 281: Bylaw Changes and Adoption

The Planning Commission prepares recommended changes to bylaws or ordinances consistent with the Town Plan. Prior to sending a proposed bylaw or ordinance revision or adoption to the Selectboard for consideration, the Planning Commission must hold at least one Public Hearing to hear comments from the community, pursuant to 24 V.S.A. § 4441.

Prior to Selectboard adoption, amendment, or repeal of a bylaw or ordinance the Selectboard shall hold at least one public hearing pursuant to 24 V.S.A. § 4442.

Pursuant to 24 V.S.A. § 4442(b), the Selectboard may make minor changes to the bylaw or ordinance proposed by the Planning Commission, but shall do so at least 14 days prior to the final Selectboard held public hearing. Should the Selectboard make substantial changes to the concept, meaning, or extent of the bylaw or ordinance after public hearing, a new final hearing will be held on the proposed bylaw, with public advance notices as described below.

The Selectboard must notify the planning commission and the clerk of the municipality of the changes at least 10 days prior to the final hearing. The Planning Commission shall prepare an amended report to reflect the changes and submit the amended report to the Selectboard at or prior to the public hearing. This final report provides the Planning Commission the opportunity to voice any concerns they may have over changes made by the Selectboard to recommended language.

Pursuant to 24 V.S.A. § 4442(d), no Selectboard vote for adoption of a bylaw, amendment, or repeal shall take effect if, within 20 days of the vote, five percent (5%) of the voters petition for a public meeting to consider the proposal and to act upon the proposal by Australian ballot.

Pursuant to 24 V.S.A. § 4442(g), any proposed bylaw, amendment, or repeal will be considered disapproved if not acted on within one year of the date of the final hearing of the Planning Commission, unless within 60 days of the end of that year five percent (5%) of the voters petition for a public meeting to consider the proposal and to act upon the proposal by Australian ballot.

Section 282: Public Hearing Notice Requirements for Preparation or Adoption of Bylaws and Ordinances

Pursuant to 24 V.S.A. § 4444, public notice of such hearings will be provided at least 15 days prior to the hearing date.

The notices of hearing will be placed:

1. In the Wilmington newspaper of record, and
2. in three (3) or more public places in Wilmington, in conformance with 1 V.S.A. § 312(c)(2).

The notices of hearing will include:

1. Location, place, and purpose, and
2. A copy of the text of the proposed material or a statement of purpose, a map or description of the geographic area covered, list of Sections headings or table of contents, and the place where the full text can be seen.

In addition to public notice as defined above, and pursuant to 24 V.S.A. § 4441, the town will provide required notices to abutting municipalities, the regional planning commission, and the department of housing and community affairs within the agency of commerce and community development.

Section 283: Who May Attend and Be Heard at a Planning Commission or Selectboard Hearing on Zoning Bylaws and Ordinances

The public may attend all Public Hearings. Any person has the right to be heard at a Public Hearing regarding a zoning bylaw or ordinance.