

project, information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal; and

- For hearings on subdivision plats within 500 feet of a municipal boundary, written notification to the clerk of the adjoining municipality.

Public notice of all other types of development review hearings, including site plan review (Section 5.3) shall be given not less than seven (7) days prior to the date of public hearing, and shall at minimum include the following:

- (1) Posting of the date, place and purpose of the hearing in three (3) or more public places within the municipality, and
- (2) Written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way, which includes a description of the proposed project, information that clearly informs the recipient where additional information may be obtained, and that participation in the local proceeding is a prerequisite to the right to take any subsequent appeal.

(E) Recording Requirements. Pursuant to the Act [§4449], within 30 days after the issuance of a municipal land use permit or notice of violation, the Administrative Officer shall deliver either the original, a legible copy, or a notice of the permit or violation to the Municipal Clerk for recording in municipal land records as provided in 24 V.S.A. §1154(a). The applicant may be charged the cost of the recording fees as required by law. In addition:

- (1) Subdivision plats shall also be recorded in accordance with Section 6.6.
- (2) Permits, approvals and variances issued for development within the Flood Hazard Area Overlay District shall also be recorded in accordance with Section 5.5.

(3) **Planning Commission.** In accordance with the Act [§§4322,4323], a Planning Commission consisting of not less than 3 nor more than 9 voting members shall be appointed by the Legislative Body for 4 year terms; however no more than 2 Commissioners shall be reappointed or replaced during any calendar year, and a majority of Commissioners shall be residents of the municipality. Vacancies shall be filled by the Legislative Body for the unexpired terms and upon the expiration of such terms. Any member may be removed at any time by unanimous vote of the Legislative Body. The Planning Commission shall elect a chairman and clerk, and adopt rules of procedure to guide its official conduct in accordance with the requirements of the Act [§4323] and Vermont's Open Meeting Law [1 V.S.A., §310-314]. The Planning Commission shall have all powers and duties as set forth in the Act to administer the provisions of these regulations, including but not limited to the power to hear and decide:

- requests and petitions for bylaw amendments under Section 1.4,
- access requests under Section 3.2,
- applications for site plan approval under Section 5.3,
- applications for planned unit and planned residential developments under Article 8, and
- applications for subdivision approval under Article 6.
- review of request for waivers
- review of wireless telecommunications facilities, and
- any other reviews required by the bylaws

(B) **Fee Schedule.** The Legislative Body shall establish a schedule of fees to be charged in administering these regulations, with the intent of covering administrative costs. In accordance with the Act [§4430], the fee schedule may include provisions which require applicants to pay for reasonable costs of an independent technical review of their applications. The schedule of fees shall be posted in the offices of the Municipal Clerk and Administrative Officer, and may be altered or amended only by resolution of the Legislative Body.

(C) **Application Forms.** The Planning Commission is hereby authorized to prepare and revise application forms from time to time, in consultation with the Administrative Officer. In no case shall the introduction of a new or revised form have the effect of, or be construed as, amending these regulations. Application forms will be made available through the offices of the Municipal Clerk and Administrative Officer.

(D) **Hearing Notice Requirements.**

In accordance with the Act [§4464], , a warned public hearing shall be required for conditional use review (Section 5.4), appeals of decisions of the Administrative Officer and variances (Sections 9.3, 9.4) and final subdivision review (Section 6.5). Any public notice for a warned public hearing shall be given not less than 15 days prior to the date of the public hearing by all of the following:

- Publication of the date, place and purpose of the hearing in a newspaper of general circulation of the municipality;
- Posting of the same information in three (3) or more public places within the municipalities, including the posting of a notice within view from the public right-of-way nearest to the property for which the application is being made;
- Written notification to the applicant and to owners of all properties adjoining the property subject to development, without regard to public rights-of-way, which includes a description of the proposed

authority under Title 18 relating to the abatement or removal of a public health risk or hazard.

(D) **Complaints.** Whenever a violation of these regulations occurs, or is alleged to have occurred, any person may file a written complaint with the Administrative Officer on a form provided by the municipality. The complaint shall state fully the causes and basis for the alleged violation. The Administrative Officer shall properly record such a complaint, immediately investigate, and take action as appropriate in accordance with these regulations.

Section 9.6 Municipal Administrative Requirements

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

(1) **Administrative Officer.** In accordance with the Act [§4448], an Administrative Officer, who may hold any other office in the municipality, other than membership on the Zoning Board of Adjustment, shall be nominated for a term of 3 years by the Planning Commission, with the approval of the Legislative Body. The Planning Commission may also nominate, with the approval of the Legislative Body, an Acting Administrative Officer who shall have the same duties and responsibilities as the Administrative Officer in his or her absence. An Administrative Officer may be removed for cause at any time by the Legislative Body after consultation with the Planning Commission. The Administrative Officer:

- shall administer these regulations literally, and shall not have the power to permit any land development which is not in conformance with these regulations;
- in administering these regulations, may enter at reasonable times upon any public or private property for purposes of inspection, investigation or enforcement; and
- shall provide forms and maintain records as required, and perform other tasks as needed to administer and enforce these regulations.

(2) **Board of Adjustment.** In accordance with the Act [§4460], a Board of Adjustment consisting of not less than 3 nor more than 9 members, shall be appointed by the Legislative Body for specified terms. Vacancies shall be filled by the Legislative Body for the unexpired terms and upon the expiration of such terms. The Legislative Body also may appoint alternates to the Board of Adjustment for specified terms, to be assigned by the Legislative Body to serve in situations where one or more members of the Board are disqualified or absent. Members of the Board of Adjustment may be removed for cause by the Legislative Body upon written charges and after public hearing. The Board shall adopt rules of procedure to guide its official conduct in accordance with the requirements of the Act [§4430] and Vermont's Open Meeting Law [1 V.S.A., §310-314]. The Board of Adjustment shall have all powers and duties as set forth in the Act to administer the provisions of these regulations, including but not limited to the power to hear and decide:

- applications for conditional use approval under Section 5.4,
- appeals from any decision, act or failure to act by the Administrative Officer under Section 9.4, and
- variance requests under Section 9.5.
- review of request for waivers
- review of wireless telecommunications facilities, and
- any other reviews required by the bylaws

Section 5.5, only in accordance with Subsection (A), and

- (1) in accordance with the Act [§§4469, 4424] and the criteria for granting such variances found in 44 CFR Section 60.6 of the National Flood Insurance regulations;
- (2) upon determination that during the base flood discharge the variance will not result in increased flood levels; and
- (3) upon a determination that the structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(D) In granting a variance, the Board of Adjustment may attach such conditions as it deems necessary and appropriate under the circumstances to implement the purposes of these regulations and the municipal plan currently in effect. In no case shall the Board grant a variance for a use which is not allowed within the zoning district, or which results in an increase in allowable density.

Section 9.5 Violations & Enforcement

(A) **Violations.** The commencement or continuation of any land development, subdivision or use which is not in conformance with the provisions of these regulations shall constitute a violation. All violations will be pursued in accordance with the Act [§§ 4451, 4452]. Each day that a violation continues shall constitute a separate offense.

(B) **Notice of Violation.** Pursuant to the Act [§4451], no action may be brought under this Section unless the alleged offender has had at least 7 days notice by certified mail that a violation exists. The warning notice shall state that a violation exists, that the alleged offender has an opportunity to cure the violation within the 7 day period, and that the alleged offender will not be entitled to an additional warning notice for a violation occurring after the 7 day period. Action may be brought without notice and opportunity to cure if the alleged offender repeats the violation of the bylaw after the 7 day notice period and within the next succeeding 12 months.

(C) **Enforcement.** In accordance with the Act [§§ 4451, 4452], the Administrative Officer shall institute in the name of the municipality any appropriate action, injunction or other proceeding to enforce the provisions of these regulations. All fines imposed and collected for violations shall be paid over to the municipality. The municipality shall observe any limitations on enforcement proceedings relating to municipal permits and approvals as set forth in the Act [§4496], including the following:

- (1) An action, injunction or other enforcement proceeding relating to any municipal land use permit may be instituted within 15 years of the date the alleged violation first occurred, and not thereafter. The burden of proving the date the alleged violation first occurred shall be on the person against whom the enforcement action is instituted.
- (2) No action, injunction or enforcement proceeding may be instituted to enforce an alleged violation of a municipal land use permit which received final approval from the applicable board, commissioner, or officer of the municipality after July 1, 1998, unless the municipal land use permit or a notice of the permit was recorded in the land records of the municipality as required by the Act [§4449].
- (3) Nothing in this Section shall prevent any action, injunction or other enforcement proceeding by a municipality under any other authority it may have, including, but not limited to, a municipality's

- a. the name and address of the appellant,
- b. a brief description of the property with respect to which the appeal is taken,
- c. a reference to applicable bylaw provisions,
- d. the relief requested by the appellant, including any request for a variance from one or more provisions of these regulations,
- e. the alleged grounds why such relief is believed proper under the circumstances, and
- f. any request for a stay of enforcement, which may be granted or denied by the Board of Adjustment in accordance with the Act [§4467].

(D) **Appeals to the Environmental Court.** Within 30 days following the date of decision rendered by the Planning Commission or the Zoning Board of Adjustment, notice of the appeal shall be filed by certified mail with fees to the Environmental Court and mailing a copy to the Zoning Administrator who shall supply a list of interested persons to the appellant within five working days. Upon receipt of the list of interested persons, the appellant shall, by certified mail, provide a copy of the notice of appeal to every interested person, and if any one or more of these persons are not parties to the appeal, upon motion they shall be granted leave by the court to intervene.

Section 9.4 Variances

(A) The Board of Adjustment shall hear and decide upon requests for variances pursuant to the Act [§4469] and appeal procedures under Section 9.3. **The Board may 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:**

- (1) that 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 such conditions and not the circumstances or conditions generally created by the provisions of the regulations in the neighborhood or district in which the property is located;
- (2) that because of such physical circumstances and conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is necessary to enable the reasonable use of the property;
- (3) that the unnecessary hardship has not been created by the appellant;
- (4) that 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, nor be detrimental to the public welfare; and
- (5) that the variance, if authorized, will represent the minimum that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

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

(C) The Board of Adjustment may grant a variance from flood hazard overlay district standards under

Administrative Officer with as-built plans, certified by a professional engineer licensed by the State of Vermont, which are drawn to scale and show the location of all monuments, utilities, structures, roadways, easements, and other improvements required by the Planning Commission as constructed.

- (2) Within 7 normal working days of receipt of the application for a certificate of compliance, the Administrative Officer will inspect the subdivision to ensure that all work has been completed in conformance with the conditions of subdivision approval. If the Administrative Officer fails to either grant or deny the certificate of compliance within 7 working days of the submission of an application, the certificate shall be deemed issued on the 8th day.

Section 9.3 Appeals

(A) **Decisions of the Administrative Officer.** In accordance with the Act [§4465, §4472], the applicant or any other **interested person** may appeal a decision or act of the Administrative Officer by filing a notice of appeal with the Secretary of the Board of Adjustment, or the Municipal Clerk if no Secretary has been elected, within 15 days of the date of such decision or act.

Interested Person. In accordance with the Act [§4464 (b)] the definition of an interested person includes the following:

- The applicant and/or property owner;
- The Town and Village of Swanton or an adjoining municipality;
- A person owning or occupying property in the immediate neighborhood of a property which is the subject of a decision or act taken under these regulations, who alleges that the decision or act, if confirmed, will not be in accord with the policies, purposes or terms of the plan or regulations of the municipality;
- Any ten (10) persons owning real property within the municipality who, by signed petition to the Board of Adjustment, allege that any relief requested by a person under this section, if granted, will not be in compliance with the plan or regulations of the municipality; and
- Any department or administrative subdivision of the state owning property or any interest therein within the town or adjoining municipality, and the Vermont Agency of Commerce and Community Development.

(1) Pursuant to the Act [§4468], the Board of Adjustment shall hold a public hearing on a notice of appeal within 60 days of its filing. The Board shall give public notice of the hearing under Section 9.6 (D), and mail a copy of the hearing notice to the appellant at least 15 days prior to the hearing date.

(2) A decision on appeal, to include written findings of fact, shall be rendered within 45 days after hearing completion, pursuant to the Act [§4464]. The Board of Adjustment may reject an appeal without hearing, and render a decision within 10 days of the filing of a notice of appeal, if the Board determines that the issues raised by the appellant have been decided in an earlier appeal, or are based on substantially or materially the same facts, by or on behalf of the appellant. Copies of the decision shall be mailed to the appellant and hearing participants, and filed with the Administrative Officer and Municipal Clerk.

(B) **Decisions of the Board of Adjustment and Planning Commission.** Any **interested person** may appeal a decision of the Board of Adjustment or Planning Commission within 30 days of such decision to the Vermont

Environmental Court, in accordance with the Act [§4471, §4472, §4471]. Notice of appeal shall be sent to every interested person appearing and having been heard at the hearing before the Board or Commission.

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

provided to the Listers. The applicant must also post a permit notice, prescribed by the Town of Swanton within view of the public right-of-way most nearly adjacent to the subject property until the time for appeals has passed. The notice shall contain a statement of the appeal period and information as to where a full description of the project and approval can be found.

(D) **Effective Date.** No zoning permit shall take effect until the time for appeal under Section 9.3 has passed, or in the event that a notice of appeal is properly filed, until final adjudication of said appeal.

(E) **Permit Expiration.**

- (1) All development authorized by the zoning permit shall be substantially commenced within one year of the date of issuance, unless otherwise specified as a condition of approval, or the zoning permit and all associated approvals shall become null and void, and reapplication for a new zoning permit shall be required. The Administrative Officer, upon written request prior to the permit expiration date, may extend the zoning permit and associated approvals for a period not to exceed one year without further reviews or hearings.
- (2) Any zoning permit issued based on material inaccuracies or misrepresentations in an application or in any supporting documentation to an application shall be null and void; and any associated development activity commenced under such permit shall constitute a violation of these regulations subject to enforcement action under Section 9.5.

Section 9.2 Certificates of Occupancy & Compliance

(A) **Certificate of Occupancy.** In accordance with the Act [§4449], a certificate of occupancy issued by the Administrative Officer shall be required prior to the use or occupancy of any building or structure, or part thereof, excluding accessory structures associated with a residential use, constructed after July 1, 1998 for which a zoning permit has been issued.

- (1) An application for a certificate of occupancy shall be provided with the zoning permit issued by the Administrative Officer. The applicant shall submit the application, and any associated inspection fee, upon the completion of permitted improvements, but prior to the occupancy or use of the structure.
- (2) Within 7 normal working days of receipt of the application for a certificate of occupancy, the Administrative Officer will inspect the premises to ensure that all work has been completed in conformance with the zoning permit and associated approvals, including all applicable permit conditions. If the Administrative Officer fails to either grant or deny the certificate of occupancy within 7 working days of the submission of an application, the certificate shall be deemed issued on the 8th eighth day.
- (3) If approval is required for a wastewater system, a certificate of occupancy shall not be issued by the Administrative Officer until he or she has ensured that the system has been designed and installed in accordance with Section 3.15 and permit requirements.

(B) **Certificate of Compliance.** As of the effective date of these regulations, the Planning Commission may require, as a condition of subdivision approval, that a certificate of compliance be obtained to ensure that required improvements have been installed in accordance with the conditions of approval prior to any further land development.

- (1) The application for a certificate of compliance and any inspection fee shall be submitted to the

- (2) **Site Plan, Conditional Use, and Flood Hazard Area Review.** Applications for development that require approval under conditional use and/or site plan review prior to the issuance of a zoning permit shall include, in addition to the application information under Subsection (A)(1), a development review application prepared in accordance the requirements for each under Article 5 (See Table 5.1).
- (3) **Planned Unit or Planned Residential Developments.** Applications for planned residential or planned unit developments shall include, in addition to the application requirements under Article 8, application information required for subdivision approval under Article 6 (see Table 6.2).
- (4) **Wastewater Systems.** Applications for development requiring wastewater system approval prior to the issuance of a zoning permit or certificate of occupancy shall include wastewater system information as required under Section 3.15.
- (5) **Referral to State Agencies.** No permit for new construction or substantial improvement shall be granted for a proposal within a flood hazard area until after both the following:
 - (i) a copy of the application is mailed or delivered by the administrative officer or by the appropriate municipal panel, to the Agency of Natural Resources; and
 - (ii) either thirty (30) days have elapsed following the mailing or the agency delivers comments on the application.

(C) **Issuance of Permits.** A zoning permit shall be issued by the Administrative Officer only in accordance with the Act [§§ 4424(D), 4449] and these regulations. If, in the opinion of the Administrative Officer, the proposal as set forth in the application is not in conformance with the provisions of these regulations, the Administrative Officer shall deny the zoning permit.

- (1) No zoning permit shall be issued by the Administrative Officer until a complete application, including any required approvals from the Planning Commission, Board of Adjustment, Legislative Body and/or Health Officer, and associated fees, have been properly submitted.
- (2) For development for which a prior permit or approval has been issued, including subdivision plat approval, no zoning permit shall be issued until documentation is provided that all applicable conditions of the prior permit or approval have been met.
- (3) In accordance with the Act [§4449(d)], if public notice is issued with respect to amendment of these regulations, the Administrative Officer shall not issue any zoning permit for a development affected by that amendment, for a period commencing with the date of publication of the first public notice by the Legislative Body concerning such an amendment and ending on the effective date of adoption or rejection of the amendment, except with the written consent of the Legislative Body, given after a public hearing warned in accordance with Section 9.6(D).
- (4) Within 30 days of receipt of a completed application, including all application materials, fees, state agency reports and approvals, the Administrative Officer shall either issue or deny a permit in writing pursuant to the Act [§4448, §4449], or refer the application to the appropriate municipal panel for their review and action. Each permit or denial issued shall include a statement of the time in which appeals may be made under Section 9.3. If the Administrative Officer fails to act within the 30 day period, a permit shall be deemed issued on the 31st day.
- (5) Within three days of issuance, the Administrative Officer shall post a copy of the permit in the Town Clerk's Office until the expiration of the appeal period. Following the appeal process, a copy shall be

ARTICLE 9. ADMINISTRATION & ENFORCEMENT

Section 9.1 Zoning Permits

(A) **Exemptions.** No zoning permit shall be required for the following:

- (1) Normal maintenance and repair of an existing structure that does not result in any change to the footprint or height dimensions of the structure, an increase in wastewater generation, or a change in use.
- (2) Residential entry stairs (excluding deck or porch areas), handicap ramps, walkways, and fences or walls less than six feet in height which do not extend into or obstruct public rights-of-way, or interfere with corner visibility or site distances for vehicular traffic.
- (3) One detached accessory structure which does not exceed 100 square feet in floor area or 10 feet in height, providing such structure meets front setback requirements, is set back a minimum of 5 feet from all lot lines, and is not used as living space. A letter of intent to build, with a plat indicating dimensions and setbacks must be submitted to the Zoning Administrative Officer.
- (4) Residential garage sales, yard sales, auctions or similar activities not exceeding three consecutive days, nor more than 12 days in any calendar year.
- (5) Accepted agricultural and best management practices (AAPs, BMPs), including farm structures, as defined by the Commissioner of Agriculture, Food and Markets in accordance with the Act [§4413]; however such practices shall meet setbacks required by these regulations, unless specifically waived by the Commissioner. Written notification, including a sketch plan showing the proposed structure and associated setback distances from road rights-of-way, property lines, and surface waters, and any waiver from the state, shall be made to the Administrative Officer prior to any construction, as required under the AAPs.
- (6) Accepted management practices (AMPs) for silviculture or forestry as defined by the Commissioner of Forest, Parks and Recreation, in accordance with the Act [§4413].

(B) **Application Requirements.** An application for a zoning permit shall be submitted to the Administrative Officer on forms provided by the town for that purpose, along with required application fees. In addition, the following will be required as applicable:

- (1) **Permitted Uses.** An application for a permitted use shall include a statement of the existing and intended use of land and structures, and be accompanied by one copy of a sketch plan, drawn to scale, which shows the following information in sufficient detail to determine whether the proposal is in conformance with these regulations:
 - the shape and dimensions of the parcel, including existing and proposed property boundaries;
 - the location of major site features, including surface waters, wetlands and floodplains;
 - the location of parcel corners, as known and established on the ground;
 - the location, footprint, and height of all existing and proposed buildings and structures, including proposed additions or alterations;
 - setback distances from property boundaries, road rights-of-way, surface waters and wetlands; and
 - any other information as required by the Administrative Officer to determine conformance with these regulations.